The Planning Board met at 6:30 PM local time Thursday, March 27, 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
Allyn Hetzke, Jr.
Sue Kreiser
Terry Tydings

Excused: Linda Cummings, Secretary
Jim Burton
Doug McCord

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

II. APPROVAL OF MINUTES:

III. TABLED

1. 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.

The Draft Environmental Impact Statement is available on the Planning Department’s web page on the Town website located at www.penfield.org. Comments on the Draft Environmental Impact Statement were requested and accepted until October 25, 2010. Appl# 09P-0003.

The Board met in a special worksession for the purpose of working on the Final Environmental Impact Statement. As has been the practice of the Board for all prior meetings where the FEIS was discussed, the Board reviewed each and every comment with associated response for the identified sections below. As each comment and accompanying response was discussed, the comments and responses were displayed on a large screen using a projector for viewing by the Planning Board and members of the public who were in attendance in the audience. After review and consideration, revisions were made to responses as deemed appropriate.

- Department Head, Mark Valentine, led the Board through the following FEIS sections:
  - Specific Comments Must be Addressed (Schedule A)
  - Plaza Health Section 3.4.1 (Schedule B)
  - Additional Alternatives Section 3.10 (Schedule C)
  - Lighting and View Section 3.11 (Schedule D)
  - Alternatives Inadequate Section 3.11 (Schedule E)
  - Expanding Footprint Analysis Inadequate Section 3.13 (Schedule F)
  - Crime and Public Safety Section 3.14 (Schedule G)
The Board’s work project is attached and hereby incorporated into these minutes as Schedules A-N.

The Board took NO ACTION on this item.

There being no further business to come before the Board, this meeting was adjourned at 8:57 p.m., Thursday, March 27, 2012.

These minutes were adopted by the Planning Board on April 12, 2012.
Comment 1: Penwarden, MCDOT
Tables 3.4-4 and 3.4-9 show the westbound approach to the Creek Street Access as one shared lane, however the approach widens at Creek Street to provide for one lane for westbound right turns and one lane for westbound left turns. The analysis should be run using two lanes exiting.

Response:
The Applicant’s consultant has provided the following response to this comment: “The analysis has been run using two lanes. The 75 foot long westbound right turn lane is relatively short such that delay in the right turn lane is impacted by spillback in the left turn lane. The comprehensive Synchro results for the no build and build without mitigation have been submitted to the town. The Friday PM peak hour delay on the Bay Towne driveway approach to Creek Street is projected to change from LOS F/98 seconds of delay to LOS F/212 seconds of delay. The Saturday mid-day peak hour delay on the Bay Towne driveway approach to Creek Street is projected to change from LOS D/34 seconds of delay to LOS F/79 seconds of delay.”

Monroe County DOT, in its letter dated December 21, 2011 (***Include as an exhibit***) indicates support for the configuration of the Creek Street access to become a right-in only access from Creek Street to Bay Towne Plaza. As vehicles exiting the plaza heading for Creek Street or Bay Road will now be required to exit at Sovran Drive, MCDOT recommends formal consideration of internal geometry where Sovran Drive and the existing Creek Street access intersect with the internal plaza traffic. This will be part of any future Site Plan review.

In its letter dated February 22, 2012 (***Include as an exhibit***), the MCDOT recommends that the existing Creek Street access be modified to either right in only or right out only, but will allow the developer to attempt to justify a need to keep both. The Planning Board is reluctant to consider this option, even if justified for the plaza, until a thorough review of the potential options for the intersection of Bay Road, Creek Street and Empire Blvd. can be conducted. The Board supports a right in only access from Creek Street into the plaza at this intersection. The incorporation of adding a right out only at this location may tend to lengthen queues at the Empire Blvd. signal. If there were no right out only access in this location, it may be possible to incorporate what is today a dedicated right turn lane onto Empire Blvd, from northbound Creek Street, into a combination through/right turn lane, thereby increasing the stacking ability of vehicles, which, on occasion, currently blocks the existing exiting lane onto Creek Street from the plaza. Therefore, any final site plan review process will provide better analysis of whether the existing Creek Street access should be limited to right in only or if both a right in only and a right out only configuration best serves the site and the nearby intersection. This discussion should include NYSDOT, MCDOT and the Town of Penfield.

Comment 2
Page 3.4-16 states in part “Creek Street is free flow with left turns into Bay Towne Plaza prohibited and is projected to continue operating very well at the Bay Towne Plaza driveway.” This is contrary to the values shown in tables 3.4-4 and 3.4-9 where the delays are shown to be in excess of 168 seconds for the westbound (exiting) approach under the 2009 no build scenario and in excess of 274 seconds for the 2009 build with mitigation scenario! The results of #1 above may very well change this comment.

Response:
See the Response to Comment 1 above.

Comment 3
Page 3.4-44 indicates that no changes are proposed to the existing Creek Street access, and that with mitigation (connecting to Sovran Drive) delays for exiting left turns from the plaza are expected to be acceptable. Again, table 3.4-9 contradicts this statement.

Response:
See the Response to Comment 1 above.

**Comment 4**
Based on the historical traffic issues at the Creek Street/Bay Towne Plaza driveway, we recommend that the Sovran Drive be connected to Bay Towne Plaza, and the Sovran Drive access to Creek Street continue to be a full access (allowing all permissible movements to Creek Street). Additionally, we recommend the existing Creek Street/Bay Towne Plaza access be modified to be either a right in/right out only access or preferably, a right out only access. Both of these scenarios should be analyzed to determine if a traffic signal (and any geometric modifications) would be warranted at the Sovran Drive access point under these conditions.

**Response:**
The following is recommended to mitigate expected delays for Bay Towne exit left turns to Creek Street:

- A connector roadway between the Bay Towne Plaza and Sovran Drive;
- Analysis of geometry of intersection of Creek Street access, Bay Towne internal driveway and Sovran Drive, through any final site plan review process;
- Installation of a two-phase traffic signal on Creek Street at Sovran Drive; and
- Modification of the existing Bay Towne access to Creek Street to be a right in only

The recommended mitigation is expected to provide service levels of B or better for Creek Street and LOS C for the Sovran Drive approach at the new two phase traffic signal. The right in from Creek Street is projected to operate at LOS A. The west shoulder of Creek Street is expected to provide capacity for motorist traveling south on Creek Street to pass by vehicles waiting to turn left onto Sovran Drive. **Reference the most recent CDOT letter***
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, Peter
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 accepted the petition as part of the public comment and input process.

Comment 3: Frank, Tom
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, K-Mart 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, Ellen
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, Rose
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 on 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, Sandra
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 be 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.

Comment 7: Hansen, Sandra
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, Peter
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, Anna
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.

Mr. Hanscom’s letter of October 17, 2010 also contains a very detailed list of operating businesses and vacant commercial space in the North Penfield Crossroads area of Penfield. The information was collected during the first week of October, 2010. Mr. Hanscom states: “These stores, offices and plazas are successful due to their proximity and visibility from the roads they are located next to. All of the stores and shopping plazas along these roads, except for BayTowne Plaza, have excellent visibility from passenger cars driving along the roads.”

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.
SECTION 3.10 – ADDITIONAL ALTERNATIVES

Comment 1: Green
The property that is subject to the rezoning application should be rezoned to Business Non-Retail or Limited Business, and professional office buildings should be constructed as a buffer between Bay Towne and the existing homes. Alternatively, a senior living facility should be constructed as a buffer between Bay Towne and the existing homes.

Response:
As set forth in Sections 3.3.e and 3.5.b of the DEIS, the Applicant has explored several alternatives and determined them to be infeasible. Any uses permitted in Limited Business or Business Non-Retail zones could also be considered as permitted uses with a General Business zone. This is true within the existing plaza, as there are office uses and non-GB dependent retail uses that operate today. Given the space constraints of the Property, the development of professional office buildings or multi-residence facilities would not allow for the degree of mitigation of conditions already existing in the commercial corridor or those resulting from such new development. With the newly submitted plan CP-02, there is up to 200’ of natural buffer left between the proposed berm and surrounding residential yards. Development of this land with uses allowed in the Business Non-Retail or Limited Business districts would reduce the minimum required buffer to only 50’. The development of the lands would remove the existing vegetation, which has been shown to significantly reduce the noise impacts to surrounding neighborhoods.

Comment 2: Hanscom
Bay Towne should be redeveloped as a mini outlet mall.

Response:
The concept of an “outlet” mall is more associated with the marketing and types of tenants than the physical features of a commercial development site. As the Planning Board is intending to analyze the potential impacts of a commercial development site, not specific tenancies, this alternative concept appears to be outside the scope of this environmental review. The Town of Penfield had an outlet mall developed in Panorama Plaza in the late 1980s, but this concept failed and the resulting effect was that the mall was replaced with a series of smaller retail stores and one larger anchor tenant, Tops Market. Further, as the Applicant has stated in Section 3.5.b of the DEIS, it would be difficult for the Plaza to succeed economically with no large anchor tenant to draw customers into the Plaza.

Comment 3: J. Krause
Wal-Mart has been investing in smaller Super Centers, such as the Super Center located in the Town of Victor, which is less than 100,000 square feet. Since the current Wal-Mart is over 119,000, it should be converted without any expansion.

Response:
As set forth in Section 3.1.e of the DEIS, Wal-Mart has explored this option and determined it to be functionally infeasible. In addition, the DEIS Supplemental (***Always refer to DEIS supplemental submission this way***), Submission of August 2010, Chapter 2-2.1 addresses how the applicant has analyzed a smaller Wal-Mart store for this location. The proposed project includes an approximately 177,000 square foot Wal-Mart supercenter. The proposed size of the Wal-Mart was based on the two present prototypes that Wal-Mart is now developing. Wal-Mart has evaluated the market based on proximity to other Wal-Mart stores, population, etc. and determined a smaller Wal-Mart store would not be a feasible option for this location. With respect to the Bay Towne Plaza 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.

Comment 4: Hanscom, Rose
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.

What would make Bay Towne an exciting place to shop? I think a mini Waterloo quality outlet place. Create some stores like an Eddie Bauer -- I don't know if they're going out of business, but let's say Nike, J.C. Penney outlet -- let see if these outlet stores came to Bay Towne and Wal-Mart walked. Let it walk. There are so many Wal-Marts around we could find a Wal-Mart to shop at. Wouldn't you be excited if there was a mini Waterloo outlet at Bay Towne? People would come to that. They would come to that kind of stores. would be high quality, low price things. And then behind Bay Towne, where you have a residential area, you could create housing for senior citizens.

In fact, they emphasize the in Comp. Plan of 2010 -- I think they should look at the Comp. Plan -- the draft Comp. Plan of -- or the -- they emphasize the Comp. Plan of 2000, and they should look at the draft Comp. Plan of 2010 which asks for more senior housing, and they want to know where it could go. Well, this is perfect. It's MR, R-1-12. You could create walking paths from wonderful homes and you could create it into this wonderful mall, this outlet mall which would create the market that you need to keep your business going, Beale Street.

Response:
See Response to Comment 2, above. One alternative in the DEIS Supplemental Submission, dated August 5, 2010 is the RES-48 EXP alternative. This shows a combination of single family homes on the R-1-12 zoned land and a senior living facility on the MR zoned land. Any development of the eastern portion of the property would remove the existing natural vegetation, which has been shown to be important in mitigating noise and visual impacts.

Comment 5: Stanton, R.
The DEIS does not evaluate and compare impacts of Plaza redesign within its own footprint, the development of multi-family uses on the parcels, or less drastic rezoning to allow uses to permit professional office space to operate on the parcels at issue. The only alternative the developer purportedly modeled in the appendixes was the one which relies upon rezoning of the properties. Thus there was no evaluation of the environmental impacts of reasonable alternatives in the DEIS.

Response:
The DEIS Supplemental Submission, dated August 5, 2010 modified the rezoning application and contained discussion on several alternatives, including one that would require no rezoning and the R-1-12 zoned land is shown as a 48-lot single family subdivision and the MR zoned land is shown as a senior living facility. See also, Response to Comment 4, above.

Comment 6: R. Koontz
A Walmart super center coexisting with upscale shops is unrealistic. I would like to see a plaza that has more of a homogenous upscale look and feel. One suggestion would be to have an outlet mall something like a scaled down version of prime outlets in Waterloo or Niagara Falls.

Response:
The mix of tenancies is outside the scope of this environmental review. All future uses would be limited to those uses allowed or conditionally allowed by the Penfield Town Code. See also Response to Comment 2, above.
SECTION 3.11 – LIGHTING AND VIEW

Comment 1 - Kelly
A berm of varying heights with a 6 foot fence at the top is stated as the manner in which noise and visual impacts to adjacent properties will be mitigated. The plans call for varying distances between the property lines of the adjacent homes and the back of the proposed Walmart building. As I noted in testimony at the Public Hearing, when the distances are put into perspective, there is merely the size of a regular residential lot between the properties and the building. Assuming that the berms are placed on the residential property lines, this presents the homeowner with a totally different residential/neighborhood environment that that of the typical Penfield neighborhood – they will back up to a berm with an rather unattractive fence as opposed to a neighborhood. I would also raise the question of berm maintenance and fence maintenance. Maintenance of the berm and/or buffer on both sides would obviously be the responsibility of the Plaza management/owner, and would also require access to the homeowner’s property to do so or is there something else that runs between the berm and the homeowner’s property, which again, from a neighborhood feel or visual impact is a significant factor? Additionally, stockade wood fences quickly weather and deteriorate to become extremely unattractive. The rezoning of the property to GB is an inappropriate use of the land, but the Applicant should keep these points in mind when/if they move forward with the residential development of the land.

The site plan as proposed appears to have a significant amount of lighting. There does not appear to be any clear sense of how the lighting may impact the neighboring areas. There appears to be around a tripling of the amount of light that will be placed on the expanded site, with the majority of the pole heights being the same as those for the existing plaza, with each light source generating 400 watts of light. It was not clear to me from the proposal how the light will be contained to the site simply by the berms. In addition, I believe light impact studies should extend out to a comprehensive radius of the neighborhood. At this time, in the fall and winter, without the thick tall tree and brush buffer, the lights from the existing Plaza are clearly visible from my downstairs, as well as upstairs windows, again, with my home situated on the next rung in the proximity radius. This concern should also be addressed when/if the Applicant moves forward with any revitalization of the Plaza within the existing zoning area of GB.

Response:
The preferred alternative plan for development includes a berm which varies in height above the finish floor of the proposed Walmart from 14’ to 36’ in height with an eight foot post-and-panel decorative pre-cast concrete sound wall on top of the berm. The berm would be vegetated with grasses and additional plantings such as deciduous and coniferous trees. Access to maintain the berm would be from the commercial side of the property. There is no proposal to enter private property to maintain the commercially zoned lands. The Applicant has proposed a sound wall on top of the berm as a decorative concrete product that is maintenance free and would not be subject to deterioration as the comment suggests. In addition to the berm, the preferred alternative plan calls for maintaining approximately 100’ of existing natural buffer between the rear property lines of the residentially zoned lands and the limit of disturbance (toe of slope of the proposed berm). Recently submitted plan CP-02 shows up to approximately 200’ of natural vegetation preserved between the berm and the rear yards of residential properties.

If the lands were developed residentially, the natural buffer of trees and vegetation that exists today would be removed and replaced with homes on 12,000 sq. ft. lots. The removal of this vegetation would expose the existing neighborhoods to additional sounds and sights of the existing commercial development along Empire Blvd., as well as any new development on the commercially zoned lands not currently developed.

As shown in Figure 6 of the DEIS, the proposed site lighting for the project shall be 400 Watt Metal Halide fixtures mounted on 30’ tall poles throughout the proposed retail areas. This is consistent with the lighting currently in place at the existing Bay Towne shopping center. The lighting shall be installed in such a manner that no light spill onto adjacent properties will be experienced. Poles are placed in such a manner that the light cast by each fixture will not be visually obtrusive to adjacent properties. Poles closest to residential properties will have “house-side” shields affixed to the underside to shield any potential light spill to adjacent properties. Further, the height of the proposed berm and sound wall will be taller than the proposed light fixtures thereby ensuring that proposed site lighting will not adversely impact any properties to the east of the site. Specific details of lighting will be further considered.
during any future site plan review process. Pole heights and spacing require careful balancing between providing enough light for public safety on the site, minimizing or eliminating light intrusion off the property and spacing the light fixtures to minimize potential conflicts with customer vehicles and snow removal operations. If a site plan application is forthcoming, these will be more carefully reviewed when a specific plan is identified.

**Comment 2 - LaRocco, L & C**
The other obvious concerns that come with supercenters: loss of property value, noise and light pollution, vacated buildings, degradation of the area.

**Response:**
The factual documentation provided in the DEIS illustrates that in scenarios similar to Bay Towne, property values were not adversely affected. Please refer to Attachment 20 of the DEIS for specific property value information relative to the homes surrounding the Wal-Mart in Gates, New York.

The noise study has shown that the calculated future noise levels at surrounding adjacent residential properties may be slightly increased (less than 5 decibels), where decibels (dBA) are a unit of measure of sound pressure levels. The method of quantifying human reaction (or annoyance) to noise level increases has followed the NYSDEC Noise Guide (Exhibit __). The NYSDEC Noise Guide is based on many case studies and noise research documents that have identified that even though new noise sources may be noticed there is no apparent human reaction (or complaint) when noise level increases less than 5 dBA.

Proposed activities, according to property maintenance agreement at the future development such as sweeping, garbage pick-up and plowing can only occur between 7:00 am and 11:00 pm. If these activities are observed during hours between 11:00 pm and 7:00 am, notification can be made directly to the Town Code Enforcement Officer.

*The Planning Board acknowledges these areas of concern and therefore required the preparation of a Draft Environmental Impact Statement. Figure 6 of the DEIS shows the Site Lighting Map for the applicant’s preferred alternative. Pole heights are consistent with those within the existing Bay Towne Plaza. Also, please see Section 3.3.c. of the DEIS, entitled Potential Impacts – Visual. See also, Response to Comment 1, above.*

All of the impacts mentioned in the comment have been addressed in many of the previous responses within this section of the FEIS.

**Comment 3 - Ryan**
We spend much time in our backyard playing with the kids and enjoying many barbecues with friends and family. However, I am beginning to think that the nice quiet weekends that we have been enjoying will soon be replaced with diesel trucks idling, air-conditioning units and chillers cycling and the noisy parking lot traffic of sweepers and snow removal equipment. Believe it or not, we still have much beautiful wildlife in the small green area that remains behind us, it is not uncommon to see deer or red fox wandering in our yard. We are aware that one day this property will be developed, we would just prefer that it remain zoned, as it is, residential. This will help to preserve the Penfield that we were introduced to seven years ago. Not only are we concerned about the air quality, noise, traffic and lighting issues, we are very concerned about the possible demise of the wonderful Wegmans grocery store that we use almost every day for one thing or another.

**Response:**
The Applicant’s preferred alternative, COM-54, preserves a 100’ natural area adjacent to the Jewelberry rear yards. The Applicant has also submitted CP-02, which shows a 200’ natural area and a 100’ area with tall berm and 8’ concrete barrier. The remaining, preserved natural area will provide a wildlife corridor and will help preserve existing views from the rear yards of surrounding residents. Those preserved lands are proposed to remain zoned R-
1-12 (residential) but will be permanently preserved through deed restriction or similar technique. Quite often, in this region, Wal-Marts and Wegmans exist in close proximity successfully. Please see the section entitled Effect on Nearby Business, in this FEIS.

**Comment 4 - Keenan**
What bothers me now is finding out that what I was originally told about our neighborhood is not true. I’m now being told that my new backyard neighbor may be a very large commercial building?! If I had known this was the case when I started looking for a new residence and place to build, I would never have chosen to build here. I feel like you’re pulling the rug out from under me and my family if you chose to let DiMarco rezone this property for commercial use. You are deceiving myself and the neighbors around us if you choose to let this happen. Please don’t deceive me by turning my backyard into a commercial zone.

**Response:**
The proposed development in the Applicant’s preferred alternative, COM-54 is not proposing to turn the commenter’s (Keenan) “…backyard into a commercial zone.” Rather, the preferred alternative proposes to maintain a 100’ natural buffer of existing vegetation that is at least 20+ years old. The buffer would also be extended to include a large earthen berm and sound/view barrier on top of the berm. In addition, the Planning Board has requested the combination of features of two previously reviewed alternatives, which the applicant has entitled CP-02, which incorporates an additional 100’ of natural buffer preserved, to bring the proposed buffer component to approximately 300’ from the eastern property line (200’ of natural vegetation preserved and about 100’ to accommodate the earthen berm.) See the Response to Comment 2 above.

**Comment 5: McCombs, Anne**
Um, the developer has made very significant effort to mitigate the effect to the neighbors. The berm that is proposed, as well as the fence that is proposed, as well as the woods that are to remain, um, provide a buffer. So, therefore, I’m at a loss as to the concept that residences will directly border the commercial. Um, that simply in my review is not accurate.

**Response:**
The Board acknowledges that the applicant has offered specific mitigation measures for buffering of residential neighbors. Those measures are now being analyzed for effectiveness.

**Response to Town Project Review Committee Memorandum dated December 27, 2010:**
The following response is in reference to the above referenced Memorandum.

**Comment 1**
The applicant’s lighting plan appears to adequately address mitigation issues. Additional benefits may be obtained by the use of high/low systems or similar technologies.

**Response:**
The lighting plan was designed to have the lowest possible impact on both the environment and the surrounding properties. Lower pole heights, lower intensity fixtures, designed to provide light levels adequate for the necessary security have been the goal of the lighting package. The Applicant has indicated the long range design includes relighting the existing plaza in its entirety. LED lighting has been a considered by the Applicant as an alternative but at this time has shown to be cost prohibitive for the new developed area including the entire existing Plaza. An additional lighting scenario the Applicant is considering includes reduced lighting during non-operational hours (high/low) through a central control system. The balance that must be achieved, however, is one that maintains public safety for all commercial stores and their customers and employees while minimizing the light spillage onto non-commercial properties. These details will be explored during any future site plan application process.
SECTION 3.12 - ALTERNATIVES INADEQUATE

Comment 1-Hanscom
The proposed alternatives contain nothing that supports claim that street of shops will be pedestrian friendly or accessible. The design of the street of shops is poor from a pedestrian perspective, as the future shops will each be separated by driving lanes and parking lots.

Response:
“Pedestrian Friendly” does not indicate a total separation of vehicles and pedestrians but rather places set aside for pedestrians and elements that make that interaction a safer one. As set forth in Sections 3.4.a and 3.4.c and Figure 10 of the DEIS, existing sidewalks at the Plaza will be interconnected with the new sidewalks proposed through the former Tops store. Additionally, new crosswalks will be provided with table top crosswalks that favor pedestrian movement throughout the Plaza. These were initiated during the Tops redevelopment application before the Planning Board. Where a proposed sidewalk passes an access drive, there will be a visible, well marked crosswalk serving both the proposed street of shops and the pedestrians that work and/or shop there. In addition to the sidewalks and crosswalks, pedestrian friendly elements such as trees, planters, benches, and bollard lighting will be added to the Plaza, including in the area of the proposed street of shops, to make it safer and more pedestrian friendly. It may be premature to discuss more specific design features as they will likely be provided in any future site plan review process. These plans, however, will be guided by many resources, including but not limited to the 2010 Comprehensive Plan, the North Penfield Crossroads Plan and the Planning Board Design Guidelines.

Comment 2-Hanscom
The proposed alternatives do not include the possibility of constructing a driveway between Bay Towne and the existing Midas Muffler and/or Beale Street Café.

Response:
Insuring connectivity between Bay Towne and the parcels fronting Empire Boulevard, remains consistent with the access management detailed in the North Penfield Crossroads Plan. While the concept plans included in the DEIS may not show all interconnections, the intent is to provide either physical access or at least an easement for future access, during any future site plan review process. These will be important considerations during any future site plan review process.

Comment 3-Hanscom
Section 3.3.e of the DEIS does not adequately discuss the possibility of demolishing a portion of the existing vacant buildings at Bay Towne, including the former Tops building, to allow for the expansion of the existing Wal-Mart without the need to rezone. Since the proposed Wal-Mart Super Center is 30,000 square feet smaller than the sum of the existing Wal-Mart and Tops, it should be built within the existing footprint of the Plaza.

Response:
The DEIS and the August, 2010 supplement identify logistical concerns with construction of a new super center at the location of the existing WalMart (Alternative RES-48 EXP). In looking at this alternative, the Planning Board is aware that other stores have been successfully converted from a standard WalMart to a super center. However, the applicant has indicated that the super center, offering both food and general retail, requires two loading docks. The Board feels that installation of another loading dock onto the existing store and any subsequent addition to that existing store would impact the Guygrace neighborhood without having sufficient lot area or separation to properly mitigate those impacts. The existing Wal-Mart store is approximately 100’ from the Guygrace property lines.

Comment 4-Hanscom
The DEIS does not address how the new Wal-Mart building will be reused if it is vacated.

Response:
The re-use of the existing Wal Mart building was not required by the Final Scoping Outline to be addressed as a potential impact that was significant. The General Business category is the least restrictive commercial zoning allowed in Penfield and the ability to fill any vacant space is the responsibility of the owner. Even if vacant for a period of time, the owner of the property is responsible to pay the taxes on the improvements on the property. It is unlikely that the owner of any commercial property enjoys vacancies in owned buildings. The Board acknowledges that many factors must be considered by both tenants and owners to successfully negotiate a lease for occupancy.

Comment 5-Hanscom
The DEIS does not contain any data indicating that a smaller Super Wal-Mart would not be an effective anchor for Bay Towne.

Response:
The DEIS Supplement of August 2010, Chapter 2-2.1 addresses how the applicant has analyzed a smaller Wal-Mart store for this location. “The proposed project includes an approximately 177,000 square foot Wal-Mart anchor tenant. This was determined based on the two present prototypes that Wal-Mart is now developing. Wal-Mart has evaluated the market based on proximity to other Wal-Mart stores, and determined a smaller Wal-Mart store would not be a feasible option for this location.” As discussed in the DEIS Supplement of August, 2010, it is important to note that Bay Towne Plaza included a Tops grocery store of approximately 79,500 square feet and a Wal-Mart general merchandise store of approximately 123,000 square feet. These two combined result in 202,500 square feet of general merchandise and grocery. The proposed application for a 177,000 square foot Wal-Mart supercenter to include general merchandise and grocery is a reduction from the current and former Bay Towne Plaza and allows for additional smaller shops and quality retail.

Comment 6-Hanscom
Section 3.1 of the DEIS states that the only viable option for the land to be rezoned is commercial business use; however, the other alternatives presented by the Applicant include a residential component. Also, the Applicant asserts that the Site has a “commercial feel” which impedes the potential for future residential development, while simultaneously asserting that the Site can be developed commercial without significant environmental affects on the adjacent existing residential properties.

Response:
As stated in the DEIS and set forth on the drawings of the various alternative Project designs, the Project could include a residential component; however, the preferred alternative has been determined by the Applicant to be the most feasible, as it will result in the least environmental impacts on surrounding properties, including those relating to noise, aesthetics, and traffic. For example, the alternative designated as “Res-15,” the alternative with the smallest residential component, has a 15 lot single family development as part of the overall plan. While the applicant may be willing to build this alternative, it significantly reduces the buffering from the residences to the east by eliminating not only the earthen berm, but also the permanently preserved natural vegetative buffer that all would be provided by the preferred alternative, “Com-54,” and also by “Com-50.” The Applicant has also submitted plan CP-02, a combination of features from two previously reviewed alternatives which provides for a much larger naturally-vegetated separation from the commercial activities.

Comment 7-Hanscom
The DEIS does not provide any analysis of a possible enclosure of the loading dock area as required by the Scoping Document.

Response:
There is some discussion of enclosed loading docks in the DEIS, page 3.3-24 through 3.3-26. The discussion centers on the assumption that truck maneuvering is the main source of truck noise and the specific design of travel to and from loading docks is more of a key factor in noise reduction, than enclosing a loading dock that would house a parked trailer. Additional discussion on the need for enclosure can occur with any future site plan review process.
and determination of specific location or locations for loading docks, as well as truck routes to and from the loading docks.

**Comment 8 - Kuttruff, E & C**  
We are not in favor of changing by Bay Towne Plaza from residential to commercial. Making the existing Walmart to a super is fine in its own section, but not 24 hrs., 7 days a week.

**Response:**  
See Response to Comment 3, above. Hours of operation for businesses in the General Business zoning district are not limited. They can operate 24 hours a day.

**Comment 9 - Stanton, R.**

The DEIS does not evaluate and compare impacts of Plaza redesign within its own footprint, the development of multi-family uses on the parcels, or less drastic rezoning to allow uses to permit professional office space to operate on the parcels at issue. The only alternative the developer purportedly modeled in the appendixes was the one which relies upon rezoning of the properties. Thus there was no evaluation of the environmental impacts of reasonable alternatives in the DEIS.

**Response:**
The DEIS Supplemental Submission, dated August 5, 2010 modified the rezoning application and contained discussion on several alternatives, including one that would require no rezoning and the R-1-12 zoned land is shown as a 48-lot single family subdivision and the MR zoned land is shown as a senior living facility. This is Alternative RES-48 EXP. There was no requirement in the Final Scope to require the analysis of professional office development on the site.
SECTION 3.13 – EXPANDING EXISTING FOOTPRINT ANALYSIS INADEQUATE

Comment 1 - Hanscom
Victor’s Supercenter Wal-Mart is less than 100,000 sq feet and operates between 7am-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. Many stores go through expansion and shift operations while they do the necessary redesign. Sometimes they shift operations to other sites for a while, and sometimes they curtain off portions of the store while they renovate. The hours of operation however for any store at Bay Towne should be between 8AM-10PM given the residential nature of the surrounding properties. We do not need a 24 hour store of any kind in this area. Yet, the DEIS provides no detailed consideration of this renovation alternative, with its reduced hours of operation and its considerably less environmental impacts to the neighborhood. In fact, there is insufficient detail provided on any of the alternatives to really consider the actual adverse environmental impacts of them. Nevertheless, there is no need to expand the current General Business District into the residential fabric of our Town when, in fact, our neighborhoods were developed in reliance on these residential buffers. The current General Business District upon which Bay Towne stands is more than adequate to accommodate a Supercenter, particularly with Bay Towne’s current vacancies and its future vacancies relative to the Royal Dynasty moving and Blockbuster filing bankruptcy. 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 Walmart 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!

Section 3.1.e, Alternate Mitigations, and Section 3.3.e do not adequately discuss the possibility of demolishing a portion of the existing buildings to allow for the expansion of the Existing Walmart. This would allow for the required additional parking and improvements in traffic patterns. There are sufficient vacant businesses in the existing Bay Towne Plaza, including the Tops store, to allow for this to happen.

The proposed Super Walmart is approximately 50% or 60,000 square feet larger than the existing Walmart. Alternate CP-1 shows a Walmart building expansion of 101,000 square feet, which is much larger than needed. Therefore, the Applicant has not made a realistic attempt at laying out an expansion of the existing Walmart.

Response:
The DEIS and the August, 2010 supplement identify logistical concerns with construction of a new super center at the location of the existing Walmart. This alternative shows the demolition of over 62,000 sq. ft of existing buildings. In looking at this alternative, the Planning Board is aware that other stores have been successfully converted from a standard Walmart to a super center. However, the applicant has indicated that the super center, offering both food and general retail, requires two loading docks. The Board feels that installation of another loading dock onto the existing store and any subsequent addition to that existing store would impact the Guygrace neighborhood without having sufficient lot area to properly mitigate those impacts. The existing Walmart store is approximately 100’ from the Guygrace property lines.
SECTION 3.14 – CRIME AND PUBLIC SAFETY

Comment 1-Dave (Coralburst Crescent resident) (**Need to add last name**)
I hope this plaza does not happen. We bought this house to stay away from crime as much as possible. Being a Monroe county deputy I know first hand that this will bring crime to this nice area. We pay high taxes and should have some say in what is built in our back yards! I hope the hunger for money does not turn this great area into a crime zone. Obviously it will!

Response:
The proposed application to increase the shopping center square footage to approximately 490,000 square feet would include provisions that the Applicant, as owner of the property, will provide all necessary security measures needed to deter crime on the property. The applicant has indicated that the tenants of the Plaza, including the major anchors (i.e. Wal-Mart) would pay for the costs of providing security through Common Area Maintenance (CAMs) charges, which are typical in centers of this size. The additional square footage proposed under the Bay Towne expansion necessitates that the Applicant operate a management office at the center to manage the daily needs of the center including providing a safe and secure environment for patrons of the shopping center as well as neighboring residents. Other security measures are being considered. They include security cameras that are monitored in the management office and improved lighting in all parking areas. In addition, by maintaining a significant portion of natural vegetation, adding an earthen berm and constructing a concrete wall or barrier on top of the berm, access to surrounding neighborhoods could be significantly restricted.

Comment 2-Farr
The current Wal-Mart is not well shopped nor is it well maintained. I cannot tell you how many times the police have come through our neighborhoods looking for people who had shoplifted in the store and are on the run last seen running into our development. That will only worsen.

Response:
See the Response to Comment 1 above. In addition, by maintaining a significant portion of the natural vegetation, adding an earthen berm and constructing a concrete wall or barrier on top of the berm, access to surrounding neighborhoods could be significantly restricted.

Comment 3 - Hanscom
Pages 3.5-7 and 3.5-8 provide an analysis of the crime statistics at the current Wal-Mart at Bay Towne Plaza and compare them to a Wal-Mart Supercenter located in the Town of Sweden in order to demonstrate low crime rates at Wal-Mart Supercenters. Unfortunately, this is not a fair comparison due to the dramatic differences in demographics between the Town of Sweden and the Town of Penfield. The Town of Penfield is a well developed suburban community located next to the City of Rochester. The Bay Towne Plaza is located on a RTS Bus Route with easy access from the City of Rochester. The Town of Penfield has a 2000 census population of 34,645 people. Bay Towne Plaza is located approximately 3 miles from the City of Rochester city limits. The Town of Sweden is a rural community with the Village of Brockport located in it. Even though the Town of Sweden is located in Monroe County, there is no easy access to it from the City of Rochester via a well traveled RTS Bus route. The Town of Sweden has a 2000 census population of 13,716. The referenced Wal-Mart Supercenter is located approximately 18 miles from the City of Rochester city limits. A more fair comparison would use the crime statistics from one of the following Wal-Mart Supercenter locations. The demographics of each of these communities are closer to that of the Town of Penfield than the Town of Sweden with regards to the Wal-Mart locations.

1200 Marketplace Drive, Henrietta, New York
2150 Chili Avenue, Gates, New York
1490 Hudson Avenue, Irondequoit, New York

Response:
The Planning Board also felt that the initially submitted statistics were inadequate and therefore required the applicant to include data from the Gates store in the accepted version of the DEIS.
Please reference Attachment 20 of the DEIS in which police reports/crime data are provided for the Gates, New York Wal-Mart. Based on that document, there was no significant increase in crime in the area adjacent to the new Wal-Mart.
SECTION 3.14 - DEIS INADEQUACIES WITH SCOPE

Comment 1 - Hanscom, Michael

There was also little mention in the Noise Study of accounting for the noise levels produced by the Vacuum-pickup Sweeper Trucks that are currently used to clean the parking lots in the existing Bay Towne Plaza. The evaluation of noise levels from parking lot maintenance with vacuum-pickup sweeper trucks is a requirement of the Scoping Document.

On page 3.3-34, the DEIS states that “the existing Wal-Mart store is still leased on a property under separate ownership. It is therefore not reasonable to ask the Applicant to consider an alternative outside the Scope of the Project.” However on page 3.5-6, the DEIS states that “the building where Wal-Mart is currently located is owned by the Applicant and leased to Wal-Mart.”

If the second statement is true, then it is entirely reasonable to ask the Applicant to consider expanding a building that he currently owns. Therefore the DEIS has not adequately responded to the Scoping Document request that the Alternative of expanding the existing Wal-Mart be examined.

The DEIS does not provide an analysis of the “pros and cons of optional loading dock positions on the proposed anchor tenant floor plan” as required by the Scoping Document.

21. The DEIS does not provide an analysis of the possible “enclosure of the loading dock area” as required by the Scoping Document.

22. Alternate architectural elevations to the proposed building façade were not presented in the DEIS as required by the Scoping Document.

23. As per Section 3.5.c of the DEIS, the Applicant has apparently not given any thought to how to reuse the existing Wal-Mart building if it is vacated by Wal-Mart. The Applicant does not list any anticipated redevelopment uses as requested by the Scoping Document.

This is puzzling to me, since the entire thrust of the Applicant’s proposal is to relocate the existing Wal-Mart to a new and larger location. This is a further indication of the Applicant’s lack of ability in marketing their properties to new retail tenants and creating viable uses for their existing commercial space.

Response:

The revised Noise Study Addendum, dated February, 2011 provides a more detailed analysis of a sweeper. The Noise Study in the DEIS does recommend that parking lot sweeping be restricted to the hours of 7:00 AM to 11:00 PM.

The expansion of the existing Walmart location was one of the alternatives in the DEIS Supplemental Submission, dated August 5, 2010. It is identified as RES-48 EXP.

While not specifically listing “pros and cons”, the DEIS does contain sufficient discussion on different loading dock locations. See DEIS, Section 3.1.e – Alternative Mitigation Considered and Section 3.3.e – Alternative Loading Dock Location and Design.

There is some discussion of enclosed loading docks in the DEIS, page 3.3-24 through 3.3-26. The discussion centers on the assumption that truck maneuvering is the main source of truck noise and the specific design of travel to and from loading docks is more of a key factor in noise reduction,
than enclosing a loading dock that would house a parked trailer. Additional discussion on the need for enclosure can occur with any future site plan review process and determination of specific location or locations for loading docks, as well as truck routes to and from the loading docks. There is more detailed discussion of potential noise impacts in the Noise section of this FEIS.

Section 3.1.e. of the DEIS contains a discussion of alternative facades considered. The DEIS recommends that the new structures not involve large “big box”, long wall facades, but rather mimic the designs approved for the existing Bay Towne Plaza redevelopment. These approved designs are included in Attachment 7 of the DEIS, entitled Bay Towne Redevelopment Approval.

Section 3.5.c. of the DEIS does list the permitted uses in the GB zoning district, by referencing the Penfield Town Code. Listing specific tenants for space that may or may not be available is premature (**Verify if Sweden was included and if so, note the demographics of the Sweden store including two towns, a village, and a college**).

**Comment 2 - Sanchez, J.**

First, to begin with, Figure 7 in the DIS talks about the noise element in terms of where they put all of the surrounding -- hang on a second. Both the noise measurement site plus the noise rear sites, I think, need to be done at -- at distinct different times. I think that there are noise modeling deficiencies made in the DIS that I think I -- that I would encourage all to review. Separately, with respect to groundwater, I think the assumptions that were made were outdated, and I think those need to be looked at again. Traffic, I think, was modeled based on best case, not a worse case. I think that needs to be looked at very carefully. Um, 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.

**Response:**

See Response to Comment 2, Comment 3.F. and 3.O contained in the section of the FEIS entitled VALIDITY OF DATA IN DEIS, above.
**SECTION 3.15 – PROPERTY MAINTENANCE AGREEMENT**

**Comment 1 - Hanscom, M**  
The draft Property Maintenance Agreement (Attachment 13) contained in the DEIS does not accurately reflect the terms of the existing Property Maintenance Agreement that the Applicant signed for the existing Bay Towne Plaza. One specific difference is the hours of enforcement for permitted noise levels. The draft agreement requires noise level enforcement between the hours of 12:00 am and 6:00 am. The signed agreement requires noise level enforcement between the hours of 11:00 pm and 7:00 am.

**Response:**  
The Property Maintenance Agreement in Attachment 13 of the DEIS is the signed agreement between representatives of the Town of Penfield and the owners of Bay Towne Plaza. It limits the hours of parking lot sweeping, dumpster collection and other noise-producing activities to the hours between 7:00 AM and 11:00 PM.  
***Cross ref. other similar responses***  Add other large retailers in the vicinity also operates 24 hours***

**Comment 2 - Krause, J**  
The hours of operation however for any Super Center should be between 8AM-10PM given the residential nature of the surrounding properties. We do not need a 24 hour store of any kind in this area.

**Response:**  
*If the lands are rezoned to General Business, the permitted hours of operation by Code are 24 hours per day. However, as noted above, a Property Maintenance Agreement can restrict the hours of many noise-producing activities.*
SECTION 3.15 – PUBLIC INPUT PROCESS

Comment 1-Kelly
The Applicant did not conduct a transparent, good faith process to obtain public input, particularly from neighbors closest to the proposed site. Specifically, property owners within ½ mile of site did not receive any notifications from the Applicant regarding Town or private meetings to discuss the Project. The only notifications received by the neighbors were those from the Town.

Response:
The Town strictly complied with the notice publication and mailing requirements in connection with the SEQRA public hearing on the Project as set forth under New York State Law and the Town Code. Moreover, the Town website has provided a link to the DEIS, and routine mailings and updates about the Project have been sent continuously by the Town (**Add in posting agendas on the Town website, PCTV, etc. Include the legal requirements for public hearings,**). The Town Board discussed the Project at a number of public Town Board meetings throughout 2010. Multiple mailings have been sent to Town residents by the Applicant; in addition, for many months the Applicant has dedicated space in the Plaza as an informational and comment center regarding the Project. Finally, the Applicant held an open meeting on February 9, 2010, which was attended by numerous Town citizens residing throughout the proximate neighborhoods. The Town and the applicant both have established webpages that include the application and detailed information describing the proposed development. The Town established a list of email addresses from interested citizens who wished to remain informed about the continuing review process. There has been extensive TV coverage prior to and after all public meetings and there has been extensive coverage in all of the local newspapers. If this application is to move forward, a public hearing on the actual rezoning request is required. Another public hearing would be required if a future site plan review is undertaken. **The applicant is not required to notify residents.

Comment 2-Kelly
The Democrat & Chronicle newspaper advertisement regarding the public hearings for the Project did not contain enough info to render an informed opinion on the Project.

Response:
See the Response to Comment 1 above. The Town of Penfield followed the required process of legal notification in the official newspaper of the Town; the Penfield Post, regarding the public hearing and the ability to review the DEIS. The Town does not use the Democrat and Chronicle for legal notices of public hearings. The Town of Penfield did not place this referenced advertisement.

Comment 3  ***Need to identify the Commentor’s Name***
The petition presented by the Applicant providing limited information as to scope of Project and the Rezoning.

Response:
The petition presented during the SEQRA public hearing was designed to show general support for the Project. Nonetheless, the petition included many specific details regarding the Project and the rezoning. Regardless of the intent and content of the petition, the Town is the final arbiter of the weight to be given to each comment and submission made by both the applicant and the public, including the petition.
SECTION 3.16 – SEQRA PROCEDURE

Comment 1-Hanscom
The Scope required Applicant to create an inventory of all stores within 1 ½ miles of Bay Towne, and the Applicant did not create such an inventory.

Response:
An inventory of all stores was not required by Final Scoping document. The Scoping verbiage required land uses and zoning within a 1 ½ mile radius. Figure 3 of the DEIS contains zoning information that assisted the Planning Board with general knowledge of the area around the project site. Land uses in this area of Penfield are generally consistent with zoning. Aerial photographs in the DEIS also provided specific information that assisted the Board in its review, as did the inclusion of the North Penfield Crossroads plan.

Comment 2-Hanscom
Alternate architectural elevations of the proposed building façade were not presented by the Applicant as required in Scoping Document.

Response:
As detailed in Sections 3.1.e, 3.3.c, and 3.3.e of the DEIS, alternative architectural designs were considered along with the “main street” or “street of shops” portion of the Project, and thus other new retail development portions of the Project, including the proposed Super Wal-Mart, should be required to match the street of shops architecture. Attachment 7 of the DEIS shows the type of architectural treatment previously approved by the Planning Board for other sections of Bay Towne Plaza and new construction, if approved, would be consistent with this theme. However, the Project has not yet advanced to the point where architectural elevations of the proposed building façade are available. If the re-zoning is approved and the Project moves forward, the Applicant will be required to submit preliminary architectural elevations and designs for review as part of the site plan approval process. Thus, this issue will be considered in more detail and depth during any future site plan phase of the Project. **cross ref. other sections**

Comment 3-Stanton
Since there is currently no pending site plan application for the Project, the Planning Board is an interested, rather than an involved agency under SEQRA, and thus cannot act as lead agency in connection with this SEQRA review.

Response:
Under 6 NYCRR 617.2(s) “[i]nvolved agency means any agency that has jurisdiction by law to fund, approve or directly undertake an action. If an agency will ultimately make a discretionary decision to fund, approve or undertake an action, then it is an involved agency, notwithstanding that it has not received an application for funding or approval at the time the SEQR process is commenced.” Further, based upon the following excerpt from Question (8) of Chapter 3, Section A of the SEQRA Handbook created and distributed by the New York Department of Environmental Conservation, the Planning Board is an involved agency, and thus a proper lead agency in connection with the SEQRA review for the Project:

“8. Is it necessary for an agency to have an application before it to be considered as an involved agency?

No. An agency is an involved agency if it will ultimately make a discretionary decision with respect to some aspect of the whole action. The agency must be consulted in the initial coordinated review procedure under SEQRA, and is eligible to be considered as lead agency. This is true even if such decision will not occur until some later phase of a project.”

Thus, since the Planning Board will ultimately make a discretionary decision with respect to the site plan phase of the Project, it is a proper involved agency and followed the necessary steps to confirm the lead agency role.
SECTION 3.17 – BLASTING

Comment 1 - Kelly
The proposal references potential blasting on the site due to the presence of bedrock. This is an area that I am unfamiliar with. What does it mean to the area’s environment when bedrock is present? Does removing bedrock have any impact on the surrounding land? It is commonplace in the Town of Penfield to blast bedrock? Can some instances when this has occurred in recent years be provided? A reference is made to potential vibration damage impact from blasting. What does this mean? How would any damage be assessed and fixed? Who is liable for the cost? Who is liable for the “burden of proof”?

Response:
When bedrock is present at relatively shallow depths (i.e. zero to five feet) it can be anticipated that there may be a shallow ground water table associated with the underlying bedrock. In the case of Bay Towne, the bedrock and associated ground water table are believed to be deep based on published geologic information. Removal of bedrock could be necessary for the installation of subsurface features such as utilities (storm sewers, sanitary sewers, water mains), or to achieve finished grades consistent with an overall approved grading plan. Blasting for such construction is common within the Town of Penfield and for such, the Town has established the Blasting Policy/Regulations (**Add as an exhibit?**). All blasting is subject to a permit issued by the Penfield Fire Marshal. Blasting for underground utilities was used for at least one phase of the Graceland Estates Subdivision, in close proximity to the project site.

If bedrock requires removal, there are several methods that can be employed. Bedrock can be removed via mechanical methods (i.e. excavation through the use of an excavator and/or air-hammer), or through the use of blasting. Any excavation proposed for the Project would be subject to permit for excavation to be approved by the Town. This is typically done through a Site Plan approval process.

Should blasting be required for the Project, the Applicant and the Applicant’s contractor would be responsible for conducting a pre-blast survey, monitoring blasting to conform with protocols for safety during blasting operations and conducting a post-blast survey. The pre and post blast surveys are utilized to determine the conditions of structures and improvements in the vicinity of the Project area (such limit of vicinity is determined via commercially accepted standards and at the discretion of the Town). The Applicant and Applicant’s contractor would document all structures in the designated area prior to and after blasting takes place. If any damage attributed to blasting is documented, the applicant and applicant’s contractor would be liable for damage and subsequently remedy the damage.
SECTION 3.91 – HABITAT/WILDLIFE

Comment 1: Bezenah, J.
I am concerned that the wildlife that live in the existing green area surrounding Walmart would very negatively be affected. On a regular basis we experience deer and foxes, and on an occasional basis we see coyotes as well. They run back and forth from that green area along the creeks and through our neighborhood. We have already encroached on their habitat with our homes and businesses, and removing even more of that green area to make room for more shopping is unfair and unhealthy for our community.

Response:
The Planning Board acknowledges that there are several varieties of wildlife that inhabit the land under application. There have been no known unique or endangered wildlife or habitats identified on the property. The applicant’s preferred alternative will preserve 100’ of natural habitat along the eastern property line and provide an additional 100’ that proposes to contain a landscaped berm. At the request of the Planning Board, the Applicant has supplied a compromise plan. This is a combination of two previously reviewed alternatives that comprise drawing CP-02. This natural area will extend from the north property line to the south property line, providing for the preservation of some of the habitat area and maintaining a wildlife corridor along the natural area. It should be noted that absent any rezoning of the lands under application, there would be no permanent restriction of development of this area and residential development would likely occur, eliminating most or all of the existing habitat area, as residential development requires the clearing of trees for roads, utilities, house pads and proper grading for drainage.

Comment 2: Green, S
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.

Response:
The Planning Board is not aware of any easement that exists for the sole purpose of open acres of land on this property. It is possible that the commenter could be referring to the existing condition of the residentially zoned land or to the minimum buffer requirements where commercial development abuts residential development. The Penfield Town Code requires a minimum of 100’ buffer between General Business development and residential uses. In this instance, with the possible scenario of CP-02, the buffer proposed well exceeds the minimum. CP-02 would include 200’ of natural buffer and an additional 100’ for a landscaped berm and barrier. See also, Response to Comment 1, above.

Comment 3: Hanscom, Michael
Shipbuilders Creek is considered by the New York State Department of Environmental Conservation to be a Class C trout stream. At a meeting I went to last year, they presented it to be considered in serious need of significant improvement to its water quality. Now, when it comes to Class C trout streams, trout are very sensitive to temperature. Um, as part -- because -- for the development -- for the development of the expansion of Bay Towne, they're relying on these existing ponds. They're not doing any -- they're doing very little storm water retention on their own property and very little water quality treatment. They, in -- in fact -- in the DEIS, all they say is they're going to put in some storm water filters. They don't say anything about -- anything at all about sizing, what type of filters they will be using, what type of pollutants they're seeking to remove.
Also, because they are not holding the water in -- in deep water ponds, which would be cool, and letting it flow off all of the pavement, the water that flows off the pavement will have a significant amount of oil, grease, things that drip off of cars and it will be of high temperature. When it flows off down into those detention ponds, first it is going to stay in that very shallow pond, which is only about 5 feet deep, which will be warmed by the sun, which will additionally warm the water before it goes into the trout stream. This is according to the DEC website. Trout live in a variety of habitats, ranging from small mountain streams to enormous great lakes. They require cool, clean water to survive and they're often the first species to disappear from polluted waters. The presence of trout is and has been for many years used as a measure of water and habitat quality by the DEC when making decisions regarding permitted land or water use.

**Response:**
The Penfield Town Engineer has indicated that this watercourse is a Class C stream, not a Class C(t) stream. Therefore, it does not have the additional standards that must be met if it were a Class C(t) stream, identified for trout. That being said, there are techniques that are available and discussed in the DEIS related to underground storage of storm water, which has much less of an effect on water temperature. The vegetation surrounding the existing regional ponds in Webster also helps maintain cooler water temperatures. There are significant standards in place, both from NYSDEC and the Town of Penfield that must be met during any future Site Plan review process. The applicant has acknowledged that all current requirements will be met. This issue is also discussed in the Drainage & Storm Water section of this FEIS. The reader is encouraged to review this Section for a more detailed response.

**Comment 4: Hanscom, Michael**
Ship Builders Creek is further recognized by the NYSDEC to be a Class “C” trout stream. Stormwater runoff into Class “C” trout streams requires special consideration when it comes to water quality treatment for the following reasons:

a. Trout water temperature sensitivity: The runoff from asphalt pavement and rooftops is significantly warmer than that of a forest or even an undeveloped field. Higher water temperatures reduce the amount of dissolved oxygen in the water available for trout respiration. Rainbow trout like all trout are essentially cold water fish. They are slightly tolerant of warmer temperatures than some other species, and yet they will not survive in water that goes above 65° F for very long. High water temperatures can also be deadly to some of the prey organisms that make up the trout’s food base.

b. Water quality: Stormwater runoff quality will be significantly affected in a negative way by contamination from the leaking of various automotive fluids from a considerable number of motor vehicles in a large parking lot, from the leaching of chemicals from asphalt and rubber based roofing materials used on large retail buildings and from winter time salt either applied to the parking lot or dripping from the motor vehicles that occupy the parking lot. Runoff from the grass and landscaped areas can also degrade the quality of trout streams with the influx of fertilizers and herbicides.

c. According to the NYSDEC website, “Trout live in a variety of habitats, ranging from small mountain streams to the enormous Great Lakes. They require cool, clean water to survive and are often the first species to disappear from polluted waters… The presence of trout is and has been for many years, used as a measure of water and habitat quality by DEC when making decisions regarding permitted land or water use.”

d. In summary, the surface water runoff from the parking lot and building rooftops will be contaminated with chemical pollutants of hydrocarbons, anti-freeze, ethyl alcohol (windshield washer fluid) and will also have an elevated temperature compared to stormwater runoff from natural ground and surface water. Even though the Project Engineer proposes to detain a portion of the storm water in underground chambers which will help to reduce the elevated temperatures, they are only planning on detaining a very small fraction of the stormwater in this manner, approx. 1.34 acre feet. As stated in the Stormwater Management Plan, it is their intention to rely upon the Regional Detention Ponds for stormwater control.

It appears that the proposed development plan would further exacerbate the nuisance factors imposed upon the natural environment as well as the human environment.

**Response:**
Penfield Planning Board  
March 27, 2012

See Response to Comment 3, above.

**Comment 5: Kircher, K.**  
I live in the area and feel this would have a negative impact for many reasons. The wildlife will be significantly affected.

**Response:**  
See Response to Comment 1, above.

**Comment 6: Ryan, J**  
Believe it or not, we still have much beautiful wildlife in the small green area that remains behind us, it is not uncommon to see deer or red fox wandering in our yard. We are aware that one day this property will be developed, we would just prefer that it remain zoned, as it is, residential. This will help to preserve the Penfield that we were introduced to seven years ago.

**Response:**  
See response to comment 1, above.

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**Schedule N**  
Bay Towne FEIS Working Document

**SECTION 3.92 VALIDITY OF DATA IN DEIS**

**Comment 1: Circelli, A & T**  
We are not engineers but some of our neighbors are engineers. Michael Hanscom and others have presented compelling evidence and data that invalidates the subject document. As a result, the planning board has no choice but to send the DiMarco Group back to re-accomplish all studies and re-write the document.

It is obvious that the data regarding water run-off and drainage was based on data that is about 12 years old. As noted, there have been many changes to the surrounding area since that data was created, this also INVALIDATES all related results and assertions in the DEIS.

- The noise studies were faulty and skewed to produce favorable results. Only good old fashioned common sense needs to be employed to realize that if the noise generated from the existing Bay Towne is already a nuisance, moving the shopping center to within 200 feet of our homes would make it unbearable. As we know, data can be manipulated to support any desired lie and misrepresentation.
- Shipbuilders Creek would no longer be able to support trout as the water temperature would rise from the new heated run off water.
- New traffic patterns would make that area even more dangerous than it already is.
- Our property values will be reduced significantly. This property value reduction will trickle down to surrounding neighborhoods. The resulting loss in tax revenue, by the town, can not be made up by the expanded Bay Towne Plaza.

The bottom line is that your residents have proven that the DEIS is not ready, not detailed enough and not reliable enough to support this proposal, the rezoning and the impacts of putting a gigantic Super Wal-Mart on such a small parcel of land…

Let's remember that the environment that closely surrounds this land, on 3 sides, is residential neighborhoods. This grouping of residential neighborhoods IS THE ENVIRONMENT THAT HAS BEEN IGNORED, must be protected and must be addressed in the DEIS. You, as our planning board must protect the environment that is our neighborhoods. A super Wal-Mart in our backyards will destroy the environment that is our currently beautiful, quiet and peaceful neighborhood.

Thus, we call on you, as our Planning Board, to reject the current Draft DEIS (for Appl # 09P-0003) for all of the reasons, data and testimony presented to you in this e-mail and thus far, by the residents of Penfield.
Response:
These comments are topic-specific and have been addressed as responses in other sections of the FEIS. The Planning Board is the Lead Agency for review of this action and responsible for compliance with all environmental regulations governing this review. The comment stated above relates to the completeness of the DEIS. The SEQR Handbook (http://www.dec.ny.gov/permits/55758.html) states:

“2. What is the basis for determining the adequacy of a draft EIS?

The lead agency should rely on the standards in 617.9, which describe the required content of EISs. Additionally, a written scope, if one was prepared, provides a detailed catalogue of the materials which the lead agency identified as necessary for inclusion in the EIS. The lead agency should ensure that all relevant information has been presented and analyzed, but should neither expect nor require a "perfect" or exhaustive document. The degree of detail should reflect the complexity of the action and the magnitude and importance of likely impacts.

A draft EIS that is adequate to be accepted for public review should describe the proposed action, alternatives to the action, and various means of mitigating impacts of the action. The draft EIS should identify and discuss all significant environmental issues related to the action, however, the draft EIS will not necessarily provide a final resolution of any issues. Since one of the major purposes of a draft EIS is to give the public an opportunity to comment on the environmental issues raised, as well as the possible alternatives and mitigation offered to address those issues, settling on a resolution of one or more issues prior to public review would actually be counter to the intent of SEQR.”

The Planning Board believes that receiving this type of comment is exactly the intent of the DEIS. This comment, along with others made at the public hearing and in writing, by agencies and the general public has provided substantial input to the Planning Board as it continues its role as Lead Agency in preparation of this FEIS. This FEIS contains many discussions about the adequacy of the DEIS and the application itself.

Comment 2.A: Hanscom, Michael
And I believe there is a -- those are major issues. To support some of them, one of the requirements of the DEIS scoping outline was for the applicant to create an inventory of all of the stores, businesses that were within 1 1/2 miles of the existing plaza. That was not done. That is not part of the DEIS...

Response:
The Final Scoping Outline did not require an inventory of all the stores and businesses within 1 ½ mile of the project site. It required: “A narrative and graphical presentation of land uses and zoning districts within a one and one-half (1 ½) mile radius of the Action and subsequent Project site will be presented.” Figure 3 of the DEIS shows the zoning of parcels within Penfield in a general radius around the project site which provides the Planning Board with a good sense of the land uses in the area as the land uses are primarily consistent with the zoning. For example, General Business & Limited Business zoning provide mainly retail & service uses, R-1-20 zoning provides generally single-family detached housing and Multiple Residential provides apartment dwellings. There are narrative descriptions of surrounding land uses in Section 2 and Section 3 of the DEIS. The DEIS also contains the entire North Penfield Crossroads plan, with maps and descriptions of this area. The combination of these resources provides the Planning Board with sufficient background on surrounding land uses and patterns to continue its review of this Action (***Add a reference to the DEC website source identifying the stream as a C vs. C(t)***).

Comment 2.B: Hanscom, Michael
The storm water management plan, an assessment of impacts related to storm water, relies on outdated and no longer valid assumptions and is inadequate in its scope. The Project Engineer relies heavily on the 2001 Shipbuilders Creek Management Study performed by the MRB Group when he discusses storm water runoff on the project site. Specifically, the Project Engineer relies upon the regional detention pond's capacity to calculate in that report. Unfortunately, the capacity calculations in that report are no longer reliable for the following reasons: One of the regional detention ponds, the largest one, was partially filled in by an attempt by the Town of Webster a couple years ago to construct a new baseball field in Empire Park. That baseball field was never completed because the DEC happened by and found that they were filling in DEC regulated wetlands in part of the pond. Um, they
have since excavated out that part of the pond that they did. But no one really knows if they restored it to full capacity or not. I recently went around and walked around all of these ponds or attempted to. There has been significant plant growth, trees, and everything growing into the ponds. I would estimate they have lost about 20 to 30 percent of their volume capacity because they haven't been maintained well.

Response:
The Town Engineer was consulted on this comment. The preliminary drainage study utilized data from a 1988 watershed study. The data provides sufficient detail to develop a concept of the water quality and quantity mitigation measures that need to be employed. Upon submission of a Site Plan for the site, a more detailed analysis will be required. The Towns of Webster and Penfield are completing a modification to the Empire Park pond that will improve flood storage and provide some water quality benefits that were not incorporated into the initial design. Once the project is completed, a determination of water quality and quantity credits will be defined. The development will be required to provide the remaining mitigation measures on site. The Planning Board has determined that there is adequate discussion of on-site and off-site mitigation techniques in the DEIS and in other sections of this FEIS.

Comment 2.C: Hanscom, Michael
One other thing regarding the 2001 Shipbuilders Creek Management Study, it was done before the Providence Landing Subdivision was constructed. Providence Landing is Jewelberry and all of the other roads in there. So they had to make some assumptions on what the flows were in a -- the study does not actually cover all of the paving, houses, sheds, all of the impermeable areas that are part of Providence Landing. So, therefore, the runoff calculation from there should be redone. Um, in addition to these false assumptions that the Project Engineer unfortunately inadequately reviewed the storm water runoff water quality requirement of the State's DEC general permit for storm water discharge and construction activity. A new one was -- went into effect on January 29th, 2010 of this year. While the parts -- some of the parts of that is that they require a significantly, um, more intense treatment of the water for water quality, to remove pollutants before it goes into the stream. And that is important for this area.

Response:
The drainage facilities serving the ShipBuilder’s Creek Drainage District were sized for full build-out of the lands within the contributing drainage area. This includes the Plaza as well as adjacent commercial and residential developments. The fundamental methodology and drainage calculations used to size the Ship Builder’s Creek detention pond have not changed. The DEIS takes into account the new requirements of the NYSDEC General Permit for managing water quality as well as a change from residential to commercial development. Changes to the surrounding area are included in the drainage study and based on the Town regulations. The ShipBuilder’s Creek Watershed update, prepared by the MRB Group, was adopted by the Town in 2001. All land areas included in that study have been analyzed to take into account the full build-out of all the sub-watersheds in accordance with Town Requirements. While the drainage study analyzed the lands now zoned MR and R-1-12 under the current zoning densities, additional analysis has been provided to the Town, indicating that both on-site and off-site mitigation may be necessary to alleviate impacts to the drainage system, as a result of the proposed redevelopment application. More specific detail will be provided if and when a formal application for Site Plan is made. There is some availability for the off site pond to accommodate stormwater drainage from this site and there appears to be adequate land area and techniques available for any required on-site mitigation of stormwater impacts. Until a decision is made on the rezoning request and ultimately a specific project is proposed for Site Plan review, specific details cannot be determined on all storm water calculations.

Comment 2.D: Hanscom, Michael
Shipbuilders Creek is considered by the New York State Department of Environmental Conservation to be a Class C trout stream. At a meeting I went to last year, they presented it to be considered in serious need of significant improvement to its water quality. Now, when it comes to Class C trout streams, trout are very sensitive to temperature. Um, as part -- because -- for the development -- for the development of the expansion of Bay Towne, they're relying on these existing ponds. They're not doing any -- they're doing very little storm water retention on their own property and very little water quality treatment. They, in -- in fact -- in the DEIS, all they say is they're going to put in some storm water filters. They don't say anything about -- anything at all about sizing, what type of filters they will be using, what type of pollutants they're seeking to remove.

Response:
As previously noted, Shipbuilders Creek is a Class C stream, not a Class C(t) stream. It does not have a “trout” designation. See Response to Comment 3, above.

**Comment 2.E: Hanscom, Michael**

Also, because they are not holding the water in -- in deep water ponds, which would be cool, and letting it flow off all of the pavement, the water that flows off the pavement will have a significant amount of oil, grease, things that drip off of cars and it will be of high temperature. When it flows off down into those detention ponds, first it is going to stay in that very shallow pond, which is only about 5 feet deep, which will be warmed by the sun, which will additionally warm the water before it goes into the trout stream.

**Response:**

The Town Engineer has indicated that Shipbuilders Creek is on the NYSDEC 303d list as an impaired waterway. All water quality and quantity requirements will be met in the final design of the stormwater control facilities. The stream that runs through the site does not have a “trout” designation and, therefore, the requirements for temperature mitigation measures are less stringent for a Class C stream than for a Class C(t) stream.

**Comment 2.F: Hanscom, Michael**

And the other thing that is not talked about in the DEIS is in addition to expanding the pavement by the construction of the proposed Super Wal-Mart and additional small stores, they're redeveloping the existing Bay Towne Plaza. There are areas in Bay Towne Plaza, over here (indicating) where there is an abandoned storm water pond where -- and the water currently flows through is all grass. And other grass areas, they're all going to be covered up with pavement, and that is where you increase the storm water flow off of those areas. One of the things that occurs in this new SPDES permit is that when you -- when you -- the expansion and redevelopment of the -- of the existing Bay Towne Plaza will trigger the redevelopment regulations of the storm water general permit. That will require them to provide water quality treatment for at least a portion of the water that flows off the existing Bay Towne Plaza. That is not talked about in the DEIS. Um, in regards to water quality treatment, there is many ways in the New York State Storm Water Management Design Manual for providing for water quality treatment. I will just talk about one of them. Their definition of a storm water filter for water quality is typically a sand filter, sedimentation chamber and a distribution chamber. The design example they give in the manual shows a 20 foot by 100 foot filter system for a 4 1/2 acre site with 68 percent impervious area. Since the proposed Bay Towne expansion is approximately 32 acres with 65 to 75 percent impervious area, a storm water treatment facility would be usually about seven times as large with a -- a suitable -- a suitable buffer area around it. Which means they have to reserve approximately 3/4 of an acre for 1 acre of land for that treatment system. This would be in addition to the water detention pond which is also not shown on the -- although I believe they were talking about underground detention for storm water.

**Response:**

When considering development in the North Penfield Crossroads area, the Town determined that a regional storm water system offered benefits over individual systems on each project site. All runoff is collected at a central location for quantity control. It is conveyed to the regional ponds for quality control. The beneficial quality control was inherent in the original pond construction and has been further enhanced by the Town. Compliance with applicable NYSDEC requirements satisfies discharge water quality standards. The proposed water quality and quantity controls will meet the most current NYSDEC requirements in effect at the time the Notice of Intent is filed with the DEC, if and when a Site Plan application is made. Below ground quality treatment has been identified as possible mitigation for this project as an alternative to delivering all runoff to the regional facility. In addition, the Board believes that the Applicant could provide ample stormwater storage and treatment capacity on site to mitigate quantity and treat stormwater in accordance to the SPDES General Permit and supplement the regional pond. The Project will meet or exceed the NYS pollutant goals for stormwater discharge. Shipbuilders Creek is Class C stream, not a Class C trout stream. The water course that extends from the proposed Bay Towne Plaza site is a tributary of ShipBuilder’s Creek (0-107-1-6) and is classified as a Class C stream. Water temperature controls are less stringent than C(t) streams, which signifies a trout stream. While not required by NYSDEC, the below ground quality treatment storage would promote cooler water temperatures then the shallow, at grade pools, if this technique is used.

The Planning Board acknowledges that one of the options for storm water quality mitigation is to use a sand filter system. Other systems and techniques are also available. Refer to section 3.2.d of the DEIS, Mitigation - Onsite
Stormwater Quality Treatment. "The on-site water quality treatment will consist of stormwater filters and will be designed to meet the combination of the redeveloped goals and new construction criteria listed in the NYSDEC Design Manual. Based on the rezoning of the northern portion of the site, it is estimated that approximately 10,000 to 15,000 cubic feet of on-site water quality treatment should be provided.” Both the applicant and the Town Engineer have indicated that all applicable standards for stormwater quality and quantity will be met or exceeded, if any future Site Plan application is forthcoming.

Comment 2.G: Hanscom, Michael
One other issue I had with the stormwater management study, is if you're calculating runoff, one of the things that you look at is, what they call a CM factor. Years ago, the -- the U.S. Department of Agriculture developed a procedure for determining stormwater runoff called TR-55. In that document, they assigned CM numbers to different types of materials. Grass, lawns are about CM of 65. Um, impervious surfaces are like a paved -- paved asphalt. Roofs are 98. Um, when you do a stormwater management study, typically you measure the areas of each of those CM numbers and you come up with a composite number. Um, they did not explain how they do that with the stormwater management study. Just purely a CM number of 90. If you look through the TR-55 manuals, they have tables in there, and they talk about different areas. One of the -- one of the entries in the table is if you have an area similar to Bay Towne where you have 80, 85 percent of impervious area, actually I think the -- the study area that they used probably has around 85 percent impervious area. You're using a CM number of 94, 95, not a 90. One of the reasons that it is that high, is for some reason, when they outlined the stormwater management study area, they did not include the berm area, and they did not talk about the -- the additional runoff that would come from the steep slopes of the berm. That was not included in their study.

Response:
While a berm is recommended for visual and noise mitigation, final design plans have not been completed and cannot be until this environmental review has been concluded. The Penfield Town Engineer has stated:
“The actual areas of each surface will be calculated and the appropriate CN value will be assigned per standard engineering practices. The berm, if included, will consider the slope and ground cover in the determination of a CN value.”

Comment 2.H: Hanscom, Michael
The noise study uses industry standards for how they get some of the work -- it -- it was not -- it was not incomplete. They collected background noise. They only did it on two days. Both of these days were on Thursday and they measured them approximately the same time of day. Um, they did -- in order to provide an -- an adequate background sample of noises, you have to do it on several different days, particularly on the weekends. In this area, since no data was collected on the weekends, background noise levels tend to be lower on early Sunday morning and Sunday afternoons due to reduced highway traffic. There is also a -- very little mentioned in the noise study accounting for noise levels produced by the vacuum sweeper trucks that are currently used to clean the parking lot at the existing Bay Towne Plaza.

Response:
Mr. Hanscome’s comments in this paragraph were addressed in the Noise Study Addendum, dated February, 2011. The Noise Study was conducted on two separate days, Thursday, September 9, 2008 and Monday, September 22, 2008. The data was collected for both daytime and nighttime values. Daytime values were collected from 9:16 AM until 12:05 PM. Nighttime values were collected from 4:05 AM until 5:15 AM. This information is contained in the Noise Msmnt. Data Sheets, Appendix B of the Noise Study, Attachment 10 of the DEIS. The noise source of a vacuum sweeper truck is addressed in the Noise Study Addendum.

Comment 3: Hanscome, Michael (Note: for clarification purposes, the substantive comments have been lettered A–Y and responses are provided after each lettered comment, for ease in review.)
The Draft Environmental Impact Statement for Bay Towne Plaza does not adequately explain all of the environmental impacts that will occur if this project is allowed to go through. It also does not provide adequate mitigation for several of the environmental impacts that are identified.

Comment 3.A - Hanscome, Michael
In Section 3.1.d, Mitigation, 8th bullet, the DEIS states the following: “To maintain the economic viability of Bay Towne, the Applicant will work quickly to fill any vacancies to minimize storefront vacancies that would adversely impact the character of Bay Towne and the surrounding community.” As of October 2010, the Applicant has shown an appalling lack of ability to market the existing Bay Towne Plaza to prospective retailers and a lack of commitment to do this. The Applicant has also shown a lack of ability in being able to keep their existing tenants. This is evidenced by the following: There are currently 10 vacant small storefronts (1,000 SF to 5,000 SF) out of a possible 31 small storefronts. There is 1 vacant large storefront (the former Tops grocery store) out of a possible 2 large storefronts. The owners of the Royal Dynasty Restaurant have approached the Town of Penfield about building a new restaurant at another location. The Applicant received approval to renovate the former Tops building into a “Street of shops” and to construct two (2) additional free-standing buildings over 2 years ago in August 2008. The Applicant has yet to begin this work.

Response:
Work on revitalization of the existing plaza has begun and one new major tenant has occupied a portion of the former Tops store. As stated in other sections of this FEIS, the Planning Board believes that there are usually many factors that go into marketing for tenants of a commercial facility. Coordination of infrastructure, competition on availability of similar off-site space, fear of the unknown, availability of business loans in a less-than-stable economy all could affect a successful marketing campaign for vacant space. The Board believes that vacant space is neither desired nor sought after by the owners of Bay Towne Plaza.

Comment 3.B - Hanscome, Michael
This site will need “post-construction stormwater management practices” that include significant water quality treatment requirements. These water quality treatment requirements have come into effect since the Webster Regional Detention Ponds in Empire Park were constructed and subsequently reconstructed. In particular, the report and mitigation only address sediment control and not the thermal and chemical pollutants that will be created by the large surface runoff in the sensitive receptors.

Response:
See Response to Comment 2, subparagraph 6, above.

Comment 3.C - Hanscome, Michael
It is also my understanding that the expansion of the original Bay Towne Plaza triggers the Redevelopment regulations of the Stormwater General Permit. In Appendix B, Table 2 of General Permit, one of the “Construction Activities that require the Preparation of a SWPPP that includes Post-construction Stormwater Management Practices” is “all other construction activities or reconstruction of impervious area and alter the hydrology from pre to post development conditions and are not listed in Table 1”. The original Bay Towne Plaza falls into this category due to the loss of green space in the northeastern corner of the existing plaza under the Applicant’s Overall Master Plan and preferred alternatives. This means that at least a portion of the stormwater runoff from the existing Bay Towne Plaza will require water quality treatment in the future. The existing storm water retention pond for Bay Towne Plaza was not designed to provide the water quality treatment required by the new regulations.

Response:
Refer to section 3.2.d of the DEIS, Mitigation - Onsite Stormwater Quality Treatment.

“The on-site water quality treatment will consist of stormwater filters and will be designed to meet the combination of the redeveloped goals and new construction criteria listed in the NYSDEC Design Manual. Based on the rezoning of the northern portion of the site, it is estimated that approximately 10,000 to 15,000 cubic feet of on-site water quality treatment should be provided.”

The Town Engineer will verify that the storm water system proposed for any new development, will meet all required regulations, including NYSDEC requirements for a redevelopment project, if the thresholds are met in any future Site Plan application.

Comment 3.D - Hanscome, Michael
Paragraph 2 on page 1.3.2 of the DEIS states that “according to the Shipbuilders Creek Stormwater Management Study, the downstream channel has sufficient capacity to carry the runoff generated from the existing Bay Towne Plaza and Roman Estates subdivision.” Once again, this study was done before the construction of the Providence
Landing subdivision which also contributes stormwater flow to this channel. Therefore, the Project Engineer cannot rely upon the results of this study and these capacity calculations need to be redone. The Stormwater Management Study done for the proposed Bay Towne Expansion is also flawed in the following ways and therefore needs to be redone:

a. The study does not explain how the composite runoff curve numbers (CN) used in calculating the stormwater runoff were arrived at. The assumed CN factor of 90 is too low. The accepted CN factor for impervious surfaces is 98. Since approximately 85% of the study area is impervious, the overall CN factor should actually be in the range of 94 to 95. This would significantly increase the stormwater runoff from the site.

b. It does not address the changing stormwater management needs for the existing Bay Towne Plaza. This includes an increase in impervious area and changes in the water volume that need water quality treatment.

c. The study does not address the increased stormwater runoff from the steep slopes of the proposed berm to the north, east and south of the proposed SuperWalmart building. For some reason, this area was not included in the study.

Response:
The Town Engineer has explained that the Towns of Webster and Penfield have worked together to expand the water quality and quantity mitigation measures in the Empire Park pond. This involved the removal of a soccer field and new outlet control structures. The design has been reviewed by the US Army Corps of Engineers (ACOE) and the NYS Department of Environmental Conservation (NYSDEC). The earthwork is completed and final approval for the outlet structures is pending. The ponds are designed to mimic a stormwater wetland with native vegetation. Trees and ground cover provide valuable uptake of the runoff and are encouraged by the NYSDEC. Any additional water quality and quantity mitigation efforts will be incorporated into the Bay Towne Plaza’s final design. The Empire Park site is encumbered by NYS and Federal wetlands. These areas are heavily regulated and permits to remove vegetation is difficult to obtain. Wooded wetlands are considered the most valuable by the NYSDEC. The Town Engineer has also indicated that he will confirm all CN factors based upon a Site Plan submission, if any, to assure that storm water impacts comply with all applicable regulations and standard engineering practices. Additional responses can be found in the Storm Water/Drainage section of this FEIS.

a. The statement that the project will be 85% impervious is an exaggeration. The Penfield Town Code requires a maximum of 65% impervious surface for commercial development. Depending upon any future site plan application, the resulting percentage of impervious surface is likely to be lower than 65%. The CN factor will be appropriately determined by the Town Engineer, if and when a formal site plan application is made.

b. See Response to Comment 3, subparagraph C., above.

c. As stated in subparagraph a., above, the calculations of the CN factor will be done upon submission of a formal site plan. That will require all land areas...natural buffers, impervious surfaces and any berms to be properly categorized and calculated. That will then determine the ultimate needs to achieve the stormwater management goals of the NYSDEC and the Town of Penfield. All of these will be subject to review and approval by the Town Engineer. **Add see also comments in section ___ within every section**

Comment 3.E - Hanscome, Michael
The following statement is made in Section 3.1: “The Bay Towne area is already a collection of noise sources, many which will remain after completion of the Project. Typical sound sources at the Project Site include overhead airplanes, distant background traffic (Creek St, Empire Blvd, Bay Rd, Brandt Point), local traffic on neighborhood streets, area construction activity, retail operations, household air conditioning systems, lawn mowers, garbage trucks, delivery vehicles, buses, car radios and other noise sources typical of the variety of development in the area. This noise makes up the existing background conditions. The Project would not add any new types of noise that does not already exist.” The developer appears to have chosen to ignore the fact that the typical rural/suburban noise factors that he cites are sporadic, dissipate at night, and are not at the magnitude or intensity of the planned heavy commercial operations. This statement is also inaccurate and misleading since it omits the fact that the proposed Anchor Retail Store is designed to create substantial noise 24 hours a day. Since the current Bay Towne Plaza and most of the existing retail and commercial stores in the area do not operate 24 hours a day, and traffic and residentially generated noises decrease substantially at night, then the noise levels are lower at night than they would be if the stores did operate 24 hours a day. It also does not state that none of the proposed retail stores in the Bay Towne Plaza will only operate during normal business hours of 9 am to 11 pm, as an example.
Response:
The Noise Study was conducted on two separate days, Thursday, September 9, 2008 and Monday, September 22, 2008. The data was collected for both daytime and nighttime values. Daytime values were collected from 9:16 AM until 12:05 PM. Nighttime values were collected from 4:05 AM until 5:15 AM. This information is contained in the Noise Msmt. Data Sheets, Appendix B of the Noise Study, Attachment 10 of the DEIS. All businesses within a General Business district are permitted to operate 24 hours per day. This is true for the Wegman’s grocery store on the opposite side of Empire Blvd. as well as many other area businesses in the GB district that may or may not choose to operate 24 hours/day.

Comment 3.F - Hanscome, Michael
The background noise data collected as part of the 2008 Noise Study is incomplete since it was only collected on 2 days and both of these days were a Thursday and the noise levels were measured at approximately the same time of day. This is not an adequate sampling of the background noise levels. No data was collected on weekend days, particularly on Sunday. The background noise levels tend to be lower on early Sunday mornings and Sunday afternoons due to reduced highway traffic. Many of the neighborhood complaints with regards to noise are based on loud noises that occur during early Sunday morning hours when residents are trying to sleep in. The residents would like to see noise modeled against early morning conditions at multiple seasonal conditions (i.e. with and without foliage on the trees which now buffer the residential neighborhood).

The Noise Section only seems to take into account the increase in average background noise and not the increase in short term and instantaneous noises that will be located close to existing residential areas. Examples of short term and instantaneous noises would be:
- Starting of tractor trailer trucks
- Emptying of garbage dumpsters
- Starting and stopping of air conditioning and/or ventilation units mounted on top of the buildings.
- Loading and unloading of tractor trailer trucks with propane powered forklifts.
- Opening and closing of tractor trailer truck doors.

Response:
The Noise Study was conducted on two separate days, Thursday, September 9, 2008 and Monday, September 22, 2008. The data was collected for both daytime and nighttime values. Daytime values were collected from 9:16 AM until 12:05 PM. Nighttime values were collected from 4:05 AM until 5:15 AM. This information is contained in the Noise Msmt. Data Sheets, Appendix B of the Noise Study, Attachment 10 of the DEIS. The Planning Board did not require the analysis of “instantaneous noises” as part of the Final Scope for the DEIS. Many of these occur in neighborhoods as well as commercial areas. The Property Maintenance Agreement will regulate controlled noise sources, but cannot regulate noise from opening or closing doors. HVAC units are typically required to be screened for visual and sound attenuation. ***Ask Noise Consultant is he is aware of a noise study completed on a residential street, indicating the noise generation of lawn mowers, etc.*** - Katie – look at the noise study for Tire World***

Comment 3.G - Hanscome, Michael
There was also little mention in the Noise Study of accounting for the noise levels produced by the Vacuum-pickup Sweeper Trucks that are currently used to clean the parking lots in the existing Bay Towne Plaza. The evaluation of noise levels from parking lot maintenance with vacuum-pickup sweeper trucks is a requirement of the Scoping Document. The noise from these trucks is one of the primary sources of complaints from residential properties up to ½ mile away from the plaza, particularly during the summer months when household windows are open. A typical vacuum-pickup sweeper truck such as the popular Johnston VT650 produces the following noise levels, even with the full sound suppression package. The VT650 is considered to be a relatively quiet model of vacuum-pickup sweeper truck. (Information as published by the Ashland, Oregon Public Works Department).
- 88.9 dBA operating at 10 feet
- 73.0 dBA operating at 75 feet

The measured noise levels for the average vacuum-pickup sweeper truck is 82 dBA at 50 feet and 49 dBA at 2,500 feet, as published by the Federal Highway Administration. These noise levels are substantially higher than the stationary equipment noise levels used in the 2008 Noise Study as given in Table 3.3-2 on Page 3.3-12 of the DEIS. The noise level decibel scale is logarithmic. This means that a 10 dBA increase is perceived as roughly a doubling of...
A vacuum-pickup truck operating at 82 dBA at 50 feet sounds almost four (4) times as loud as a refrigeration unit operating at 64 dBA at 50 feet. Also 82 dBA is therefore almost 10,000 times more intense than the existing ambient 42 dBA nighttime background noise level established by the 2008 Noise Study and sounds sixteen (16) times as loud. (Noise information taken from the Encyclopedia on the Infoplease.com website.)

Response:

A Noise Study Adendum, dated February, 2011 (Exhibit __) contains additional information related to vacuum sweeper noise generation.

Comment 3.H - Hanscome, Michael

In addition, the Noise Study does not take into account the fact that sound waves bend around solid objects, unlike light waves. Even though the earthen berm and wooden fence may dampen the noise for the residences located directly behind them, the berm and fence may have very little effect for residences located further away from the berm and the fence. This is commonly known as the “Amphitheater Effect.” An additional concern is the longevity of wooden fences in the environment. A good example is shown in the photographs taken of the SuperWalmart site in the Town of Gates. These photographs are shown in Attachment 20 of the DEIS. This fence is only a few years old and yet it shows warped boards and panels, has sections missing and a large gap under the fence between the ground and the fence boards. This fence may provide some visual buffer, but it is virtually useless for sound mitigation due to the warped boards, missing sections and the gap under the fence.

Response:

In the publication entitled Assessing and Mitigating Noise Impacts, NYSDEC 2/2/01 Program Policy, the following information helps address this comment:

“The degree to which topography attenuates noise depends on how close the feature is located to the source or the receptor of the noise. Topography can act as a natural screen. The closer a hill or other barrier is to the noise source or the receptor, the larger the sound shadow will be on the side opposite the noise source.”

Later in this publication, there is a list of recommended mitigation measures, including:

“3. Reduce Noise sound pressure levels by:

a. Increasing the setback distance.

g. Erecting sound barriers such as screens or berms around the noise generating equipment or near the point of reception. The angle of deflection also increases as the height of a screen or barrier increases. Screens or barriers should be located as close to the noise source or the receptor as possible. The closer the barrier is located to the source or the receptor, the greater the angle of deflection of the sound waves will be creating a larger “sound shadow” on the side opposite the barrier. Stockpiles of raw material or finished product can be an effective sound barrier if strategically placed.

h. Phasing operations to preserve natural barriers as long as possible.

i. Altering the direction, size, proximity of expanding operations.

j. Designing enclosed facilities to prevent or minimize an SPL increases above ambient levels. This would require a noise analysis and building designed by a qualified engineer that includes adequate ventilation with noise abatement systems on the ventilation system.

Public notification of upcoming loud events can also be used as a form of mitigation although it doesn’t fit easily into the categories above. People are less likely to get upset if they know of an upcoming event and know that it will be temporary.

The applicant should demonstrate that the specific mitigation measures proposed will be effective in preventing adverse noise effects on receptors.
“Ultimately, the final decision must incorporate appropriate measures to minimize or avoid significant noise impacts, as required under SEQR. Any unavoidable adverse effects must be weighed along with other social and economic considerations in deciding whether to approve or deny a permit.” (DEP-00-1rev.2/2/01 The DEC Policy System 24 February 2, 2001) The Board requested the applicant to submit another alternative that combines features of two other alternatives already reviewed. This new alternative (CP-02) provides for the preservation of 200’ of natural vegetation and could be enhanced with the plantings of evergreen trees.

**Comment 3.J - Hanscome, Michael**

As State agencies have pointed out, the traffic modeling does not explore the potential adverse impact of the Project on the host community during Walmart’s peak retail season. The traffic study conclusions which are based upon turning a blind eye to worst conditions are arbitrary and capricious.

There is a substantial error in the data used for the Traffic Study. The only traffic counts that were done were performed in Mid-June between 3 pm and 7 pm on a Friday and between 11 am and 2 pm on a Saturday. This is an inadequate sampling of traffic counts and does not adequately reflect the peak rush hour traffic that occurs on Empire Boulevard for the following reasons:

- In mid-June, many local schools have closed for the summer or have reduced hours.
- In mid-June, it is common for many local workers to take the day off or leave work early on a Friday.

The traffic counts should be re-done when all of the local schools are in session and they should be re-done for at least 2 additional week days. These 2 days should be a Monday, Tuesday, Wednesday or Thursday.

**Response:**

The Final Scoping Outline, completed with public input, required the traffic counts to be taken on a Friday from 4:00 PM to 6:00 PM and a Saturday from 11:00 AM to 2:00 PM. The traffic counts were taken on Friday, June 16, 2006 and Saturday, June 17, 2006. Although the counts were taken from 3:00 PM until 7:00 PM on Friday and from 11:00 AM until 2:00 PM on Saturday, the peak hours for heaviest traffic was determined to be 5:00 PM to 6:00 PM on Friday and 11:00 AM to 12:00 Noon on Saturday. There would be little to no school-oriented traffic during these times. These timeframes appear to be consistent with the heaviest traffic in commercial areas along a main commuter route like NYS Rte. 404. **Add in reference from Traffic section as to why you wouldn’t want to rely on data from the busiest day of the year**

**Comment 3.J - Hanscome, Michael**

In addition, the Traffic Section does not state if the Applicant has obtained the rights to connect the existing Bay Towne Plaza to Sovran Drive as is proposed. It also does not state if the Developer has even approached the owner of the Sovran Drive property. To the best of our knowledge, Sovran Drive is a private road. Even if Sovran Drive is a Town road, the access to Sovran Drive from Bay Towne Plaza would be across existing private property. Mitigation based upon false assumptions is also arbitrary and capricious and should not be considered.

**Response:**

Sovran Drive is a private road. During previous reviews and approvals for projects utilizing Sovran Drive, previously known as Self Storage Way, the Planning Board required the owner(s) of Sovran Drive to enter into an agreement that will permit traffic from Bay Towne Plaza to access Creek Street via Sovran Drive. This agreement is currently in place. ***See Exhibit _____***

**Comment 3.K - Hanscome, Michael**

The discussion of cut through traffic on Seabury Boulevard in the Traffic Section of the Executive Summary does not include a discussion of the traffic impact on Seabury Boulevard if the installation of a new Traffic Signal at Brandt Point was denied by the NYS Department of Transportation (NYSDOT). An unreasonable assumption is made on the part of the Engineer that the NYSDOT will approve the installation of the traffic signal based on the NYSDOT Correspondence in the Attachments. Again, mitigation based upon false assumptions is also arbitrary and capricious and should not be considered.

**Response:**
The Planning Board also is concerned about potential cut-through traffic on Seabury Boulevard, and therefore required this analysis in the Final Scoping Outline. In its letter dated, February 13, 2012, the NYSDOT indicated:

“2. At the Route 404 and Brandt Point Drive intersections, provide dual left turn lanes exiting Brandt Point Drive along with a dedicated exiting right turn lane. A three-color traffic signal is warranted at this intersection, with a dedicated westbound left turn phase on Route 404 with an overlapping northbound right turn arrow for exiting right turn vehicles. Pedestrian indications are also required.” Therefore, NYSDOT is requiring the installation of a traffic signal as part of mitigation of the impact of the project on area transportation systems. There are many other mitigation features described in the Traffic section of this FEIS.

Comment 3.L - Hanscome, Michael
The Traffic Section discusses the potential closure of the existing curb cuts from businesses that are adjacent to the proposed Bay Towne Plaza expansion. However, it does not discuss how customers will be directed to these existing businesses when their Empire Boulevard access has been cut-off. The driveways and parking areas in several of these businesses such as the Instant Oil Change are designed for traffic entering their properties from Empire Boulevard. Moving the entrance to the rear of these properties will have a significant negative impact on the ability of these businesses to service their customers. These impacts and the ways to mitigate them are not discussed in this DEIS.

Response:
The applicant has complied with a key recommendation of the North Penfield Crossroads Area Study by including access to the several existing commercial uses that abut the proposed development. This access is intended to permit customers of these businesses to use the applicant’s property for access to either the existing traffic signal at Bay Towne Plaza or the proposed signal at Brandt Point Drive, allowing safer egress onto Empire Blvd. The volume of traffic on Empire Blvd. at times, makes left turns entering or exiting the businesses a dangerous movement. The applicant cannot control how the existing businesses operate, but by allowing alternate accesses to these businesses, customers will have the option of using alternate means to enter or leave a specific business. This will also be convenient for customers wishing to visit one of the frontage businesses and also visit one of the businesses in Bay Towne Plaza without having to enter Empire Blvd. The Planning Board acknowledges that not all businesses may immediately modify their Empire Blvd. access points, but as changes or new applications are made on these properties, an analysis of access points will be a key focus, with the intent to minimize potential conflict points and provide a safer means to access the properties.

Comment 3.M - Hanscome, Michael
The Traffic Section does not address the impact of how changing the alignment of Brandt Point will affect the ability of Emergency Vehicles to gain entrance to the Apartments and residential houses located on Seabury Boulevard from the south. In the event of a closure of the northern Seabury Boulevard exit onto Empire Boulevard, the Emergency Vehicles will have a more difficult time reaching these properties via Brandt Point. We would recommend that the site alternatives presented in the DEIS also be reviewed by the local Fire Marshall to determine the projected impacts on Emergency Vehicle Access to Seabury Boulevard and the Daniels Creek Apartments.

Response:
The Penfield Fire Marshal is a member of the Penfield Project Review Committee, which meets weekly to review and comment on applications before the Planning Board, as well as other Town issues and projects. The Fire Marshal has been involved in the review of this project and will continue in that role. The Fire Marshal has always strived to have at least two accesses to larger developments, in order to provide emergency response in the event one of the accesses is blocked for some reason. That is why both Seabury Blvd. and Brandt Point have access to the Daniels Creek Apartments.

Comment 3.N - Hanscome, Michael
The DEIS does not appear to provide data that substantiates the statement in Section 2.2 that the Existing Public Utility Infrastructure has sufficient capacity for this Project. The affected utilities would include potable water mains, sanitary sewers, electricity, and storm sewers.

Response:
Some extension of water mains, sanitary sewers and storm sewers are anticipated. Storm sewers will be sized, based upon the final site design, including storm water quality and quantity mitigation. A substantial discussion on this
topic can be found in the Storm Water and Drainage section of this FEIS. The Monroe County Water Authority is an involved agency in this review process and has received a copy of the DEIS. The Planning Board has received no comments from that agency, including any concerns about available water supply. There are large supply lines that traverse the existing Bay Towne Plaza property that will be available to the proposed new development. Sanitary sewers are under control of the Penfield Sewer Department, whose Director is a member of the Penfield Project Review Committee. There have been no concerns expressed about sanitary sewer capacity.

Comment 3.O - Hanscome, Michael
In Section 3.1, evidence is presented to support the contention that “homes in both neighborhoods have been selling at greater than current tax assessed values and in considerably rapid turn-around. There is no evidence to suggest that Bay Towne has, or will have, any negative effect on property values. All evidence shows that residential homes, constructed after Bay Towne existed, have gained substantial value, over the years.” The neighbors who have invested in the community do not support the veracity of the Applicant’s statement.

The data presented in Table 1: Bay Towne Area Property Value Comparison in Attachment 19 is severely flawed. At least 7 to 9 of the houses presented were actually for the sale of the houses to the Owners who had the houses built, which explains the short duration of the “days on market” given in the table and they do not represent a “resale” of the property. All of these houses are located on Jewelberry Drive. If you remove these houses from the calculation, then the average days on market jumps from 55.7 days to 62.5 days. Also, several of the houses shown in this chart languished on the market for 116 to 342 days. Having a house on the market for up to a year is hardly a rapid turn-around. The data is also flawed in that it doesn’t take into consideration that the Real Estate listing agent for some of the properties may have changed several times as homeowners became frustrated in trying to sell their homes. Without accurate facts to back up the Applicant’s contention, this statement is arbitrary and capricious. Therefore, this portion of the DEIS is incomplete.

Response:
The Planning Board acknowledges that there are many factors that can and should be considered in the analysis of real estate values and timeframes for buying or selling real estate. However, the Board also believes that this issue was important enough to include in the DEIS analysis of impacts. The resulting information, including the comparison of properties in Gates, NY, near an existing Walmart, provides a reasonable and rational look at property values. See also, responses to Section 3.2 – Residential Real Estate Values.

Comment 3.P - Hanscome, Michael
The DEIS does not explain why the Tops Store left the Bay Towne Plaza. The reasons behind Tops leaving could have a significant impact on the Town’s decision since it could reflect upon the management capabilities of the DiMarco Group. The Tops Management should be contacted directly to determine why the Tops Store was closed and the information obtained should be documented and appended to the DEIS. The DEIS also does not explain what efforts have been made to bring another Grocery chain or other big box retailer into the existing Tops Store space. It does not explain why it is necessary to construct a Super Walmart that includes a Grocery Department rather than bringing in another Grocery store.

Response:
The explanation of a tenant vacancy was not included in the Final Scoping Outline as it was not considered an important impact. The issue of tenant/landlord relationships is outside the scope of this impact analysis process, as are the management capabilities of the DiMarco Group or any other applicant.

Comment 3.Q - Hanscome, Michael
Section 3.1.e, Alternate Mitigations, and Section 3.3.e do not adequately discuss the possibility of demolishing a portion of the existing buildings to allow for the expansion of the Existing Walmart. This would allow for the required additional parking and improvements in traffic patterns. There are sufficient vacant businesses in the existing Bay Towne Plaza, including the Tops store, to allow for this to happen. The proposed Super Walmart is approximately 50% or 60,000 square feet larger than the existing Walmart. Alternate CP-1 shows a Walmart building expansion of 101,000 square feet, which is much larger than needed. Therefore, the Applicant has not made a realistic attempt at laying out an expansion of the existing Walmart. On page 3.3-34, the DEIS states that “the existing Wal-Mart store is still leased on a property under separate ownership. It is therefore not reasonable to ask the Applicant to consider an alternative outside the Scope of the Project.” However on page 3.5-6, the DEIS states
that “the building where Wal-Mart is currently located is owned by the Applicant and leased to Wal-Mart.” If the second statement is true, then it is entirely reasonable to ask the Applicant to consider expanding a building that he currently owns. Therefore the DEIS has not adequately responded to the Scoping Document request that the Alternative of expanding the existing Wal-Mart be examined.

Response:
The DEIS Supplemental Submission, dated August 5, 2010 contains a discussion and graphic layout on an alternative that is entitled Alternative Plan – Res 48 EXP. This layout requires no rezoning of lands and requires the demolition of over 62,000 sq. ft. of existing plaza structures. The Planning Board believes that this discussion adequately addressed the scoping requirement and that it was adequate to begin the public review. Any unavoidable adverse effects must be weighed along with other social and economic considerations in deciding whether to approve or deny an Action, such as this rezoning application.

Comment 3.R - Hanscome, Michael
The DEIS also gives conflicting statements since in Section 3.1.a, on page 3.1-2, the Applicant states that residential development continued next to Bay Towne Plaza on Guygrace and Jewelberry after Bay Towne Plaza was fully constructed. First and most importantly, the residential construction occurred in reliance upon the protections of the existing residential zoning of MR and R-1-12 that the developer seeks to eradicate. The residences were not built next to property that was zoned for high intensity 24/7 commercial usage. We are perplexed at the Applicant’s non-scientific conclusion that residential development can be successful next to Bay Towne in one area but not in another during the same time period simply because of the Commercial feel of the area. This is not explained fully enough, therefore this portion of the DEIS is incomplete.

Response:
In the DEIS Supplemental Submission, dated August 5, 2010, the applicant has amended the initial rezoning application to remove the request to rezone all of the MR and R-1-12 lands. The amended application, including the applicant’s preferred alternative (COM – 54) reduce the amount of land requesting rezoning to 11.12 acres, leaving 8.89 acres of land zoned R-1-12 immediately adjacent to residential neighborhoods. The more recent submission of Alternative CP-02 provides for about 10 acres of land to remain zoned R-1-12 and be permanently restricted from future development. As previously stated, the Comprehensive Plan and the North Penfield Crossroads study both emphasize the importance of maintaining the character of residential neighborhoods and identified ways that this can be achieved. The applicant has incorporated some of those techniques into different alternative concepts and those are now being analyzed to determine if they accomplish the goal.

Comment 3.S - Hanscome, Michael
The DEIS does not adequately explain how the construction of a new large Anchor Retail Store will enhance retail traffic to the existing Bay Towne Plaza. It just makes an assumption that it will since it is built nearby. My comment is based on the fact that the proposed location of the new large Anchor Retail Store and its road network is totally outside the traffic pattern area for the existing Bay Towne Plaza. The proposed site plan does not include any changes to the existing Bay Towne traffic pattern or road network that will make it easy for shoppers to move between the 2 retail areas. In point of fact, the proposed changes to the existing Bay Towne Plaza to give it more of a “City Place” and pedestrian feel, will make it even more difficult to get through the existing Bay Towne Plaza parking lot to the proposed Anchor Store.

Response:
The concepts contained in the DEIS are not representative of any formal site plan. The inter-connection between Bay Towne Plaza and any new development proposed will undergo a formal site plan review. However, the Board is aware that some area business owners are supportive of the revitalization of Bay Towne and desire some improvement to this business section of Penfield. The Board is also supportive of pedestrian-friendly commercial development, recognizing that pedestrian safety is a prime concern. This was a primary focus of the North Penfield Crossroads plan. Logically located vehicle travel lanes and easily identifiable pedestrian crossings are important considerations during any future site plan review process.

Comment 3.T - Hanscome, Michael
The draft Property Maintenance Agreement (Attachment 13) contained in the DEIS does not accurately reflect the terms of the existing Property Maintenance Agreement that the Applicant signed for the existing Bay Towne Plaza.
One specific difference is the hours of enforcement for permitted noise levels. The draft agreement requires noise level enforcement between the hours of 12:00 am and 6:00 am. The signed agreement requires noise level enforcement between the hours of 11:00 pm and 7:00 am.

Response:
The Property Maintenance Agreement contained in Attachment 13 of the DEIS is indeed the formal agreement signed by representatives of both the Town of Penfield and the applicant and notarized. It states the noise restriction hours between 11:00 PM and 7:00 AM. **Add liber and page info of filed document**

Comment 3.U - Hanscome, Michael
The DEIS does not provide an analysis of the “pros and cons of optional loading dock positions on the proposed anchor tenant floor plan” as required by the Scoping Document.

Response:
While not specifically listing “pros and cons”, the DEIS does contain sufficient discussion on different loading dock locations. See DEIS, Section 3.1.e – Alternative Mitigation Considered and Section 3.3.e – Alternative Loading Dock Location and Design.

Comment 3.V - Hanscome, Michael
The DEIS does not provide an analysis of the possible “enclosure of the loading dock area” as required by the Scoping Document.

Response:
There is some discussion of enclosed loading docks in the DEIS, page 3.3-24 through 3.3-26. The discussion centers on the assumption that truck maneuvering is the main source of truck noise and the specific design of travel to and from loading docks is more of a key factor in noise reduction, than enclosing a loading dock that would house a parked trailer. Additional discussion on the need for enclosure can occur with any future site plan review process and determination of specific location or locations for loading docks, as well as truck routes to and from the loading docks.

Comment 3.W - Hanscome, Michael
Alternate architectural elevations to the proposed building façade were not presented in the DEIS as required by the Scoping Document.

Response:
Section 3.1.e. of the DEIS contains a discussion of alternative facades considered. The DEIS recommends that the new structures not involve large “big box”, long wall facades, but rather mimic the designs approved for the existing Bay Towne Plaza redevelopment. These are included in Attachment 7 of the DEIS, entitled Bay Towne Redevelopment Approval.

Comment 3.X - Hanscome, Michael
Pages 3.5-7 and 3.5-8 provide an analysis of the crime statistics at the current Wal-Mart at Bay Towne Plaza and compare them to a Wal-Mart SuperCenter located in the Town of Sweden in order to demonstrate low crime rates at Wal-Mart SuperCenters. Unfortunately, this is not a fair comparison due to the dramatic differences in demographics between the Town of Sweden and the Town of Penfield.
Response:
Please reference Attachment 20 of the DEIS in which police reports/crime data are provided for the Gates, New York Wal-Mart. Based on that document, there was no significant increase in crime in the area adjacent to the new Wal-Mart. The Planning Board also felt that the initially submitted statistics were inadequate and therefore required the applicant to include data from the Gates store in the accepted version of the DEIS.

Comment 3.Y - Hanscome, Michael
The Traffic Section has an in depth discussion of how the NYSDOT comments in its March 30, 2009 have been addressed. In this discussion, there is mention several times of a meeting that was held on May 28, 2009 with the NYSDOT. However, documentation has not been provided that demonstrates that the NYSDOT has agreed that its concerns have been mitigated.

Response:
The NYSDOT is an agency that is currently very involved in the review of all submitted materials relating to this Action. The discussions of May 28, 2009 were not required to be documented in the DEIS. Since that time, an additional meeting was held on November 18, 2011 and notes of that meeting are contained in Exhibit __. At that meeting, attended by representatives of the NYSDOT, MCDOT, the Town of Penfield and the Applicant, several topics were discussed, including additional information needed by the agencies. The February 13, 2012 letter from NYSDOT outlines that agency’s position on the mitigation proposed and/or required to accommodate the project as proposed.

Comment 4: Penwarden, MCDOT
We have reviewed the DEIS for the above referenced project and offer the following comments and recommendations:

1. Tables 3.4-4 and 3.4-9 show the westbound approach to the Creek St. access as one shared lane, however the approach widens at Creek St., to provide for one lane for westbound right turns and one lane for westbound left turns. The analysis should be run using two lanes exiting.

2. Page 3.4-16 states in part "Creek Street is free flow with left turns into Bay Towne Plaza prohibited and is projected to continue operating very well at the Bay Towne Plaza driveway." This is contrary to the values shown in tables 3.4-4 & 3.4-9 where the delays are shown to be in excess of 168 seconds for the westbound (exiting) approach under the 2009 no build scenario and in excess of 274 seconds for the 2009 build with mitigation scenario! The results of #1 above may well change this comment.

3. Page 3.4-44 indicates that no changes are proposed to the existing Creek St access, and that with mitigation (connecting to Sovran Drive) delays for exiting left turns from the plaza are expected to be acceptable. Again, table 3.4-9 contradicts this statement.

4. Based on the historical traffic issues at the Creek St./Bay Towne Plaza driveway, we recommend that the Sovran Drive be connected to Bay Towne Plaza, and the Sovran Drive access to Creek St. continue to be a full access (allowing all permissible movements to Creek St.). Additionally, we recommend the existing Creek St./Bay Towne Plaza access be modified to be either a right in I right out only access or preferably, a right out only access. Both of these scenarios should be analyzed to determine if a traffic signal (and any geometric modifications) would be warranted at the Sovran Drive access point under these conditions.

Response:
The above agency comments from Mr. Penwarden of the Monroe County Department of Transportation have been addressed in a response memo from the applicant’s engineering consultant, Bergmann Associates, dated 2/14/2011. This memorandum was part of the revised traffic analysis submitted to the Town on July 29, 2011 and contained herein as Exhibit __. ***Reference recent comments issued by CDOT***

Comment 5: Sanchez, J.
First, to begin with, Figure 7 in the DEIS talks about the noise element in terms of where they put all of the surrounding -- hang on a second. Both the noise measurement site plus the noise rear sites, I think, need to be done at -- at distinct different times. I think that there are noise modeling deficiencies made in the DIS that I think I -- that
I would encourage all to review. Separately, with respect to groundwater, I think the assumptions that were made were outdated, and I think those need to be looked at again. Traffic, I think, was modeled based on best case, not a worse case. I think that needs to be looked at very carefully. Um, 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.

Response:
See Responses to Comment 2, Comment 3.F. and Comment 3.O., above

Comment 6: Stanton, R
The Draft Environmental Impact Statement ("DEIS") relies upon incomplete and objectively false assumptions and conclusions in its noise, traffic, and water impact assessments, and thus would render reliance upon the conclusions from the studies arbitrary and capricious. Michael Hanscom, who is an experienced civil engineer, submitted extensive written comments regarding the false assumptions in the modeling upon which the DEIS relies; and

Comment 6.A: Stanton, R
that the proposed mitigation measures are inadequate, and with regard to traffic mitigation illusory; and

Response:
The adequacy of mitigation measures is currently under review in this FEIS.

Comment 6.B: Stanton, R
Bay Towne's primary problems appear to be largely design related, and that there is not a shortage of development space in the Plaza (or public need for the rezone) if the space within the plaza were properly utilized, and the expansion of the Plaza to develop a one stop shopping center with the proposed service road does not address the Plaza's needs; and

Response:
The Planning Board appreciates the author’s suggestion of proper utilization of existing Plaza space, however this is outside the scope of this environmental review. The DEIS did contain an analysis of using the existing WalMart location for the new super store. There was no requirement to assess the operation of the plaza or detail specific leasing strategies for vacancies.

Comment 6.C: Stanton, R
the DEIS does not evaluate and compare impacts of Plaza redesign within its own footprint, the development of multi-family uses on the parcels, or less drastic rezoning to allow uses to permit professional office space to operate on the parcels at issue. The only alternative the developer purportedly modeled in the appendixes was the one which relies upon rezoning of the properties. Thus there was no evaluation of the environmental impacts of reasonable alternatives in the DEIS; and

Response:
While there has been some discussion and suggestions to incorporate multi-family or office space on the land in question, there was no requirement to include this in the DEIS as an alternative analysis. The Board did require a discussion of “…prior approvals on the property under different zoning categories that permit multiple residential or combination of multiple residential and single family uses, Business Non-Retail (office/service uses), and Limited Business uses…” The prior approvals related to discussion of Section 2 of Providence Landing Subdivision (alternative RES-48 EXP) and a senior living facility on the MR zoned property. The Planning Board is not aware of any previous approvals that would fall on lands owned by the applicant that are zoned Business Non-Retail or Limited Business, in this area of Penfield.

Comment 6.D: Stanton, R
the DEIS misrepresents a formally adopted master plan of the community, to wit the Penfield Economic Development Plan, recommendations for where commercial retail development should be expanded; and

Response:
Regarding this particular comment about the Economic Development Plan (EDP), the applicant quoted specific information of the EDP. The EDP acknowledged that there was very little General Business (GB) zoned land left in Penfield and recommended a strategy to increase GB lands, if the town wanted to. The EDP did suggest that lands along NYS Rte. 250 might be appropriate for some additional GB development. The North Penfield Crossroads Plan specifically references the applicant’s lands for development that could be increased in intensity from the current zoning.

**Comment 6.E: 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 Planning Board acknowledges that the DEIS does state that there will be additional real estate tax and sales tax revenue from additional commercial development, but this information was not a key potential impact that was identified. However, the impact to property values was considered an important impact to analyze and therefore was included in the final Scope for the DEIS.