I Call to Order - Pledge of Allegiance - Roll Call

II Public Hearing – To Allow a Deck and Additional Outdoor Dining and a Larger Freestanding Sign than Permitted at 1776/1778 Penfield Road Located in the Four Corners (FC) Zoning District

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IX Old Business
X New Business
XI Public Participation
XII Adjournment
The Regular meeting of the Penfield Town Board was held on Wednesday, August 3, 2016 at 7:00 PM at the Penfield Town Hall, 3100 Atlantic Avenue, Penfield, New York.

Present: R. Anthony LaFountain Supervisor
Linda Kohl Councilwoman
Paula Metzler Councilwoman
Robert Quinn Councilman

Also Present: Amy Steklof Town Clerk
Richard Horwitz Town Attorney
Jim Costello Director of Developmental Services

Absent: Andrew Moore Councilman

Supervisor LaFountain called the meeting to order – Pledge of Allegiance

The Town Board, Town Clerk and Town Attorney “took their hats off” to the Penfield Little League (PLL) in celebration of their most successful season in the league’s 64 year history with five (5) of the teams moving forward to World Series Tournament Play.

Supervisor LaFountain congratulated everyone on behalf of the Town Board and community that is associated with the Penfield Little League organization and gave a brief summary of their accomplishments for this season.

Public Hearing #1 To Allow a Deck and Additional Outdoor Dining and a Larger Freestanding Sign than Permitted at 1776/1778 Penfield Road Located in the Four Corners (FC) Zoning District

The Town Clerk read the title of the above Public Hearing; said Notice was published in the Penfield Post on July 15, 2016 and was posted on the Town Website and Town Clerk Bulletin Board. 20 postcards were mailed. Town Attorney Horwitz confirmed that this meeting is in order.

Applicant, Anthony DaPice, owner of T Bones Restaurant, has owned the property at 1776/1778 Penfield Road since 2010 and is looking to renovate the property and change the name to Bistro 1778. Renovations would include a new roof, new siding, new gutters, new parking lot and new fencing. Mr. DaPice stated that the current outdoor deck is approximately 20’ x 30’ feet and he would like to add square footage to it for additional seating and include a pergola with lighting. He also stated he would like to add some fire pits to the existing patio. Additionally, he would like to add a few renovations to the inside of the restaurant which would include new tile in the bathrooms, floor renovations and new window treatments plus some new tables and chairs to be added.

Mr. DaPice stated the hours of operation will be similar to the hours the restaurant has now. Lunches will be served Tuesday through Friday from 11:30 AM to 2:00 PM and dinner Tuesday through Sunday from 4:30 PM to 9:00 PM. He plans on having a fusion menu with food from six (6) different countries and a smaller price point than before. He also plans to expand the wine list.

Councilwoman Metzler asked if heaters for the outside seating area are planned?

Mr. DaPice said, “possibly.” Mr. DaPice handed out pictures of the free standing sign he is proposing.

Supervisor LaFountain asked how different is the larger sign he is proposing?

Mr. DaPice stated he doesn’t believe the sign is bigger than what is there today. The rectangular sign that is already there is 5 ft. by 6 ft. and the one he is proposing is 5 ft. in diameter.
Councilwoman Metzler pointed out that the sign there today had required a variance. She asked how many existing signs for the property are there now?

Mr. DaPice said “three (3).”

Mr. DaPice stated he is asking for approval to place awnings on four (4) windows and two (2) awnings to be placed on the existing patio and the main entrance. The name of the restaurant, “Bistro 1778” will be placed on the awning at the main entrance and on the awning that will be located on the west side of the building leading to the patio.

Councilwoman Metzler inquired about landscaping.

Mr. DaPice stated he plans to landscape the property.

Councilwoman Kohl inquired whether the people next door will see shrubbery or patrons sitting on the deck.

Mr. DaPice stated his plan is to plant shrubbery around the deck.

Councilwoman Metzler asked if there will be any outdoor music?

Mr. DaPice stated there will be light background music and there will be no live music.

**Public Participation**

Betty Perkins-Carpenter, 1780 Penfield Road stated she has not seen any plans pertaining to the proposal. She stated her concern pertains to the patrons mistaking her driveway for the restaurant’s driveway and hopes that proper signage will rectify the situation.

Mike Schum, who joined Ms. Perkins-Carpenter at the podium, stated the driveway is a huge safety issue.

Ms. Carpenter went on to say the driveways are so close that the restaurant patrons end up backing out of the driveway onto Penfield Road which is very dangerous. She hopes a sign can be placed by the driveway to indicate that the entrance to the restaurant is on Liberty Street and not on Penfield Road.

Councilwoman Metzler suggested holding the Hearing open until Ms. Perkins-Carpenter has a chance to look at the plans and the proposal.

Supervisor LaFountain asked Jim Costello, Director of Developmental Services to bring the driveway issue to the Project Review Committee (PRC) for their comments.

Mr. Perkins-Carpenter also asked for notifications to be sent to her when special events for the restaurant are planned so she can block her driveway.

Councilwoman Metzler asked Ms. Perkins-Carpenter to contact Supervisor LaFountain with any questions or comments she has once she has viewed the plan.

Ms. Perkins-Carpenter extended her congratulations to the Penfield Little League.

Mr. Costello stated that he would be happy to provide Ms. Perkins-Carpenter with all the materials we have on this application. He also stated that he would like Mr. DaPice to provide the Town Board with a breakdown of how much signage is proposed for this site including the dimensions.

Councilwoman Metzler asked Mr. Costello if the Historic Preservation Board has weighed in on this proposal?
Penfield Town Board, August 3, 2016

(Public Hearing #1 – Continued)

Mr. Costello said, no.

Supervisor LaFountain went over the next steps.

Hearing closed.

Communications and Announcements

1. The 3rd Annual Golf Tournament to benefit the Penfield Ecumenical Food Shelf will be held on Monday, August 29, 2016 at Shadow Lake Golf Course. For more information please visit www.donsrestaurantandpub.com or call 585-377-1040.

2. Just a reminder to please view the Town’s website at www.penfield.org for a list of active selling permits in our Town.

3. Hunting Licenses and Deer Management Permits (DMP’s) are now on sale through October 1, 2016 and are valid from September 1, 2016 to August 31, 2017. For more information please visit the DEC website at www.dec.ny.gov or contact my office at 340-8627.

4. The Penfield Ecumenical Food Shelf continues to need its shelves re-stocked. Please go to the www.penfieldecumenicalfoodshelf.org to view the current wish list.

5. The Penfield Trails Committee will sponsor a free public hike at Ellison Park on Saturday, August 13, 2016 from 9:00 AM to 11:00 AM. To pre-register please contact Penfield Recreation at 340-8655.

6. The scheduled road closure for NYS RTE 441 eastbound at Linden Avenue in Penfield has been rescheduled to take place on Friday, August 5, 2016 beginning at 7:00 PM through Monday morning. NYS RTE 441 in the east bound direction will be closed between Linden Oaks and Panorama Trail. Detours for the weekend closure will be posted. For more information about this project, please visit www.penfield.org.

7. Town Historian, Kathy Kanauer has reminded Supervisor LaFountain that the Penfield Town Hall was moved from Penfield’s Four Corners to this campus, 3100 Atlantic Avenue, 50 years ago.

8. This week completes Cool Jazz Tuesdays and Kids Fest Thursdays. The next event at the Penfield Amphitheater and Kiwanis Stage is “Tastin’ the Blues” on Saturday, September 17, 2016 from 12:00 PM to 4:00 PM. For more information please visit www.penfieldrec.org.

9. The Penfield Public Library will hold the event “How to Festival” featuring 20 stations demonstrating quick skills. The event will take place on Sunday, August 14, 2016 from 1:30 PM to 4:30 PM. For more information please visit www.penfieldlibrary.org.

10. Councilwoman Kohl’s next Community Chat will be held on Tuesday, August 16, 2016 from 5:30 PM to 7:00 PM at the Penfield Library, 1985 Baird Road.

Public Participation

Jim Ebmeyer, 2020 Baird Road stated he has lived in the Town of Penfield for 53 years. He mentioned he enjoys the Town’s music programs and the music programs are a great asset to the Town of Penfield.
Mr. Ebmeyer stated that the owner of the new orthodontics office on Harris Whalen Road has recently planted trees under power and cable lines. He is concerned that as the trees grow they will push on the power and cable lines. He hopes that someone will take responsibility for trimming the trees.

Mr. Ebmeyer also stated that he was unable to attend the meeting that was held that pertained to the proposed Mixed Use multipurpose development along NYS RTE 250 between the YMCA and Atlantic Avenue. He would like to know how the traffic will be handled as the development progresses. Mr. Ebmeyer also said that the Town of Penfield’s known as the “Town of Planned Progress”, but when it comes to roadways he doesn’t believe there has been any planning. He went on to say that as long as he has lived in Penfield, there are no new roads that go east to west or north to south. He stated that the zoning requirements should include planned spaces for connecting streets as new developments are added to the Town.

Mr. Ebmeyer brought to the Town Board’s attention that at the intersection of Baird Road and Penfield Road vehicles are constantly speeding and running through the red light. He suggested that a red light camera be placed at that intersection. He also stated that the intersection of Five Mile Line Road and Atlantic Avenue needs to be improved by adding turning lanes in all directions. He also feels the Town needs to have more smart traffic control devices. He stated that the signals at the intersection of Whalen Road and Five Mile Line Road are geared for volume, as are other signals throughout the Town. He would like the Town to notify the NYS DOT to change the signals to “traffic sensitive” devices.

Lastly, Mr. Ebmeyer spoke about the Town’s Open Space Plan and Shadow Pines. He feels the Open Space plan should consider all open areas within the Town. He handed a sheet of recommendations to Supervisor LaFountain that pertained to the Town’s Comprehensive Plan.

Kevin Gallagher, 1973 Dublin Road, handed to Town Attorney Horwitz a document that he shared with the Town Board two (2) weeks ago and stated he will be referencing the document. Mr. Gallagher spoke about the Oak and Apple proposal and brought up to the Town Board a number of questions he would like to eventually be answered. He also spoke of the Conservation Easement. He would like to work with the Town to protect the property at 1381 Sweets Corners. A 10 page attachment summarizing his questions and concerns can be found at the end of the Minutes.

He stated that it has been two (2) months since the project has been stalled and would like to see some progress.

Jeff Cady, 1728 Dublin Road also spoke about the Oak and Apple proposal. He read a correspondence from Fox Planning Services that stated once the apple trees are planted it will take a few years before the trees begin producing apples for the cider operation and should be producing apples prior to the development of a cider mill. Otherwise, apples will need to be imported. He stated this was not the initial intent of the Conservation Easement. He also read a correspondence from Agriculture and Markets that pertained to acreage and salary requirements, especially for starting farms.
Mr. Cady stated in regards to the July 29, 2016 letter from the Town of Penfield, it mentioned that on September 16, 2015 a resolution was passed to declare four (4) separate farmsteads be created. He went on to say that for 13 years the land was untouched, but less than two (2) months after the resolution passed the property is closed on by Oak and Apple. He agrees with Mr. Gallagher to hire an attorney to represent the neighbors. He does not feel the taxpayers of Penfield should have to pay for an attorney. He also said he would like the answer to the question on whether Agriculture and Markets can override the Town agreement and why is the “Bar” considered agrimarket? He stated that so much is listed on the Conservation Easement that has not been taken into consideration.

Supervisor LaFountain suggested that Mr. Cady write a list of his questions and submit to the Town Clerk and she will make sure the Town Board and Town Attorney receives them.

Sheryl Dimuro, 1877 Dublin Road stated she is against the cidery being developed and will be disappointed if it is approved.

Approval of Minutes

Councilwoman Kohl moved to approve the Minutes of June 15, 2016 Councilman Quinn seconded and all voted “Aye.”

Petitions- None

Resolutions by Function

Law and Finance

#16T-166 Appointment of School Tax Collector for the 2016-2017 School Year for Wayne Central School District by Moore

WHEREAS, Section 37 of the Town Law of New York State provides that collection of school taxes in first class towns is the duty of the Town’s Receiver of Taxes & Assessments unless a Resolution is adopted by the Town Board to convey this responsibility to the tax collector appointed by the Board of Education, and

WHEREAS, Penfield is one of six first-class townships within the boundaries of Wayne Central School District, and

WHEREAS, the tax receiver as appointed by the Wayne Central School District as the school tax collector for the Wayne Central school District portion of the Town of Penfield for the 2016-2017 school year,

NOW, THEREFORE, BE IT RESOLVED, that the Penfield Town Board hereby approves the appointment of Mrs. Cathy Herzog as School Tax Collector for the Wayne Central School District portion of properties in the Town of Penfield.

Moved: Metzler
Seconded: Kohl

Vote: Kohl  Aye  LaFountain  Aye
       Metzler  Aye  Moore    Absent
       Quinn   Aye

Adopted
Authorization for Town Supervisor to Sign a Professional Service Contract with Cohen Law Group for Cable Franchise Fee Audit and Cable Franchise Renewal Services by Moore

BE IT RESOLVED, that the Supervisor is hereby authorized to sign a Contract, for the amount of $17,100.00, with The Cohen Law Group, 413 South Main Street, Pittsburgh, PA 15215, to provide a Cable Franchise Fees Audit and Cable Franchise Renewal Services for the Town of Penfield. Said Contract is to be acceptable to Town Attorney.

Moved: Metzler  
Seconded: Quinn

Vote:  
Kohl Aye  
LaFountain Aye  
Metzler Aye  
Moore Absent  
Quinn Aye

Adopted

Setting a Public Hearing to Consider Permitting a Garage Additional with Less Side Setback than Permitted at 1750 Penfield Road by Moore

WHEREAS, an application has been received by the Penfield Town Board pursuant to §250-5.10-C and §250-5.10-F(3) of the Code to consider permitting an addition to a garage with less side setback than permitted at 1750 Penfield Road, located in the Four Corners (FC) zoning district; 

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

RESOLVED, that the subject application is determined to be an Unlisted action pursuant to the requirements of the State Environmental Quality Review Act; and be it further

RESOLVED, that the Town Board of the said Town of Penfield shall hold a Public Hearing at the Penfield Town Hall, 3100 Atlantic Avenue, in the Town of Penfield, New York on September 7, 2016 at 7:00 PM on said date, to consider the said application and to hear all persons interested on the question of permitting an addition to a garage with less side setback than permitted at 1750 Penfield Road in the Four Corners (FC) zoning district; and be it further

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

Moved: Metzler  
Seconded: Kohl

Vote:  
Kohl Aye  
LaFountain Aye  
Metzler Aye  
Moore Absent  
Quinn Aye

Adopted
Approval of an Incentive Zoning Application and Final Subdivision and Site Plan Approval to Allow 11 Residences in Phase V of the Abbington Place Subdivision on 3.74 Acres at 1229 Fairport Nine Mile Point Road by Moore

WHEREAS, pursuant to Local Law No. 2 of 2003, known as the Town of Penfield Incentive Zoning Law, on May 4, 2011, the Town Board granted preliminary overall approval of 99 single family residences and final approval for 28 residences in Phase I of the Abbington Place Subdivision; and

WHEREAS, the Town Board has subsequently granted final subdivision and site plan approval for Phases II and III and IV of the subdivision since that date; and

WHEREAS, the Town Board has received an application for final subdivision and site plan approval for the development of 11 residences in Phase V of the Abbington Place Subdivision under §250.11-2.A and §250.12-2 of the Code on 3.74 acres in the Rural Residential 1 (RR-1) zoning district at 1229 Fairport Nine Mile Point Road subject to the requirements of Town Board resolution 11T-125; and

WHEREAS, on January 13, 2016, the applicant requested and was granted permission from the Town Board to apply for a total of three (3) additional lots to be developed in Phases V and VI of this subdivision for the purpose of aligning the lots abutting the adjacent property owner to the south, who was given concept approval by the Board for a proposed 27 lot subdivision with similarly sized lots as those in the Abbington Place Subdivision, subject to the Incentive Zoning requirements for the original 99 lots; and

WHEREAS, the Town Board of the said Town of Penfield held a Public Hearing at the Town Hall, 3100 Atlantic Avenue, in the Town of Penfield, New York on July 20, 2016, at 7:00 PM on said date, to consider the application and hear all persons interested on the question of granting Final Subdivision and Site Plan Approval to allow 11 single family homes on 3.74 acres in Phase V of the Abbington Place Subdivision, located at 1229 Fairport Nine Mile Point Road, and the Public Hearing was closed and decision was reserved; and

WHEREAS, the Penfield Town Board acting as “lead agency” within the meaning of the State Environmental Quality Review Act (SEQRA) had classified this proposal as an Unlisted Action prior to granting Preliminary Overall Subdivision and Site Plan Approval of the project and issued a Negative Declaration determining that this action will not result in a significant adverse environmental impact; and

NOW, THEREFORE, BE IT RESOLVED that the subject application for Incentive Zoning, Final Subdivision and Site Plan approval for 11 lots in Phase V of the development, be and the same are hereby APPROVED subject to the following conditions; and

1. The applicant shall be responsible for providing the amenities for this phase of the development outlined in the Town Board’s Findings Statement Resolution No. 10T-198 dated September 1, 2010 which identified them as follows:

   • Necessary financial support and participation in the proposed relief sewer within the Town of Webster as identified in the sewer capacity study prepared by BME Associates, December 2003 and subsequent preliminary cost data prepared by Schultz Engineering for Visca Homes in the Town of Webster dated August 2009, both on file with the Penfield Engineering Department. The applicant shall be required to submit an amount of $500 per lot at the time a building permit is requested and prior to its issuance.

   • The site has been designed to reduce the on-site flow to the Angean Drive culverts. Phase V will be served by the existing storm water facility that was constructed in Phase I.
(Resolution #16T-169 – Continued)

- The developer shall provide cash contribution payment of $3,250 per each lot above the RA-2 conventional yield of the property, that being 25 lots (formerly 22 lots), totaling $81,250 (formerly $71,500) for the specific purpose of designating funds to the Town’s drainage fund and to the Town’s highway fund to provide the Highway Department the ability to address public works projects that benefit the Town residents as deemed necessary.

2. Obtaining the signature of the Town Engineer indicates compliance with this requirement.

3. Compliance with all requirements of the Town of Penfield Design and Construction Specifications, revised January 18, 2011.

4. Submission of all easements to implement the approved plan. Easements shall be submitted in the Town’s format and accompanied by the required filing fees prior to obtaining the signature of the Director of Developmental Services on the final site plan.

5. Compliance with the Town of Penfield’s Street Tree Planting Policy and Sidewalk Policy.

6. The final grading plan shall contain a full schedule of erosion control implementation, temporary and permanent seeding details, topsoil stockpile areas, construction sequence, and other applicable measures deemed appropriate by the Town Engineer.

7. The finished ground level adjacent to each home foundation wall shall be graded in such a manner as to provide positive drainage away from the structure and shall be subject to the approval of the Town Engineer.

8. Furnishing the Town with a Letter of Credit, in an amount to be approved by the Town Engineer. Said Letter of Credit shall insure that all public improvements and such other items as may be deemed necessary are constructed in accordance with the approved plan and the standards and specifications of the Town of Penfield.

9. Any and all costs related to the relocation of utilities necessitated by this project shall be borne by the individual and/or the utility company requesting the relocation. All new utilities serving this project shall be installed underground.

10. The final site plan for this phase shall contain proper notations regarding the possible presence of field tile on the site. In the event field tile is encountered, it shall be removed in its entirety or otherwise secured at the direction of the Town Engineer. Under no circumstances shall field tile be permitted to exist near home foundations.

11. The submission of all the required documents for roadway dedication, all to be in the Town’s format, accompanied by the proper filing fees and acceptable to the Town Attorney, prior to obtaining the signature of the Director of Developmental Services on the final plans.

12. All sanitary sewer connections are to be approved by the Town Engineer, the Town of Webster and the Monroe County Health Department. All funds for such improvements shall be covered in the Letter of Credit.
13. The applicant shall work with the Building Inspector to establish street addresses for all proposed buildings. Any new street names must be approved by Monroe County 911 and the Town of Penfield.

14. The applicant must consult with the local office of the U.S. Postal Service to determine an appropriate location and time frame for mailbox installations.

15. A notation shall be placed on each corner lot with the subdivision stating that: “Any modification in the placement of a home from the location shown on the site plan, must be submitted in writing to the Building Inspector prior to application for a building permit for review and approval for compliance with the minimum setback requirements as set forth on the approved Site Plan.”

16. No walkout basements shall be permitted without the approval of the Town Engineer. In the event that walkout basements are approved, basements that are substantially exposed shall have siding compatible with the main structure installed to within 24” of ground level in order to provide an attractive appearance from all sides.

17. The applicant shall pay a recreation fee for each proposed structure on the site at the time a building permit is issued. Said fee shall be determined by Town Board Resolution.

18. All site work is to be in compliance with the standards of the Code of the Town of Penfield.

19. Compliance with all requirements of any Federal, State, County or local agency.

20. Construction is to begin within one (1) year from the date of this resolution.

21. The approved subdivision plat must be properly filed in the Monroe County Clerk’s Office prior to the issuance of a building permit.

22. The approved site plan must be properly filed in the Town Clerk’s Office prior to the issuance of a building permit.

23. Compliance with all of the requirements of the Director of Developmental Services regarding this matter.

24. A copy of this resolution in its entirety shall be placed on the final site plan.

AND BE IT FURTHER RESOLVED, that the Board bases its decision to APPROVE and its determination of environmental non-significance on the following findings:

Subdivision Approval: Factors for Consideration
1. Character of the land, including topography and watercourses. – The site is well suited for development. There is no designated watercourse flowing through the property, however the applicant has modified the project layout to address the collection of storm water and to provide a reduction of volume of flow leaving the site prior to it discharging to Four Mile Creek. One of the two (2) storm water management facilities have been constructed on the site to mitigate storm water concerns voiced by area neighbors and is properly functioning as proposed. The Town Board is satisfied with the overall layout of the project.

2. Conformity to the Official Zoning Map and in harmony with the current Master Plan of the Town. – This project is consistent with the Town of Penfield 2010 Comprehensive Plan which recommended higher densities for this area of Penfield.

3. Current Development Regulations and Specifications. – The applicant shall comply with all current requirements.

4. Street layout and design. – The Board has reviewed the proposed street layout and design. The Town Board granted a waiver from the radius design of the street layout to minimize the amount of filling to the lots adjacent to the proposed storm water management facility along Route 250, provided the requirements of the MUTCD are followed and appropriate signs are installed.

5. Street Names. – Street names are required to be reviewed and found acceptable by Monroe County 911.

6. Arrangement of lots. – The lot and building arrangement remains exactly as that approved by the Town Board in its Preliminary Overall Subdivision and Site Plan Approval on May 4, 2011 in resolution 11T-125.

7. Drainage Improvements. – Drainage improvements were installed in Phase I of the project and have significantly reduced and mitigated drainage impacts to area property owners.

8. Utility Sidewalk and Pedestrian access and conservation easements. – Pedestrian patterns have been considered and will utilize sidewalks both within the proposed subdivision as well as a trail to provide pedestrian accessibility for those residents residing on the proposed Whitespire Lane. Said pedestrian access will be constructed with an impervious, durable material as directed by the Town Engineer.

9. Parks, open spaces and natural features, including ownership, use and maintenance of such lands. – The project required the construction of two (2) storm water management facilities that area intended to revert back to their natural states, which will be owned by the Town of Penfield and maintained through a Special Improvement District which was created at the time Phase I of this project was approved.

10. Density Calculation. – The density calculation was established in Resolution No. 10T-198 of 2010 and approved in resolution 11T-125 of 2011 and remains the same.

11. Special benefited districts required including, but not limited to, sidewalks and trails, lighting, sewer, storm water management facilities, parks, and other embellishments. – A specially benefited district for the overall subdivision was created for each listed amenity as a condition of Phase I of the project.
12. On-site sewage disposal systems will require the approval of the Monroe County Health Department. Proposed lot geometry must conform to the Monroe County Health Department’s criteria as well as the Ordinance. - The site will be served by a dedicated sanitary sewer system. No on-site sewage disposal systems (septic systems) are proposed.

13. Documents required for dedication of public improvements. - Sanitary sewers, roadways and storm water management facilities are proposed to be dedicated to the Town and extension of the water system will be dedicated to the Monroe County Water Authority.

Site Plan Approval: Factors for Consideration

1. 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. - The Board has reviewed all aspects of this factor and finds that the approved development, as currently designed satisfies this factor for consideration. Pedestrian sidewalks are proposed to provide pedestrian access throughout the project. The project’s roadways are designed to connect to the adjacent properties to the south and west of the site to provide for multiple means of ingress and egress as development occurs on those properties as requested and considered during the application review.

2. Location, arrangement, size, architectural feature and design of buildings, lighting and signs. As much as possible, consideration should be given to noise sources, privacy and outdoor waste disposal locations. - The applicable factors have been found to be acceptable by the Board.

3. Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise deterring buffer between these and adjoining properties. Site plans should also show existing stands of trees on site. - There are few trees in the areas of proposed development. Trees will be installed as a condition of site plan approval, in compliance with the Town’s Street Tree Policy. Several trees were removed to construct the existing storm water management facility adjacent to NYS Route 250; however, vegetation in that area was intended to and has reverted to a natural, unmaintained state, allowing for new growth. The preservation of existing vegetation, where practical and effective, has been required.

4. In the case of an apartment house or multiple dwelling, the adequacy of usable open space for playgrounds and informal recreation. - Not applicable.

5. Adequacy of storm water, sanitary waste disposal, and public water facilities. - The storm water management facility that services this phase of development was constructed in conjunction with the development of phase I of the project and is functioning as designed.

6. Protection of adjacent properties and the general public against noises, glare, and unsightliness, or other objectionable features. - This phase of development is well screened from the surrounding neighborhood.

7. The effect of the proposed development on environmentally sensitive areas such as but not limited to: wetlands, floodplains, woodlands, steep slopes and watercourses. - There are no Environmental Protection Overlay Districts (EPOD’s) on this site.
(Resolution #16T-169 - Continued)

8. Compliance with this Ordinance, Master Plan, Design and Construction Specifications, SEQRA, IBP, LWRP and any others. - Of those documents, plans, laws, acts and reports listed, the following are applicable:

   a. Ordinance - The Town Board, under Local Law No. 2 of 2003 is empowered to modify the Town’s Zoning Ordinance through the Incentive Zoning application process. All applicable Ordinance sections are complied with and the Town Board has superseded the Ordinance through the use of Incentive Zoning.

   b. Master Plan - The Town Board has determined that this project, as proposed and herein approved, is consistent with the Town of Penfield 2010 Comprehensive Plan, for density and use.

   c. Design and Construction Specifications - As previously noted the plan complies with all requirements of the Specifications.

   d. SEQRA - The environmental review of this action is consistent with SEQRA.

   e. The Irondequoit Bay Plan (IBP) and Local Waterfront Revitalization Program (LWRP) are not applicable as the project is not located near Irondequoit Bay. All storm water flows to Four Mile Creek which directly flows to Lake Ontario.

9. Provisions for adequate drainage away from walls or structures. - The applicant is required to comply with the requirements of the Town’s Specifications and Design Criteria which requires positive drainage away from all structures.

10. Agreements, easements and other required legal documentation shall be approved by the Town Attorney. - No construction will be permitted for this project until such time as all legal documentation has been reviewed and approved by the Town Attorney and appropriate staff members.

11. The impact of the proposed use on adjacent land uses. - The adjacent land uses include agricultural lands surrounding the site. Those lands are also subject to development pressure based on their accessibility to sanitary sewers. It is anticipated that said properties will be similarly developed as the subject property over the next several years. The adjacent property owners to the west of the site requested that the Town Board require the developer to provide road access to their easterly property line to allow future development on their property to tie into said proposed road. The Board did so and the applicant complied. The applicant to the south of this site requested the Town Board to provide a right of way to his property along with access to a sanitary sewer for the future development of his site as well as providing sanitary access to his residence. The Board did so and the applicant complied. Finally the owner to the south requested that the Town Board require the applicant to install an earthen berm along the common property line to prevent drainage from the project from entering onto his site. At the applicant’s request, the Board did so and the applicant complied. The Town Board, in granting the neighbor’s request is doing so to the extent that the Town is honoring his request. The Town assumes no liability in the event that the berm prevents storm water from positively draining from the adjacent property. The Town Board was concerned that since the Town has no drainage easement over the lands immediately east of Route 250 that there may be an adverse impact to the properties to the west of Route 250 in the event that positive drainage was not maintained east of Route 250.
12. The applicant secured a letter from the property owner on the east side of Route 250 allowing the Town access to his property to resolve any drainage issues in emergency situations. This action resolved the Board’s issue.

13. The Town Board finds that a proper case exists for requiring the developer to show on the plat a park or parks suitably located for playgrounds or other recreational purposes; but that a suitable park or parks of adequate size cannot be located in any such plat or is otherwise not practical. Therefore, a recreation fee, in lieu of construction of a park within a subdivision, shall be assessed on each lot in an amount established by the Town Board and same shall be paid prior to the issuance of a building permit and said requirement for the payment of the recreation fee shall be noted on the plat. See condition #20.

AND BE IT FURTHER RESOLVED, that Section 276 of the Town Law states that “Conditional Approval of the final plat shall expire within one hundred eighty (180) days after the date of the resolution granting conditional approval unless such requirements have been certified as complete”.

AND BE IT FURTHER RESOLVED, that this section also states that “The Town Board may extend the time in which a conditionally approved plat in final form must be submitted for signature if in its opinion such intention is warranted by the particular circumstances thereof, not to exceed two (2) additional periods of ninety (90) days each.”

Moved: Metzler
Seconded: Quinn

Vote: Kohl  Aye   LaFountain  Aye
       Metzler Aye   Moore   Absent
       Quinn Aye

Adopted

#16T-170 Advertising for Sealed Bids for Multimedia Video Automation System by Moore

WHEREAS, the Cable TV Coordinator, of the Department for Cable TV has identified the need for replacement of the department's existing video playback system that has failed to consider effectively managing distribution of new technologies, devices, and delivery platforms and,

NOW THEREFORE BE IT RESOLVED, that the Cable TV Coordinator be, and is hereby, authorized to advertise, in the manner prescribed by Law, for sealed proposals to provide the necessary hardware, and support services for a replacement multimedia communication, automation and delivery system.

BE IT FURTHER RESOLVED, that said system shall conform to the specifications and services which are available at the Town Clerk Office until 11:00 AM, EST, Thursday, August 18, 2016, at which point said bids will be received at the Town Clerks Office to be opened and read publicly.

Moved: Metzler
Seconded: Kohl

Vote: Kohl  Aye   LaFountain  Aye
       Metzler Aye   Moore   Absent
       Quinn Aye

Adopted
#16T-171 Authorization to Attend the 2016 NYS Assessor’s Seminar on Assessment by Moore

WHEREAS, it is in the best interest of the Town of Penfield to provide for adequate educational opportunities for employees to maintain high standards and keep abreast of current methods and Laws;

NOW, BE IT THEREFORE RESOLVED, that Ann Buck, Assessor’s Office, is hereby authorized to attend the NYS Assessor’s Seminar on Assessment Administration being held in Lake George, New York the week of September 18-21, 2016, for a cost not to exceed $950.00. Funds for this seminar have been budgeted in the Assessor’s Office 2016 budget.

Moved: Metzler
Seconded: Quinn

Vote: Kohl Aye LaFountain Aye
      Metzler Aye Moore Absent
      Quinn Aye

Adopted

Public Works

#16T-172 Making a Determination of Non-significance and Adopting a Negative Declaration for the Box Athletic Field Project for Rothfuss Park by Metzler

WHEREAS, the Town Board supports the construction of a new 120 feet long by 60 feet wide box athletic field at Rothfuss Park; and

WHEREAS, a grant was obtained from Senator Rich Funke, for the construction of said field; and

WHEREAS, the Town Board, hereby declares itself lead agent for this project, as it is the only involved agency for this action; and

WHEREAS, the Town Board, acting as lead agency pursuant to the State Environmental Quality Review Act has classified this proposal as an Unlisted action.

NOW, THEREFORE, BE IT RESOLVED, that the Town Board hereby makes a determination of non-significance and adopts a Negative Declaration for this proposal, a copy of which is attached hereto and made a part hereof.

Moved: Metzler
Seconded: Kohl

Vote: Kohl Aye LaFountain Aye
      Metzler Aye Moore Absent
      Quinn Aye

Adopted

See Attachment at end of Minutes

#16T-173 Making a Determination of Non-significance and Adopting a Negative Declaration for a New Cold Storage Building at the Public Works Facility by Metzler

WHEREAS, the Town Board supports the construction of a new 100 feet long by 60 feet wide by 20 foot high storage building at Public Works Facility, located at 1617 Jackson Road; and

WHEREAS, a grant was obtained from Senator Rich Funke, for the construction of the cold storage building; and
WHEREAS, the Town Board, hereby declares itself lead agent for this project, as it is the only involved agency for this action; and

WHEREAS, the Town Board, acting as lead agency pursuant to the State Environmental Quality Review Act has classified this proposal as an Unlisted action.

NOW, THEREFORE, BE IT RESOLVED, that the Town Board hereby makes a determination of non-significance and adopts a Negative Declaration for this proposal, a copy of which is attached hereto and made a part hereof.

Moved: Metzler
Seconded: Quinn

Vote: Kohl Aye LaFountain Aye
      Metzler Aye Moore Absent
      Quinn Aye

Adopted

See Attachment at end of Minutes

Public Safety - None

Community Services

#16T-174 Authorization for Supervisor to Sign Recreation Contracts by Kohl

BE IT RESOLVED, that the Town Board authorizes the Town Supervisor to sign the following Recreation Contracts:

Bushido Kai Judo Club, c/o Heiko Rommelman, 240 Curtice Park, Webster, New York 14580, to supervise and provide instruction for the Bushido Kai Judo programs for youth and adults 6/27/16 - 8/10/16 for the fee of 70% of program revenues. Voucher to be submitted on 8/17/16.

Moved: Kohl
Seconded: Quinn

Vote: Kohl Aye LaFountain Aye
      Metzler Aye Moore Absent
      Quinn Aye

Adopted

Old Business- None

New Business- None

Public Participation- None

Adjournment

Supervisor LaFountain moved to adjourn the meeting at 8:49 PM.
Penfield Comprehensive Plan Input  
Sept. 17, 2010

Here are three things that I recommend be included in the Comprehensive Plan:

- **Residential Developments must have interconnecting streets and walkways:** There are few streets in the Town, which really go anywhere. These streets must handle an increasing traffic load. If subdivision streets interconnect, vehicles don’t have to exit a tract and go some distance to enter a neighboring tract. The same is true for children and adults, either on foot or bicycle. This provides greater access to neighbors and friends. If Penfield wants to have a sense of community, we have to have interconnection of residential areas. Developers must be required to provide such access, to adjoining residential areas. If when a development is designed and approved, there is no existing adjacent residential area since it is vacant undeveloped land, then they must design the layout to provide for future connecting streets and pedestrian access. An example is this respect, is the Penfield Gardens to Village Green East interconnecting street (Hillrise Drive to Lazy Trail). Cul-de-sacs must have interconnecting walkways to adjoining areas/tracts. While the developers will not like these requirements, they are necessary for the Town and its citizens to survive and build community spirit.

- **Development east of Rt. 250:** While open space it good and we need to encourage continued farming in Penfield, we need to avoid cramming people together in the more established parts of Penfield, while leaving vast areas undeveloped. All citizens need some open space, and allowing or encouraging development in the few remaining pockets east of Rt. 250 is wrong. Hence, planned development east of Rt. 250 is needed.

- **Rt. 250:** This along with 5 Mile Line road are the only north/south roads in this portion of Monroe County that go anywhere. Hence, we must not allow development that introduces more points of ingress/egress to the road. Any future development must use existing access points. If this road becomes “just another street”, traffic will crawl. We need roadways that move vehicles with reasonable speed, and Rt. 250 is the last north-south road in eastern Monroe County that does that.

If we can have a town design that reduces motor vehicle use and vehicle stops and starts, we will reduce green-house gasses and save ourselves money.

James Eltmeyer  
2020 Baird Road  
Penfield, New York 14526
August 3rd 2016, Penfield Town Board follow up

Oak and Apple

This document is intended to set out the questions and points of my August 3 2016 statements.

In the July 29, 2016 letter from the Town Board to the Planning Board, under the section “Proposed use consistent with the easement,” it is suggested the words “we believe,” or “it is the opinion” be inserted. Oak and Apple is likely to interpret this as a determination rather than an opinion, as they did in their June 7, 2016 letter, “1. Town Counsel has already made the determination..."

Months ago I suggested that the town hire a representative for the Willmes easement. I am now formally requesting that the town of Penfield hire a representative for the Willmes easement. Will the town hire a representative? [ ]

Can we have a decision on this in a short period of time? [ ]

While some topics were touched upon during the July 27 work session, there are questions that remain unanswered and details that must be revealed.

Where did the Willmes conservation easement wording come from? To clarify, was a template available, that was used? [ ]

Was someone else the original author? [ ]

Did the Willmes have an attorney that negotiated the wording? [ ]

Who are the authors of the Willmes conservation easement? [ ]


Were similar goals intended for each easement? [ ]

Below, references are made to the July 27th work session video including times and transcription. The session video used is https://vimeo.com/176762507.

To paraphrase, it was stated during the July 27th work session [+5:01] that the right to create a farmstead is not contained in Ag and Markets but is specified in the conservation easement.

Can you clarify that, the so-called right to farm cannot create a farmstead? [ ]

Is
August 3rd 2016, Penfield Town Board follow up

the right to create a farmstead, in the conservation easement? [ ] If yes where? [ ] Is it located anywhere else? [ ]

Do Ag and Markets laws include a right to create a farmstead? [ ]

Where? [ ] Is the only source for a right to create a farmstead contained in the conservation easement? [ ] Where else is the right to create a farmstead located? [ ] So-called right to farm relates mostly to nuisance complaints such as smells and noises and pertains to municipal Ag ordinances. The town could not create an ordinance that prevents the growing of cabbage because it smells, or the raising of roosters or cows because of noise. Is that correct? [ ] Is this the intent of the so-called right to Farm law? [ ]

Comparison with other conservation easements

Is there a right to create a Farmstead on the Beardsley, Rothfuss and Wilbert conservation easements? [ ]

Why are there no farmsteads on these easements? [ ]

If there is no Farmsteads, can Ag and Markets law override this? [ ]

Where is support? [ ]

Is there a right to create a Farmstead on the Bauman easement? [ ] How many farmsteads can be created? [ ] Where is this stated? [ ]

What happens if the easement property is subdivided into 20 parcels? [ ]

Are there any limitations on the Bauman farmstead? [ ]

If yes, what are they and where are they identified? [ ]

Is there a right to create a farmstead on the Willmes easement? [ ]

Where is this right located? [ ] How many farmsteads can be created? [ ] Where is this stated? [ ]

What happens if the easement property is subdivided into 20 parcels? [ ]

Are there any limitations on the farmstead? [ ]

If yes, what are they and where are they identified? [ ]

Did the town board look at these other easements back in September 2015? [ ]

For the Willmes easement, are there any amendments? [ ] For the Willmes easement, was the right against subdivision violated? [ ] Are there statements on file recording "sufficient assurances that the proposed subdivision will not impair or diminish the agricultural productivity and open space character of the property? [ ]

Now that the easement property is subdivided into 4 parcels, which parcel contains the right to create a farmstead? [ ] It would seem that prior to subdivision, it is important to
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define where that one farmstead is located. If the Oak and Apple parcel was subdivided into 5, could there be 5 Wineries on the hill? Could there be another 20 on the other sections of the easement? Does 25 wineries on 128 acres of scenic open spaces, fit the easement purpose?

Previously the town board came to the conclusion that a farmstead is necessary for farming. Do the Beardsley, Rothfuss, Wilbert, or Baumant easements have farmsteads?

No. How are they able to farm? They actually have farmsteads that are not part of the easements. Having a farmstead may be important to conducting farm activities. If someone purchases the Beardsley, Rothfuss, or Wilbert, easements are there any farmsteads included? No. It seems important that the prospective buyer also purchase a farmstead in needed. If you buy a car, you have to buy the gas separately.

For the Willmes easement apparently there is a special "Buy-a-farm-area, get-a-free-farmstead at no charge. Except, every farmstead = an investment of ~$52,000 [year 2002 $ value] of taxpayer money, that you want to give away. Is that fiscally responsible?

The September resolution does not have relevance because it is non-binding, and has zero legal standing. Its only importance is that you are still relying on it for current decisions. It needs to be cancelled. How many neighbors were notified that this Property was under review?

Was the town given the right to first refusal prior to the Oak and Apple purchase?

Where are the supporting documents for that?

Answers need to be supported. I am providing some potential answers for questions so that they can be pasted in an electronic document. These are not all the possible answers.

Easement, Farmstead section
Ag & Markets law 301-2
Unknown
Opinion

Review of the July 27 work session [with video times].
This is an opportunity to make corrections, clarifications or deletions to statements made during the July 27th meeting.
[2:15] Point 1 • All the property contained within the 2002 Willmes conservation easement is defined as "Farm Area." There is no "Farmstead." (See the section, Willmes Parcels Group 5 Legal Description.) Mr. Horwitz, "That is a correct statement."

[2:34] Point 2 • The conservation easement delineates distinctively different activities allowed within a "Farm Area" and a "Farmstead." (See section III Farm operations, B. Farmstead and C. Farm Area.) Mr. Horwitz, "That is a correct statement."

[2:47] Point 3 • Oak and Apple has acknowledged that their proposed development can only be constructed on a "Farmstead." (See the June 5, 2016 letter to the town board.) Mr. Horwitz, "This is a correct statement also."

The word "shall" is a pretty powerful word when it comes to the law and contracts. What does shall mean? What does solely and exclusively mean?

[3:04] Point 4 • The only right to create a "Farmstead" is "for a winery." (See section III Farm operations, B. Farmstead.)

[3:16] Mr. Horwitz, "The response to that is, this is not a correct statement." "All types of farm uses are allowed to have agricultural support buildings in a farmstead area." (Where does this statement come from?) Is this a blending of "Farm area" and "Farmstead?" into "farmstead area" a mistake or intentional? If this comes from a law, does the easement override the law? This appears to be a false or unsupported statement.

- [3:30] "A. The easement provides that the property shall be used solely and exclusively for the purposes defined and described in section 301 Z of the New York agricultural and markets law." (This looks to be from "III Farm Operations A. General Provisions 2.," but you need to read General Provisions 1. Consistent Uses - The Property may be used for all purposes not inconsistent with this easement. How does this counter. "The only right to create a "Farmstead" is "for a winery."

- [3:48] "B. The agricultural and markets law section 2 allows a "cider mill" to be considered and protected as a farm operation." (Is a cider mill listed in section 301 Z? No. 301 2 does not contain "cider mill." This is a false statement.

- [3:58] "C. The New York Agriculture and markets department guidelines state that a cider mill operation is a protected farm operation." (Why is there a reference to the Ag &
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Markets guidelines? Doesn't the easement exclude the guidelines "the property shall be used solely and exclusively for the purposes defined and described in section 301 2 of the New York agricultural and markets law?"

What does solely and exclusively mean in this context?

If the guidelines mention "cider mill," would it be a "farm area" activity or a "farmstead" activity? See Point 2 above, and see the easement, I Introduction, 2. Description of Easement Construction, FARMSTEAD and FARM AREA. If Guidelines were permitted, they still would not support this position. This response does not support Mr. Horwitz' position.)

• [4:11] "D. Easement Article 3 b entitled Farmstead provides in section 1 page 10 that the owner has the right to construct new buildings including but not limited to barns and farm market buildings including a winery and suitable tenant housing." (This wording describes activities in an existing Farmstead. There is no Farmstead within the easement, see Point 1 above,) "The Easement Language does not limit the Farmstead and farm operation buildings to only a winery." (This construction of new buildings is true for an existing farmstead, if it existed, but it does not, see Point 1 above. !!!! This is a dangerous issue to consider - once a Farmstead is established, there are no longer any restrictions on the buildings that can be constructed!!! Is this correct?

As there is no farmstead, as confirmed above, this does not support Mr. Horwitz’ position.)

[4:47] "Any farm operation that would be done on the Willmes easement is entitled to request a farmstead area to build support buildings for the farm operation” Where does this statement come from? Is it Mr. Horwitz opinion? It appears to be untrue and unsupported.

Point 4 above has not been successfully countered by Mr. Horwitz. No other method of creating a Farmstead has been shown. Point 4 stands.

[5:01] Point 5 • The right to farm does not include a right to create a “Farmstead.” (My text said “They are allowed "Farm Area" activities only,”) Mr. Horwitz said “They are allowed "Farm activities" only, embraced in the term right to farm.” Is this another blurring of "Farm Area" and "Farmstead? This causes confusion. Does the right to farm allow them to do "Farm area" activities? [5:18] "The response to that statement is, The owners right to create a farmstead area, the right to request one is set forth expressly in the conservation easement." (Where is this expressly set forth? Is this set forth in the sentence, "The Grantor reserves the right to designate a Farmstead area for a winery within the conservation easement conveyed by Grantor to Grantee,"? Is the right to designate a farmstead found anywhere else in the easement? ) "The
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Agricultural and markets law section 308 regarding the right to farm does not embrace the subject of farmsteads, that’s a subject that is expressly covered in the conservation easement. *(Does this mean that Ag and Markets law section does not grant the right to create or designate a farmstead?)* Do any other Ag and Markets laws (that are cited and allowed by the easement) grant a right to designate a farmstead? *(Within the sentence “The Grantor reserves the right to designate a Farmstead area for a winery within the conservation easement conveyed by Grantor to Grantee,” what does “for a winery” mean?)* How many Farmsteads is “a Farmstead?” *(Do those words require that a winery is a requirement for the right to designate a farmstead?)* Why or why not? *(Do those words limit the number of farmsteads to 1?)*

Can you ignore the words “a Farmstead area for a winery?”

Relating to the right to designate a Farmstead, these are the most important, and only relevant words within the entire easement “The Grantor reserves the right to designate a Farmstead area for a winery within the conservation easement conveyed by Grantor to Grantee.”

[5:47] Point 6 • All remaining development rights are transferred to grantee (the town) and are terminated. This includes cidery, brewery, rendering facility, housing, hotel or restaurant. *(See section IV Rights of Grantee S. Development rights.)* *(6:08) “The response to that is, as has been previously stated, the easement provides that the property may be used for farm operations and agricultural support buildings and improvements,” *(Are those buildings specified based on the type of area “Farm area” vs. “Farmstead”?)* They can’t build Farmstead type buildings in a Farm area, is that correct? *(They can’t build Farmstead type buildings in a Farm area, is that correct?)* Since the entire property has been identified as “Farm area” see Point 1 above, only “Farm Area” operations and agricultural support buildings and improvements are allowed. Is this correct? *(Since the entire property has been identified as “Farm area” see Point 1 above, only “Farm Area” operations and agricultural support buildings and improvements are allowed. Is this correct?)*

Where is the supporting information that a cidery is not a terminated right? *(Where is the supporting information that a cidery is not a terminated right?)* “all the remaining development rights for uses that are not permitted by the easement are terminated and extinguished.” *(“all the remaining development rights for uses that are not permitted by the easement are terminated and extinguished.”)* *(A cidery use has been determined to be a permitted use.”)* *(A cidery use has been determined to be a permitted use.”)* *(Are you referring to 301 section 2, where “cider mill” is not included?)* *(Are you referring to 301 section 2, where “cider mill” is not included?)*

When was this determination made? *(When was this determination made?)* or is this a reference to the an earlier unsupported statement? *(or is this a reference to the an earlier unsupported statement?)*

Point 6 above has **not** been successfully countered by Mr. Horwitz. No building except a winery can activate the right to designate a Farmstead, so all remaining development rights are transferred to grantee (the town) and are terminated including a cidery. Point 6 stands.
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[7:18] Is the town required by law to protect the grantee rights in the easement? 
Is this legal obligation embraced by the conservation easement? 

[8:16] Is the Willines easement part of a greater open space plan? 

[8:59] "...when this board came to the conclusion that the cider use was a permitted use." (When did the board come to this conclusion? ) What is the supporting information for this conclusion? If this is a reference to 301.2, it is a false conclusion. If this is based on guidelines, it is not a permitted use in a Farm Area because it is not solely and exclusively for the purposes defined and described in section 301.2. Without supporting information, you must abandon this conclusion.) 

[9:04] What is the primary purpose of the easement? 

[9:32] Is the conversion of Farm Area to Farmstead consistent with the active use of the property? 

[10:10] "The prime preservation goal of this easement to have farming and farming operations be successful and operate." What is the supporting source for this statement? 

[10:40] "Agriculture is the prime goal to be protected under this contract (conflict with earlier statements) and viewsheds... are also to be preserved are sort of subordinate if there is a bit of a conflict." Where are viewsheds described as (sort of) subordinate? 

[13:17] This seems to be a mischaracterization of the option for a winery. "...right to create a farmstead for any kind of farm that could be on that property or farm operation..." is almost immediately conflicted by the statements "he was concerned all his life with the grapes and he had this dream potentially of establishing a winery..." "The town negotiated all kinds of protections in the conservation easement to limit the size of the winery, so as not to have a Wegman’s operation, purely commercial operation, it was designed, this easement to, specifically reserve to him and any subsequent owner, the right to have a winery." (Doesn’t this statement support that the right to designate a Farmstead - is for a winery? ) Yes. 

[14:31] "But other types of farm operations were not excluded ... (these are references to buildings allowed on a Farmstead, not the right to create a farmstead. Again, this is a mixing of
August 3rd 2016, Penfield Town Board follow up

buildings allowed on an existing Farmstead versus the right to designate a farmstead (for a winery). As the entire easement is defined as Farm Area, this statement is not supported.)

[15:48] Revised questions - Would the town agree to a easement without a provision to create a Farmstead? Would Willmes have agreed to an easement without an option to create a winery?

[17:28] If yes, what are they?

[17:38] Mr. Weishaar, "There are other restrictions that are specifically listed later..." there are restrictions on that use but there are no listed restrictions on other type of Farmstead buildings or activities. Would a 30,000 sq foot barn violate the easement? Since the primary concern of Mr. Willmes was a winery, does it make sense that there are restrictions on his primary use, and no restrictions on other uses?

[17:48] Mr. Weishaar, "So, when the parties wanted to restrict something, they put it in there and they didn't do that for limiting it to a winery, for example." Is the following a restriction "The Grantor reserves the right to designate a Farmstead area for a winery within the conservation easement conveyed by Grantor to Grantee?"

Does the easement place a restriction on the location of a Farmstead? Can the town deny some locations for a farmstead as long as it allows another?

What are the factors of consideration for the town to decide on acceptability of Farmstead location?

[19:16] Mr. Horwitz "He wanted to emphasize, he wanted the right to do a winery within a Farmstead" Does this reinforce the "right to designate a farmstead for a winery?"

[19:22] "That's how that winery provision got put into the agreement. It's not in any other conservation easement the town has."

[26:16] Mr. Weishaar, "... it took a couple things back, like things that would be inconsistent with this particular parcel, such as the banquet facility..." "... carve outs and take backs..." Mr. Horwitz, "... it may violate the easement..." Do these statements support the strength of the conservation easement over Ag and Markets law?
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[27:45] paraphrase "Just because it is in Ag laws and Guidelines, that does not mean they can do it." "The answer to that was yes it might violate the easement." If there is a discrepancy between the easement and Ag and markets, does the easement take precedent?

If the easement identifies things you can’t do, and Ag and markets says you can do them, does the easement rule? Does the 150’ setback restriction apply to any Farmstead building? Is a cider mill or cidery a “Farm area” activity or a Farmstead activity? Is a cidery the same as a winery?

If yes, where is this stated? Do the restrictions on a winery apply to all other Farmstead buildings? How would a winery restriction apply to any other building such as a cidery? Is 10,000 sq feet, a winery restriction? Is 10,000 sq ft a cidery restriction? Is the number of parking spaces a winery restriction, a cidery restriction or does it apply to any Farmstead building? Is "no banquet party or facilities" apply to a winery, a cidery or any Farmstead building?

Why? Is "Winery to make wine from grapes grown on the property" a definition of a winery? Is "Winery to make wine from grapes grown on the property", restrictions? Is “For a winery” a restriction? Can some restrictions be enforced while others ignored?

Does Oak and Apple acknowledge that these restrictions apply to their proposal?

Does Oak and Apple agree that the source for the right to designate a Farmstead is only contained within the easement? I don’t believe they do. It sounds like they are voluntarily adhering to the winery standards to please you. Do the Oak and Apple documents shed light on their position? You need to take a second look at their case law example. They may claim they still have a right for a Farmstead for any reason. They may claim that the winery restrictions do not apply to a cidery. Do the other restrictions apply?

Based on the letter to the planning board, it appears that back in September the town was aware of the subdivision violation of the easement in but took no corrective action.

It is now time to withdraw, vacate or cancel the resolution from September 2015. It was a mistake contrary to the purpose of the conservation easement. It is being used as a basis for your current actions. The Oak and Apple issue would be easier to understand if you were not relying on the faulty resolution.
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The Town of Penfield, as Grantee has not and is not effectively protecting the rights within the conservation easement.

- The right against subdivision has been violated.
- The right to first refusal has been violated.
- The provision about fences has been violated.
- The town board has been provided false and misleading information.
- The town board has made decisions based on false or unsupported opinions.
- The Town Board has made decisions contrary to the restrictions, rights and responsibilities in the conservation easement.

Please hire a representative to specifically and exclusively protect the rights within the Willmes conservation easement.

Kevin Gallagher
Penfield
Appendix B
Short Environmental Assessment Form

Instructions for Completing

Part 1. Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval of funding, and may be subject to public review, and may be subject to further validation. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency, attach additional pages as necessary to supplement any item.

Part 1 - Project and Sponsor Information

Name of Applicant or Sponsor:
M. Anthony LaPorte

Address:

City/State/Zip Code:

1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? NO YES

2. Does the proposed action require a permit, approval or funding from any other governmental Agency? NO YES

3. a. Total acreage of the site of the proposed action? 0.46 acres

b. Total acreage to be physically disturbed? 0.46 acres

c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? 0.46 acres

4. Check all land use that occur on, adjacent and near the proposed action:

☐ Residential
☐ Commercial
☐ Agricultural
☐ Industrial
☐ Natural

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<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
<th>NA</th>
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<tbody>
<tr>
<td>5. Is the proposed action,</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) Permitted use under the zoning regulations?</td>
<td></td>
<td>✔</td>
<td></td>
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<tr>
<td>b) Consistent with the adopted comprehensive plan?</td>
<td></td>
<td>✔</td>
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<tr>
<td>6. Is the proposed action consistent with the predominant character of</td>
<td></td>
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<tr>
<td>the existing built or natural landscape?</td>
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<tr>
<td>7. Is the site of the proposed action located in, or does it adjoin, a</td>
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<tr>
<td>county listed Critical Environmental Area?</td>
<td></td>
<td>✔</td>
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<tr>
<td>8. a. Will the proposed action result in a substantial increase in</td>
<td></td>
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<tr>
<td>traffic above present levels?</td>
<td></td>
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<tr>
<td>b. Are public transportation services available at or near the site of</td>
<td></td>
<td>✔</td>
<td></td>
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<tr>
<td>the proposed action?</td>
<td></td>
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<tr>
<td>c. Are any pedestrian accommodations or bicycle routes available at or</td>
<td></td>
<td>✔</td>
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<tr>
<td>near the site of the proposed action?</td>
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<tr>
<td>9. Does the proposed action meet or exceed the state energy code</td>
<td></td>
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<tr>
<td>requirements?</td>
<td></td>
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<tr>
<td>If the proposed action will exceed requirements, describe design</td>
<td></td>
<td></td>
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<tr>
<td>features and technologies.</td>
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<tr>
<td>10. Will the proposed action connect to an existing public water</td>
<td></td>
<td></td>
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<tr>
<td>supply?</td>
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<tr>
<td>If No, describe method for providing water.</td>
<td></td>
<td></td>
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<tr>
<td>11. Will the proposed action connect to existing wastewater utilities?</td>
<td></td>
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<tr>
<td>If No, describe method for providing wastewater treatment.</td>
<td></td>
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<tr>
<td>12. a. Does the site contain a structure that is listed on either the</td>
<td></td>
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<tr>
<td>State or National Register of Historic Places?</td>
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<tr>
<td>b. Is the proposed action located in an archeological sensitive area?</td>
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<td>✔</td>
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<tr>
<td>13. a. Does any portion of the site of the proposed action, contain</td>
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<tr>
<td>wetlands, or other watersheds regulated by a federal, state, or local</td>
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<tr>
<td>agency?</td>
<td></td>
<td>✔</td>
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<tr>
<td>b. Would the proposed action physically alter, or encroach into, any</td>
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<tr>
<td>existing wetland or waterbody?</td>
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<tr>
<td>If Yes, identify the wetland or waterbody and extent of alterations in</td>
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<tr>
<td>square feet or acre.</td>
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<tr>
<td>14. Identify the typical habitat types that occur on, or are likely to</td>
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<tr>
<td>be found on the project site. Check all that apply:</td>
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<tr>
<td>☐ Shoreline ☐ Forest ☐ Agricultural grasslands ☐ Early mid-successional</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>☐ Wetland ☐ Upland ☐ Subsurface</td>
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<tr>
<td>15. Does the site of the proposed action contain any species of</td>
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<tr>
<td>animal, or associated habitats, listed by the state or Federal</td>
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<tr>
<td>government as threatened or endangered?</td>
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<tr>
<td>16. Is the project site located in the 100 year flood plains?</td>
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<td>✔</td>
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<tr>
<td>17. Will the proposed action create storm water discharge, either from</td>
<td></td>
<td>✔</td>
<td></td>
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<tr>
<td>point or non-point sources?</td>
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<tr>
<td>a. Will storm water discharges flow to adjacent properties?</td>
<td></td>
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<td></td>
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<tr>
<td>b. Will storm water discharges be directed to unsubsidized conveyance</td>
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<tr>
<td>systems (piped and storm drain)?</td>
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<tr>
<td>If Yes, briefly describe.</td>
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</tbody>
</table>
10. Does the proposed action include construction or other activities that result in the impairment of water or other liquids (e.g. retention pond, waste lagoons, dams)?
   If Yes, explain purpose and use:
   - [ ] Yes
   - [ ] No

16. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility?
   If Yes, describe:
   - [ ] Yes
   - [ ] No

20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste?
   If Yes, describe:
   - [ ] Yes
   - [ ] No

**LAWFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE**

Applicant/owner name: ________________________________ Date: __________________
Signature: _______________________________________

---

**Part 2: Impact Assessment.** The Lead Agency is responsible for the completion of Part 2. Answer all of the following questions in Part 1 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept, "Have any responses been reasonable considering the scale and context of the proposed action?"

<table>
<thead>
<tr>
<th>Question</th>
<th>No or Small Impact May Occur</th>
<th>Moderate to Large Impact May Occur</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Will the proposed action cause a manifest conflict with an adopted land use plan or zoning regulations?</td>
<td>[ ] Yes</td>
<td>[ ] No</td>
</tr>
<tr>
<td>2. Will the proposed action result in a change in the use or intensity of use of land?</td>
<td>[ ] Yes</td>
<td>[ ] No</td>
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<td>3. Will the proposed action impact the character or quality of the existing community?</td>
<td>[ ] Yes</td>
<td>[ ] No</td>
</tr>
<tr>
<td>4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?</td>
<td>[ ] Yes</td>
<td>[ ] No</td>
</tr>
<tr>
<td>5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking, or walking?</td>
<td>[ ] Yes</td>
<td>[ ] No</td>
</tr>
<tr>
<td>6. Will the proposed action cause an increase in the use of energy and if so incorporate reasonably available energy conservation or renewable energy opportunities?</td>
<td>[ ] Yes</td>
<td>[ ] No</td>
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<tr>
<td>7. Will the proposed action impact existing:</td>
<td></td>
<td></td>
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<tr>
<td>- a. public/private water supplies?</td>
<td>[ ] Yes</td>
<td>[ ] No</td>
</tr>
<tr>
<td>- b. public/private wastewater treatment utilities?</td>
<td>[ ] Yes</td>
<td>[ ] No</td>
</tr>
<tr>
<td>8. Will the proposed action impact the character or quality of important historic, archaeological, architectural, or aesthetic resources?</td>
<td>[ ] Yes</td>
<td>[ ] No</td>
</tr>
<tr>
<td>9. Will the proposed action result in an adverse change in natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?</td>
<td>[ ] Yes</td>
<td>[ ] No</td>
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<tr>
<td>Part 3 Determination of Significance</td>
<td></td>
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<tr>
<td>The Lead Agency is responsible for the completion of Part 3. For every question in Part 3 that was answered “moderate to large impact may occur,” or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should be sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurrence, duration, recurrency, geographic scope, and magnitude. Also consider the potential for short-term, long-term, and cumulative impacts.</td>
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</table>

<table>
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<tr>
<th>No. or Small Impact May Occur</th>
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</thead>
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<td>☑</td>
<td>☐</td>
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<td>☑</td>
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</tbody>
</table>

☐ Click this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.

☑ Click this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.

Name of Lead Agency: [Name]

Date: [Date]

Title of Responsible Officer: [Title]

Town Supervisor: [Name]

Print or Type Name of Responsible Officer in Lead Agency: [Name]

Signature of Responsible Officer in Lead Agency: [Signature]

Signature of Preparer (if different from Responsible Officer): [Signature]
Instructions for Completing

**Part 1 - Project Information**. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

<table>
<thead>
<tr>
<th>Name of Action or Project:</th>
<th>Town of Penfield</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cold Storage Building Construction</td>
<td></td>
</tr>
</tbody>
</table>

**Project Location** (describe, and attach a location map):
Mount Vernon Road, 1650 Jackson Road

**Brief Description of Proposed Action**:
The project will involve the construction of a 60 foot wide, 100 foot long and 20 foot high metal frame building.

**Name of Applicant or Sponsor:**

**Telephone:** 585-340-6531

**E-Mail:** kenever@oaknet.org

**Address:**
1200 Atlantic Avenue

<table>
<thead>
<tr>
<th>City/PO</th>
<th>State</th>
<th>Zip Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Penfield</td>
<td>New York</td>
<td>14425</td>
</tr>
</tbody>
</table>

1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? **YES**

   If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality, and proceed to Part 2. If no, continue to question 2.

2. Does the proposed action require a permit, approval or funding from a state or federal governmental Agency? **YES**

   If Yes, the agency(s) name and permit or approval:

   n/a: if no funding for the project

3. a. Total acreage of the site of the proposed action? **30.2 acres**

   b. Will the property be physically disturbed? **Yes**

   c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? **30.2 acres**

4. Check all land uses that occur on, adjacent to, or near the proposed action:
   - [ ] Forest
   - [ ] Agriculture
   - [ ] Aquatic
   - [ ] Other (specify): Highway Garage

Page 1 of 4
<p>| | | |</p>
<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>5. Is the proposed action under the site plan regulations?</td>
<td>NO</td>
<td>YES</td>
</tr>
<tr>
<td>6. Is the proposed action consistent with the adopted comprehensive plan?</td>
<td>NO</td>
<td>YES</td>
</tr>
<tr>
<td>7. Is the site of the proposed action contained, or does it overlap, a state listed Critical Environmental Area?</td>
<td>NO</td>
<td>YES</td>
</tr>
<tr>
<td>8. Will the proposed action result in a substantial increase in traffic above present levels?</td>
<td>NO</td>
<td>YES</td>
</tr>
<tr>
<td>9. Does the proposed action meet or exceed the state energy code requirements?</td>
<td>NO</td>
<td>YES</td>
</tr>
<tr>
<td>10. Will the proposed action connect to an existing public/private water supply?</td>
<td>NO</td>
<td>YES</td>
</tr>
<tr>
<td>11. Will the proposed action connect to existing wastewater utilities?</td>
<td>NO</td>
<td>YES</td>
</tr>
<tr>
<td>12. a. Does the site contain a structure that is listed on the State or National Register of Historic Places?</td>
<td>NO</td>
<td>YES</td>
</tr>
<tr>
<td>13. a. Is the proposed action located in an archaeological sensitive area?</td>
<td>NO</td>
<td>YES</td>
</tr>
<tr>
<td>14. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?</td>
<td>NO</td>
<td>YES</td>
</tr>
<tr>
<td>15. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody?</td>
<td>NO</td>
<td>YES</td>
</tr>
<tr>
<td>16. Is the project site located in the 100-year floodplain?</td>
<td>NO</td>
<td>YES</td>
</tr>
<tr>
<td>17. Will the proposed action create storm water discharges, either from point or non-point sources?</td>
<td>NO</td>
<td>YES</td>
</tr>
<tr>
<td>18. Will storm water discharges be directed to established conveyance systems installed on and around the site?</td>
<td>NO</td>
<td>YES</td>
</tr>
</tbody>
</table>

Page 2 of 4
18. Does the proposed action include construction or other activities that result in the impoundment of water or other fluids (e.g. retention pond, waste lagoon, tank)?
   NO  YES
   [ ]

19. Has the site of the proposed action or an adjacent property been the location of an active or closed waste management facility?
   NO  YES
   [ ]

20. Has the site of the proposed action or an adjacent property been the subject of remediation (ongoing or completed) for hazardous waste?
   NO  YES
   [ ]

The Town of Penfield has previously consulted with portions of this site, however the nature of the proposed activity is unknown.

I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE.

Applicant/proprieur name: R. Primary Administrator
Signature:

Date:

Part 2: Impact Assessment. The Land Agency is responsible for the completion of Part 2. Answer all of the subparts questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions, the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

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<tr>
<td>3. Will the proposed action impair the character or quality of the existing community?</td>
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<td>4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?</td>
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<td>5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for motorized, biking or walking?</td>
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<tr>
<td>6. Will the proposed action cause an increase in the use of energy and if this is reasonable, assess the impact on energy conservation or renewable energy opportunities?</td>
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<td>[ ]</td>
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<tr>
<td>7. Will the proposed action impact existing: a. public/ private water supplies? b. public/ private wastewater treatment utilities?</td>
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<td>[ ]</td>
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<td>8. Will the proposed action impact the character or quality of important historic, archaeological, architectural, scenic or aesthetic resources?</td>
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<td>9. Will the proposed action result in an adverse change in natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?</td>
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<td></td>
<td>No, or small impact may occur</td>
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<tr>
<td>10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?</td>
<td>✓</td>
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<tr>
<td>11. Will the proposed action create a hazard to environmental resources or human health?</td>
<td>✓</td>
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</tbody>
</table>

Part 3 - Determination of significance. The Lead Agency is responsible for the completion of Part 3. For every question in Part 1 that was answered "moderate to large impact may occur", or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, elaborate the impact, including any measures or design elements that have been included to reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its nature, probability of occurring, duration, irreversibility, geographic scope, and magnitude. Also consider the potential for short-term, long-term, and cumulative impacts.

Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.

Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.

Town of Penfield

<table>
<thead>
<tr>
<th>Name of Lead Agency</th>
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</table>

Name of Responsible Officer in Lead Agency

<table>
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<tr>
<th>Title of Responsible Officer</th>
<th>Signature of Responsible Officer in Lead Agency</th>
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</table>

Signature of Preparer (if different from Responsible Officer)

PRINT