PENFIELD TOWN BOARD MEETING AGENDA

Wednesday, May 16, 2012 7:30PM

Supervisor R. Anthony La Fountain, presiding

I Call to Order - Pledge of Allegiance - Roll Call

II Public Hearing –To Allow a Birding/Nature Store and Engineering Office at 1807 Penfield Road, located in the Four Corners (FC) Zoning District

III Communications and Announcements

IV Public Participation

V Additions and Deletions to Agenda

VI Approval of Minutes – April 18, 2012

VII Petitions

VIII Resolutions by Function

Law and Finance
#12T-127 2012 Budget Amendment – Town Court Renovation
#12T-128 Authorization to Maintain Properties and Assess the Charges to the 2013 Property Tax Bills
#12T-129 Setting a Public Hearing for a Special Permit to Allow a Restaurant with Outdoor Dining at 1778 Penfield Road
#12T-130 Adoption of Amendments to the Penfield Zoning Ordinance

Public Works
#12T-131 Authorization for Barton & Loguidice, PC to Provide Supplemental Sewer Capacity Evaluation; and Authorization for an Engineering Fee Escrow Agreement with Morgan Acquisitions, LLC

Public Safety - None

Community Services
#12T-132 Authorization for Supervisor to Sign Recreation Contracts

IX Old Business

X New Business

XI Public Participation

XII Adjournment
The Regular meeting of the Penfield Town Board was held on Wednesday, May 16, 2012 at 7:30 PM at the Penfield Town Hall, 3100 Atlantic Avenue, Penfield, New York.

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

Also Present: Amy Steklof Town Clerk
Richard Horwitz Town Attorney
Geoff Benway Town Engineer
Jim Costello Director of Developmental Services
Mark DiFrancesco Superintendent of Sewers
Kathy Kanauer Town Historian

Supervisor LaFountain called the meeting to order - Pledge of Allegiance

Public Hearing #1 To Allow a Birding/Nature Store and Engineering Office at 1807 Penfield Road, Located in the Four Corners (FC) Zoning District (see Resolution #12T-109)

The Town Clerk read the title of the Notice of Public Hearing, said Notice was published in the Penfield Post on April 26, 2012 and was posted on the Town Clerk Bulletin Board and Town Website.

Sarah Conley, 1710 Sweets Corners Road informed the Town Board that she is interested in leasing the property at 1807 Penfield Road for the purpose of opening a wild bird store and nature center, as well as for the purpose to provide nature programs and instruction for approximately 12-14 people. Ms. Conley stated she plans on maintaining live animal aquarium exhibits on site as well.

Ms. Conley also stated that part of the space would be used for an LTHS solar office which is a solar design, installation and electric vehicle charging station business owned by her father. Ms. Conley stated that she would be the only employee, but will be receiving help from her family.

In reference to signage, the name of the business will be The Barn Owl and below the name would be Birding Store and Nature Center. Ms. Conley is getting a simple logo designed.

Ms. Conley stated that there is a permanent sign along Penfield Road with the names of all the businesses at 1807 Penfield Road and that she will get 1/3 of the sign space which measures 16” x 47”. She plans to put a sign of that size facing the Four Corners and another sign facing NYS Route 490. Also, she stated that the front of the building facing Penfield Road has an awning that she plans to put the name of the business on. Ms. Conley also plans to place a small sign at the rear left corner of the building that identifies the business.

The LTHS solar business will not have any external signage.

In reference to parking there are 48 parking spots. The lot directly in front of the building is owned by the landlord, Ronald Baroody. There is an additional parking spot behind the building. Also, going up Mott’s Lane towards Five Mile Line Road is a parking lot owned by the Town of Penfield with 14 parking spaces.

Ms. Conley stated that the hours of operation will be Tuesday - Saturday 10:00 AM to 6:00 PM and Sunday 11:00 AM to 4:00 PM. Ms. Conley would like to open her business on Saturday, October 6, with a grand opening on Saturday, October 27.
Some changes have been made to the interior of the building as per the Penfield Fire Marshal, so as to be able to hold programs in the building. The changes include a crash bar for the back door and a lighted exit sign at each entrance.

Jim Costello, Director of Developmental Services stated that there is a dumpster on site that is not fully enclosed which needs to be addressed.

Hearing closed.

Councilman Quinn read a Proclamation recognizing National Emergency Medical Services (EMS) Week which is from May 20 to May 26. Two representatives from the Penfield Volunteer Ambulance were on hand to receive the Proclamation.

Tom Tracy, on behalf of the members of the Volunteer Ambulance, thanked the Town Board for the recognition and thanked all members of the Penfield Ambulance for their dedication.

Communications and Announcements

1. A free Rabies Clinic will be held on Saturday, June 2, 2012 from 10:00 AM to 12:00 PM.

2. Reminder to motorists, bicyclists and pedestrians, share the road and obey all traffic laws.

3. Penfield Symphony Orchestra POPS Concert will be held Saturday, June 2 at 4:00 PM. (Rain date will be June 3)

4. Councilwoman Metzler read a Proclamation recognizing National Public Works Week which will be from May 20 to May 26, 2012. Mark DiFrancesco, Superintendent of Sewers and Geoff Benway, Town Engineer were recognized for all their hard work and dedication to the Town.

5. The Young, Open and Honest Players (YOHP) will present the comedy “Harvey” by Mary Chase on Friday and Saturday, June 1 and 2, 2012 at 7:30 PM at the Penfield Community Center. Tickets can be purchased at www.penfield.org or by phone at 340-8655.

6. The Wegman’s Penfield Music Fest will be held on Friday, June 1, from 6:00 PM to 8:00 PM and Saturday, June 2, 2012 from 11:00 AM to 3:00 PM.

7. Councilwoman Metzler recognized Tom Gomes and crew for creatively and successfully repairing a resident’s sanitary lateral utilizing a Pipe Patch System costing the Town $200. A plumber’s price to do the same work would have been approximately $4,700 to $5,300.

8. This year’s Memorial Day Ceremony of Remembrance will be held on Monday, May 28, 2012 at 10:30 AM at the Penfield Amphitheater in Veteran’s Memorial Park. Anyone interested in presenting a rose in memory of a deceased service member should call Sabrina Renner, Special Events Assistant at 340-8655.

9. The VFW Post 820 Flag Pole Dedication at Rothfuss Park will be held Wednesday, May 23, 2012 at Noon.

10. The 9th Annual Ride of Silence was held this evening in memory of those injured or killed while riding bikes. Supervisor LaFountain thanked the Rochester Bicyclist Club for their support and Andy Stewart who helped coordinate the event.
11. Supervisor LaFountain and Recreation Director Chris Bilow threw the first pitch out for the last home game of the Varsity Club for Penfield High School. The team will need to win tonight and Friday night in order to be the lead champions.

12. The Penfield Players present “Egad!” The Woman in White, Friday and Saturday evenings, May 4 – 19, 2012 at 8:00 PM at the Penfield Community Center.

13. The Penfield Rotary Band, Nels Carmen Big Band Night at the Penfield Community Center will be held on Tuesday, June 5, 2012 from 7:30 PM to 9:30 PM.

14. The Shepherd Home Plant Sale will be held Friday, May 18 from 4:00 PM to 6:00 PM, Saturday, May 19 from 9:00 AM to 1:00 PM and Sunday, May 20, 2012 from 11:00 AM to 1:00 PM. All proceeds will benefit the Shepherd Home located at 1959 Five Mile Line Road.

15. The Penfield Rotary’s first $100,000 Hole-In-One Tournament will be held at Harris Whalen Park. Qualifying dates are Friday, May 18 from 5:30 PM to 8:00 PM, Saturday, May 19 from 10:00 AM to 8:00 PM, Sunday, May 20 from 1:00 PM to 6:00 PM, Friday, May 25 from 5:30 PM to 8:00 PM, Saturday, May 26 from 10:00 AM to 8:00 PM and Sunday, May 27 from 1:00 PM to 6:00 PM. Finals will be held at Shadow Lake Golf Club, Monday, June 4, 2012 at 5:30 PM. For more information visit www.penfieldrotary.org.

16. Councilwoman Kohl’s next Community Chat will be held on Tuesday, June 19, 2012 from 5:30 PM to 7:00 PM at the Penfield Library. An e-mail was received from a resident on St. James Drive inquiring about the Town's bi-annual Drop off and whether the Fall Drop Off will be discontinued?

Supervisor LaFountain stated that the Fall Drop off remains tentatively scheduled, but the Town Board has had on-going discussions regarding the continuation of the Fall Drop off in light of low turn out and an increase in unfunded mandates.

Public Participation

Tim Murphy, 28 Corral Drive addressed the Board and stated his disappointment in the disposition of the Parks and Recreation Advisory Board (PARB). Mr. Murphy had submitted a letter to the Penfield Post and then submitted the letter to the Town Board after it was printed.

Supervisor LaFountain responded with a letter highlighting a timeline of events involving the Parks and Recreation Advisory Board (PARB) and addressing that Boards concerns.

Discussion ensued in which many of the PRAB concerns were discussed and addressed.

Supervisor LaFountain offered to have a follow up and broader conversation with Mr. Murphy and the other Advisory Board Members.

Linda Sorrendino, Parks and Recreation Advisory Board Senior Representative expressed her disappointment that the PRAB was dissolved. She would like to know how to proceed in continuing to represent the Senior Citizens.

Supervisor LaFountain stated that Recreation Director, Chris Bilow, Pam Mount, and Steve Orsini who support the Senior programs are available to listen to the concerns of Ms. Sorrendino and the senior citizens that she represents.
Joanne Frelier commented on the newly amended Articles 5 & 6 of the Town’s Zoning Ordinance. She is glad to see that the amendments strengthen the articles, however, she is concerned on whether the regulations are being enforced.

Ms. Frelier thanked the Town Board and Town Engineer, Geoff Benway for their efforts.

Tim Rendsland, 1604 Creek Street stated he lives across from the Caroline Court project and that a large machine that sorts out rock from the soil is directly situated across from his house. He stated that he was not aware that the contractor would be allowed to run the machine and sell top soil to landscapers.

Supervisor LaFountain stated that this is a common practice, but he agrees that it should be brought up to the Planning Committee for further review.

Mr. Rendsland also stated that the machine is utilized on Saturdays beginning at 8:00 AM and is very loud. He has spoken with Mr. Benway who has requested the developer to not run the machine on Saturdays, but the offense still continues. Mr. Rendsland also stated that the developer has not been controlling the dirt and the dust which has been blowing uncontrollably.

Supervisor LaFountain stated that he will have a discussion with Mr. Benway tomorrow to see what they can do.

Mr. Rendsland stated that he appreciates all of the help Mr. Benway has provided him thus far.

Additions and Deletions to Agenda

Councilman Moore added Resolution #12T-133 as New Business.

Approval of Minutes

Councilwoman Kohl moved to approve the Minutes of April 18, 2012. Councilwoman Metzler seconded and all voted “aye.”

Petitions

Supervisor LaFountain received a Petition from Mr. Pete Lilley, 9 Abbotswood Crescent on behalf of the Preston Park Homeowners Association requesting a street light at the intersection of Abbotswood Crescent and Baird Road.

Resolutions by Function

Law and Finance

#12T-127 2012 Budget Amendment – Town Court Renovation by Moore

WHEREAS, during 2012, the Town of Penfield received a $19,097 State Grant from the Office of Court Administration in Albany, New York, and

WHEREAS, during 2012, the Town Board was authorized to use these funds to renovate the Town Court facilities, and

WHEREAS, the Town Board desires to have an up-to-date budget in relation to current income and expenditures,

NOW BE IT RESOLVED, that the following 2012 Budget Amendment be approved for the General Funds as follows:
Resolution #12T-127 - Continued

**General Fund Revenue:**

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<th>Descriptions</th>
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**General Fund Appropriations:**

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<tr>
<td><strong>Total</strong></td>
<td><strong>$19,100</strong></td>
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BE IT FURTHER RESOLVED, that the following 2012 Budget Transfer be approved as follows:

**General Fund Appropriations:**

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<th>From</th>
<th>Amount</th>
<th>To</th>
<th>Amount</th>
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Moved: Moore
Seconded: Kohl

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

Adopted

#12T-128

**Authorization to Maintain Properties and Assess the Charges to the 2013 Property Tax Bills** by Moore

WHEREAS, on October 2, 1996, the Town Board of the Town of Penfield adopted Article IV-4-28 of the Penfield Zoning Ordinance entitled “Property Maintenance”; and

WHEREAS, the purpose of Article IV-4-28 of the Penfield Zoning Ordinance is to prevent the gradual encroachment of blight, deterioration, unsightliness and property devaluation and to assure that all premises within the Town of Penfield are maintained in a manner that will assure the health, safety and welfare of the general public; and

WHEREAS, the property owners of 23 Alden Glen Drive, SBL #094.02-1-43.122, 50 Braunston Drive, SBL #140.01-4-34.14, 54 Braunston Drive, SBL #140.01-4-34.012, 48 Chippenham Drive, SBL #125.03-1-2.183, 71 Chippenham Drive, SBL #125.03-1-2.129, 1800 Clark Road, SBL #123.08-2-64, 1399 Creek Street, SBL #093.19-2-18, 31 Grace Marie Drive, SBL #094.03-3-9, 102 Hitchcock Lane, SBL #108.12-2-41, 1892 Penfield Road, SBL #139.06-3-52, 4 Tilsit Way, SBL #094.01-2-68 have failed to maintain the lawn and exterior areas at the subject properties which continues to be a concern for the health, safety and welfare of the surrounding neighbors; and

WHEREAS, the Town staff has continually requested the property owners to maintain at these locations with no result:

NOW, THEREFORE BE IT RESOLVED, that the Town Board of the Town of Penfield hereby authorizes the Building and Zoning Administrator to have the properties appropriately maintained; and

BE IT FURTHER RESOLVED, that the Town Board further authorizes that the cost of said maintenance and any necessary subsequent maintenance during the 2012 season also be charged to the 2013 property tax bill for the subject properties.
Penfield Town Board, May 16, 2012

(Resolution #12T-128 – Continued)

Moved: Moore  Seconded: Quinn

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

Adopted

#12T-129 Setting a Public Hearing for a Special Permit to Allow a Restaurant with Outdoor Dining at 1778 Penfield Road by Moore

WHEREAS, an application has been received by the Penfield Town Board for the issuance of a Special Permit pursuant to Article III-3-97 of the Code to allow a restaurant with outdoor dining at 1778 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 does hereby designate itself as “lead agency” pursuant to SEQRA; and be it further

RESOLVED, that the Town Board of the said Town of Penfield shall hold a Public Hearing at the Penfield Town Hall, 3100 Atlantic Avenue, in the Town of Penfield, New York on June 6, 2012, at 7:30 PM on said date, to consider the said application and to hear all persons interested on the question of the issuance of a Special Permit to allow a restaurant with outdoor dining at 1778 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: Moore  Seconded: Metzler

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

Adopted

#12T-130 Adoption of Amendments to the Penfield Zoning Ordinance by Moore

WHEREAS, a Public Hearing was held at 7:30 PM on March 7, 2012 at the Penfield Town Hall, 3100 Atlantic Avenue, Penfield New York to consider amendments to the Zoning Ordinance regarding updating and strengthening current Articles V and VI relating to Environmental Protection and Excavation and Mining; and

WHEREAS, no negative input regarding said amendments was received at said Public Hearing and all persons were afforded an opportunity to be heard; and

NOW, THEREFORE, BE IT RESOLVED that the Zoning Ordinance amendments as set forth on Schedule “A” attached hereto and made part of this Resolution, be and the same are hereby approved and the pertinent sections of the Zoning Ordinance be amended to read as provided on said schedule; and
(Resolution #12T-130 - Continued)

BE IT FURTHER RESOLVED, that the Town Clerk be, and she is hereby is, authorized and directed to give necessary notices of such amendments to the Zoning Ordinance to the departments, agencies and offices having jurisdiction in this matter and to cause said amendments to be entered into the Minutes of these proceedings and be published as prescribed by law; and

BE IT FURTHER RESOLVED, that the Town Board, acting as lead agency pursuant to the State Environmental Quality Review Act, has classified the adoption of these amendments as an Unlisted Action and has determined that these amendments will not have a significant effect on the environment.

Moved: Moore
Seconded: Kohl

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

Adopted

See Schedule “A” at end of Minutes

Public Works

#12T-131 Authorization for Barton & Loguidice, PC to Provide Supplemental Sewer Capacity Evaluation; and Authorization for an Engineering Fee Escrow Agreement with Morgan Acquisitions, LLC by Metzler

WHEREAS, in September 2010 the Town of Penfield authorized Barton & Loguidice, PC to prepare a sewer capacity study for three (3) sanitary sewer basins which could potentially provide sewer service to the mixed use area at the intersection of S.R. 286 & S.R. 250, as recommended in the most recent update of the Town’s Comprehensive Plan, and

WHEREAS, the Capacity Study was completed in the fall of 2011, with hydraulic modeling and three (3) sewer unit distribution scenarios to be used for future sewer planning within these basins, and

WHEREAS, based on a recent inquiry by a local engineering firm representing Morgan Acquisitions, LLC, a corporate entity having interests in a parcel of land within this sewer service area, they have requested that the Town further evaluate one (1) of the three (3) unit distribution alternatives, and

WHEREAS, this level of detail is outside the original scope of study and any and all costs should not be borne by the taxpayers of the Town, and

WHEREAS, Morgan Acquisitions, LLC has agreed to fully fund this additional evaluation and to place said fees in an engineering fee escrow account with the Town of Penfield for any and all costs associated with this additional engineering analysis, and

WHEREAS, Barton & Loguidice PC, has prepared a separate proposal, which they have submitted to the Town to undertake this additional engineering service for the amount of $6,000, and

WHEREAS, the Town of Penfield has prepared an agreement which is in a form and substance acceptable to the Town Attorney that requires Morgan Acquisitions, LLC to cover 100% of the costs of this expanded study and specifically states this additional work does not obligate future approvals for any type of proposed development in this area for this developer or any other individuals or developers, and
Penfield Town Board, May 16, 2012

(Resolution #12T-131 – Continued)

WHEREAS, upon mutual execution of said agreement the Town of Penfield shall authorize Barton & Loguidice, PC to undertake this additional engineering work identified above and as more fully outlined in their proposal and all of their information and details shall be submitted to the Town for their records and files.

NOW THEREFORE BE IT RESOLVED, that the Town Supervisor be and hereby is authorized to execute an agreement with Barton & Loguidice, PC to perform engineering services in a form acceptable to the Town Attorney, and

BE IT FURTHER RESOLVED, that the Town Supervisor be and hereby is authorized to execute an engineering fee escrow agreement with Morgan Acquisitions, LLC in a form acceptable to the Town Attorney.

Moved: Moore
Seconded: Metzler

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

Adopted

Public Safety - None

Community Services

#12T-132 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:

Marilyn Kerstjens, 42 Peaceful Harbor Lane, Webster, NY 14580, Active Yoga, 3/12/12 - 4/25/12 for a fee of 70% of the total program revenue. Voucher to be submitted 5/16/12.

Mark Banford, 1534 State Road, Webster, NY 14580, Instructor for youth and adult tennis instruction, 6/25/12 – 11/3/12, for a fee of 70% of program revenues. Vouchers to be submitted on 7/4/12, 8/1/12, 9/5/12 and 10/3/12.

Steve Grills, 245 Cypress Street, Rochester, NY 14620, to provide entertainment “Steve Grills and the Roadmasters” and special guest Joe Beard Saturday, September 15, 2012 for “Tastin’ the Blues” for a fee of $1,550.00. Voucher to be submitted on 8/15/12.

Shadow Lake Golf Course, 1850 Five Mile Line Road, Penfield, NY 14526, to provide golf starting times for Senior 50’s + program, 5/15/12 – 7/31/12 for a fee of $8.50 per paid participant. Voucher to be submitted on 8/1/12.

Eugene Renner, 783 Liberty Street, Penfield, NY 14526, to provide supervision for 50 Plus golf program 5/15/12 – 7/31/12 for a fee of $23.00 per golf date. Voucher to be submitted on 8/1/12.

Kathleen Covell, 1745 Baird Road, Penfield, NY 14526, Instructor for Youth Culinary Kids Camp 8/6/12 – 8/9/12 for a fee of 75% of class revenues. Voucher to be submitted on 8/1/12.

Mandy Elliot, 73 Chippenham Drive, Penfield, NY 14526, Instructor for Camp Music Train 6/25/12 – 8/9/12 for a fee of 70% of program revenues. Vouchers to be submitted on 6/20/12, 7/18/12 and 8/1/12.

Sarah Gorton, 686 Laurelton Road, Rochester, NY 14609, Instructor for Adult Zumba, 6/18/12 – 12/21/12 for a fee of 70% of program revenues. Vouchers to be submitted on 6/20/12, 10/3/12, 11/7/12.
Penfield Town Board, May 16, 2012

(Resolution #12T-132 - Continued)

Amend Resolution 12T-076
Footnote Productions, should read: James Warlick, 128 Brentwood Lane, Fairport, NY 14450

Moved: Kohl
Seconded: Quinn

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

Adopted

Old Business - None

New Business

#12T-133 Authorization for Supervisor to Sign a Contract with the Law Firm of Harris Beach, PLCC by Moore

The Town Supervisor is hereby authorized to enter into a retainer agreement with Harris Beach, PLCC Law Firm to assist and support the Town with a labor matter, and defense of any legal action related thereto; in a form to be approved by the Town Attorney.

Moved: Moore
Seconded: Kohl

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

Adopted

Public Participation - None

Supervisor LaFountain stated he has received an e-mail that has informed him of the passing of past Chief and current Commissioner Frank “Ski” Mioduszewski after 39 years of service to the Penfield Fire Company. Supervisor LaFountain called a moment of silence on behalf of Frank Mioduszewski.

Adjournment

Supervisor LaFountain adjourned the meeting at 8:55 PM.

Amy Steklof
Town Clerk
Executive Summary of Changes to Article V

Article V has been revised to protect the environment and improve the permit process as follows:
- Expanded the list of items to be submitted for a permit to include location of wetlands, flood plains, steep slopes, watercourses, estimate of earthwork quantities, name and phone no. of contractors, source of fill, an erosion and sedimentation plan, and provide testing data where required.
- Included definition of approved fill materials.
- Permit applies to any cumulative activity occurring over an 18 month period.
- Permit is valid for a period three (3) months.
- Requires all extensions of a permit to require payment of applicable fees.
- Requires all fill permits to be approved by the Town Board.
- Fills in excess of 200 cubic yards may require a Public Hearing, as determined by the Town Board.
- Defines hours and days of any fill or excavation activity.
- Requires compliance with NYSDEC SPDES permit requirements.
- Requires applicant to remedy any violations within five (5) days.

Executive Summary of Changes to Article VI

Article VI has been revised to protect the environment and improve the permit process as follows:
- Article is applicable to any mining activity that does not fall under the NYSDEC’s jurisdiction.
- Requires Town Board review of all permit applications.
- Permit is valid for a period of six (6) months.
- Requires all extensions of a permit to require payment of applicable fees.
- Requires compliance with NYSDEC SPDES permit requirements.
- Defined hours and days of any fill or excavation activity.
- Revised the list of exemptions.
- Revised list of dimensional and safeguard requirements.
- Revised permit provisions.

ARTICLE 5
FILL AND EXCAVATION PERMITS
Effective Date: June 3, 2012

5-1. Title.
This article shall be entitled and known as “Fill and Excavation Permits”.

5-2. Purpose.
It is the purpose of this article to protect the Town of Penfield, its residents, and its natural environment from the negative effects of land development and land uses and ensure an accurate and permanent record of the placement of fill material. This article outlines the defined procedures and standards established by the Town of Penfield to protect the environment from the adverse impacts of land disturbances including, but not limited to the following:
- Clearing of land,
- Prolonged exposure of soil,
- Changes in drainage characteristics,
- Changes in rate and volume of water runoff from the land,
- Obstructing the natural flow of water courses and natural runoff patterns,
- Soil compaction,
- Land filling, and
- Land excavation.

5-3. Applicability.
A permit is required for any of the following operations prior to the commencement of any earth disturbance, except as otherwise provided in this article:
a) Fills and excavations that exceed 50 cubic yards of soil, greater than 4 feet in depth, impair surface drainage, or have slopes steeper than 1’ vertical to 2’ horizontal.
b) Earth grading/clearing that exceeds 5,000 square feet of area, cause a grade change of greater than 12” at any point, or change existing surface drainage.
c) Construction of any aesthetic, recreational, fire protection, fishing pond, or other pond with a depth greater than three (3) feet or meets the above requirements.
d) Other activities deemed necessary by the Town of Penfield.
e) Any earth disturbance activity occurring over a twelve month period.

5-4. Permit Provisions.
The Town Clerk shall, upon presentation of a duly verified application for a Fill and Excavation Permit, accompanied by the consent, in writing, of the owner, shall request a review and determination from the Town Board. The Town Clerk shall, upon obtaining the Town Board’s approval, issue the permit upon any conditions as may be imposed by the Town Board in a particular case. The applicant shall pay all associated fees, as set by Town Board Resolution, and shall provide a financial guarantee (cash or letter or credit from an approved financial institution) as determined and approved by the Town Board.

Each permit issued pursuant to the terms and conditions set in this article shall be granted for no more than three (3) months after the date of its issuance unless further extended by the Town Board, with input from Town staff. Any extensions of the permit shall require payment of all fees as determined by the Town Board. Any financial guarantee shall ensure the faithful performance of the terms and conditions of this article and any conditions noted in the permit. Each permit shall be conditioned on the observance of all municipal ordinances. Further, the applicant shall indemnify and hold harmless the Town Board, the Town of Penfield, and its employees and its agents from and against any damage to property of the Town, and for compliance with the terms and conditions of said permit. The cash proceeds of any guarantee, in the event of default, shall be conveyed to the Town of Penfield, which shall be entitled to maintain any action thereupon. Said guarantee shall remain in full force and effect until a certificate of completion has been issued by the Town Engineer certifying that all provisions of this article and the conditions of any permit issued have been fully complied with.

5-5. Permit Application.
Applications for Fill and Excavation Permits shall be submitted to the Town Board by the owner or the owner’s agent and must be accompanied with the following materials:

a) A letter describing the project and its purpose,
b) A survey map, prepared by a surveyor licensed in NY State, showing the location of the work with the property boundary lines and topography of the site within 100 feet of proposed fill/excavation for which the permit is requested,
c) Location of any buildings, structures, and utilities on the site where work is to be performed,
d) Location of any wetlands, flood plains, steep slopes, watercourse, or other environmentally sensitive areas within 100 feet of the site,
e) Location of adjacent buildings and structures within 100 feet of the site,
f) Proposed contours of the fill/excavation limits,
g) Show all proposed drainage improvements, erosion and sedimentation control measures, topsoil storage locations, construction entrances, haul roads, security fencing, retaining walls, and other features associated with the work,
h) Estimates of the cubic feet of material to be removed or brought onto the site,
i) Time schedule and sequence of the work,
j) Name and phone no. of contractor who is doing the work,
k) Name and phone no. of trucking company(s) and subcontractor(s) assigned to the project,
l) Source of fill or disposal location of material to be excavated,
m) An Environmental Assessment Form (EAF) in compliance with the New York State SEQR Act or an Environmental Impact Statement, if required,
n) Erosion and sedimentation control plan,
o) Restoration plan, and
p) Other materials, plans, soil testing data, or any other data as required by the Town Board.

5-6. Permit Requirements.
No excavation or fill activities shall commence until a permit has been issued, fees paid, and a financial guarantee has been received.

The Town Board shall find that the request is in harmony with the general purpose of this article, taking into account the site location, quantity of fill, proximity to EPOD areas, truck traffic impacts, and neighborhood character. The Town Board shall find that the operation, maintenance, and restoration procedures will not be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity of the operation and the operation is not detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the Town of Penfield.

Applications shall be reviewed by the Town Board, which shall make a determination, in its discretion, for the need to require a Public Hearing on this matter. Such Public Hearing will be held not less than three (3) nor more than thirty (30) days after the Public Hearing notice has been given prescribing the time, date, and place of the Public Hearing. Such Notice shall be given by the Town Clerk by causing the same to be published in the official newspaper of the Town and by posting said Notice on the Bulletin Board in the Town Hall. Such Notice shall contain a brief explanation regarding the application. Approval or denial of the permit application by the Town Board shall be rendered after the conclusion of any Public Hearing on said application.

In granting any permit, the Town Board may attach such conditions as deemed necessary to protect public and private property, utility, watercourse, or other environmentally sensitive area. The work shall be conducted as to not be hazardous to life or property or in a manner that will create a nuisance.

A separate permit is required for each separate, non contiguous site.

The Town Board may waive any of the requirements for noted herein if the applicant can provide sufficient information on the application to show that the work will conform to the requirements of this article.

In addition to the requirements for a Fill and Excavation Permit, the applicant shall be required to obtain an Environmental Protection Overlay District (EPOD) permit for work located within a steep slope, regulated wetland, woodlot, or watercourse overlay district.

Fill material shall include inert fill materials, gravel, sand, silt, clay, and/or loam. Fill material shall exclude solid waste, hazardous waste, organic materials, tires, refuge, offal, hazardous waste, electronic waste, or any deleterious materials as defined by the Town of Penfield. Inert fill material shall include rocks, bricks, concrete, or asphalt that does not exceed 12” in size. All fill/excavated areas shall be covered with a minimum of 6” of topsoil upon completion of the filling or excavation to the approved grades. No topsoil sales are permitted without a permit as described in Article 6.

Hours of operation for filling, grading, or excavation work shall only be permitted between 7:00 AM and 5:00 PM Monday through Friday and between 8:00 AM and 1:00 PM on Saturday, except for Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. Material hauling trucks shall enter or exit the premises only within the hours permitted. All equipment operations shall be restricted to the above hours.

The applicant shall limit access to the premises at all times to prevent unauthorized dumping. Failure to do so may result in the revocation of the permit.

A copy of all permits, if required, from the NYSDOT and/or MCDOT shall be obtained and submitted prior to start of work.

All public roadways shall be cleaned of spillage or windblown materials, as ordered by the Town representative. Owner shall have sweeper and water truck on site within 24 hours of request by Town officials. Construction access and haul roads shall be maintained at all times and shall be constructed of stone capable of supporting H-20 loading, as defined by the American Association of State Highway and Transportation Officials (AASHTO).
Dust control shall be addressed by use of water, mulch, stone, or other materials as approved by the Town. These shall be used on haul and access roads and disturbed areas as ordered by the Town official.

Any proposed modifications to the approved plans after a permit has been granted shall be submitted to the Town Board for review. Field changes shall be requested with a change order to the Town for review and approval. No field changes shall occur until the change order is approved in writing by the Town Board or Authorized Official.

No permit shall be transferable without the written consent of the Town Board.

5-7. Inspections.
The Town reserves the right to inspect all operations to verify that the terms and conditions of any permit are being complied with and the cost of inspections shall be reimbursed by the permittee. Failure to allow access to Town personnel or their agents may result in the revocation of the permit.

Applicant shall provide inspections in accordance with the current NYS Department of Environmental Conservation SPEDS Permit for Stormwater Discharges. Any disturbance of one (1) acre or more shall require the filing of a Notice of Intent (NOI) with the NYSDEC prior to the start of work. A copy of the NOI shall be provided to the Town of Penfield along with a copy of the approved Stormwater Pollution Prevention Plan (SWPPP).

All active excavation and fill areas shall not exceed five (5) acres at any one (1) time. Applicant may request a five (5) acre disturbance waiver from the Town of Penfield. If granted, all provisions of the current NYS Department of Environmental Conservation SPEDS Permit for Stormwater Discharges shall be followed.

5-8. Exceptions.
A permit shall not be required in the following instances:

a) Operations and activities not exceeding the criteria established herein,
b) Sites subject to Town subdivision and site plan review process, provided that the application is approved by the appropriate board or authorized official,
c) Activities subject to permit requirements in article XI; Variances, Special Permits, and/or a Conditional Use Permit,
d) Construction, modification, or replacement of individual septic systems which do not alter the natural terrain,
e) Grading, filling, or excavation within the right-of-way pursuant to a permit issued by the Highway Department for work associated with utilities, road work, or other system for public use,
f) Grading and trenching for utility installation, maintenance or inspections, only to the extent of any exemption from the provisions of this article required by State law and provided that plans are submitted to the Engineering and/or Planning Department and found to be acceptable,
g) Excavation for the purpose of constructing a cellar wall, building, or part thereof of a structure for which a permit has been issued by the Town of Penfield Building Department,
h) Any capital or public works improvement project authorized by the NYSDOT, Monroe County, or Town of Penfield, and
i) Agricultural operations that are not located in an environmental protection overlay district (EPOD).

5-8. Penalties for offenses.
The Authorized Official shall notify the applicant, in writing, of any violations of this article. Applicant shall have seven (7) calendar days to remedy any violations.

Any person, firm, or corporation who or which violates any provisions of this article shall be subject to the penalties set forth in section 14.28 of the Zoning Ordinance, or as may be amended.

5-9. Repealer.
Article V, entitled “Environmental Protection” is hereby repealed upon the effective date of this article.
ARTICLE 6
MINING AND TOPSOIL SALES

6-1. Title.
This article shall be entitled and known as “Mining and Topsoil Sales”.

6-2. Purpose.
It is the purpose of this article to regulate the manner of construction on, removal of materials from, filling of, draining, cleaning, operating, and using any lands or other premises for sand or gravel pits, stone quarries, topsoil sales or for any other mining and sale of excavated materials and prohibiting the use of any lands or other premises for the aforesaid purposes, which do not comply with this article.

6-3. Applicability.
All mining and topsoil excavation activities shall be in conformity with the provisions of this article and shall be located only within areas specifically permitted according to the provisions of the Zoning Ordinance.

The provisions of this article shall regulate any mining activity that does not fall within the NYSDEC’s jurisdiction as defined in the Environmental Conservation Law.

6-4. Permit Provisions.
Before any mining or topsoil sales activities are commenced and before any topsoil, earth, sand, gravel, rock or other naturally occurring material is removed from the ground, the owner or lessee of the premises or the agent of either, duly authorized in writing, for such purposes, shall obtain a permit therefore, and for that purpose shall file with the Town Clerk an application for a permit in such form as the Town Board may prescribe. Each application shall include a detailed report of the proposed work and a plan setting forth in detail the nature and extent of the proposed excavation. Such report and plan shall show the exact condition of the subject plot or premises of land both before and after the proposed excavation, including location of haul roads, impoundment areas, screening operations, water control features, erosion control measures, and the sequence of operations. There shall be filed with such application a legal description of said premises, together with the name and address of the owner of record of such premises and the names and addresses of the holders of any mortgages thereon. The location of all buildings upon said premises shall be set forth upon the plan accompanying said application, which shall be drawn to scale giving the location and dimension of any and all buildings or other structures thereon. Such plan shall further indicate any and all public or private streets or right-of-way adjacent to, in or upon said premises. A letter of intent shall be submitted outlining the estimated amount of material to be removed and the schedule for the work.

Any permit issued hereunder shall be conditioned that the premises, upon the conclusion of such excavation, shall be filled within a period to be specified therein with clean, non-burnable fill containing no garbage, refuse, offal, hazardous waste, electronic waste, or any deleterious materials.

Dust preventive measures shall be used to prevent the dust from spreading from said premises. The restoration of the premises shall be graded to provide a safe and stable grade. The restoration shall provide at least six (6) inches of topsoil over all excavated areas and shall be immediately reseeded with a permanent seed mixture or other fast growing surface vegetation until growth is reestablished.

The Town Clerk shall, upon presentation of a duly verified application for a mining or topsoil sales permit accompanied by the consent, in writing, of the owner, shall request a review from the Town Board. The Town Clerk shall issue the permit upon obtaining the Town Board’s approval for the issuance of a permit upon any conditions as may be imposed by the Town Board in a particular case. The applicant shall pay all associated fees as set by Town Board Resolution and provide a
financial guarantee (cash or a Letter of Credit from an approved financial institution) in an amount
determined and approved by the Town Board. Any financial guarantee shall ensure the faithful
performance of the terms and conditions of this article and any conditions noted in the permit.
Each permit shall be conditioned on the observance of all municipal ordinances. Further, the
applicant shall indemnify and hold harmless the Town Board, the Town of Penfield, and its
employees and its agents for any and all damage to property of the Town, and for compliance with
the terms and conditions of such permit. The cash proceeds of any guarantee, in the event of
default, shall be conveyed to the Town and the Town of Penfield shall be entitled to maintain any
action thereupon. Said guarantee shall remain in full force and effect until a certificate of
completion has been issued by the Town Engineer certifying that all provisions of this article and
the conditions of any permit issued have been fully complied with.

Applicants shall complete and submit an Environmental Assessment Form (EAF) or an
Environmental Impact Statement, if required, and meet any and all requirements of the New York
State Environmental Quality Review Act (SEQR), the New York State Department of
Environmental Conservation (NYSDEC), and the US Army Corps of Engineers (USACOE).

Each permit issued pursuant to the terms and conditions set forth in this article shall be granted for
no more than six (6) months after the date of its issuance unless further extended by the Town
Board, upon receipt of input from the Town staff. Any extensions shall require payment of fees as
may be determined by the Town Board.

All applications for mining or topsoil sales shall be reviewed by the Town Board, which shall
make a determination in its discretion for the need to require a Public Hearing on the matter. Such
Public Hearing will be held not less than three (3) nor more than thirty (30) days after the Public
Hearing notice has been given prescribing the time, date, and place of the Public Hearing. Such
Notice shall be given by the Town Clerk, by causing the same to be published in the official
newspaper of the Town and by posting said Notice on the Bulletin Board in the Town Hall. Such
Notice shall contain a brief explanation regarding the application. Approval or denial of the permit
application by the Town Board shall be rendered after the conclusion of any Public Hearing on
said application.

Any proposed modifications to the approved plans after a permit has been granted shall be
submitted to the Town Board for review and approval. No action shall be taken until a written
approval of the Town Board or Authorized Official has been issued.

6-5. Dimensional and Safeguard Requirements.
No mining or topsoil sales operation shall be conducted closer than 100 feet to a public right-of-
way or an adjoining property line except that grading may be conducted within such limits in order
to provide adequate access to and buffer of the premises. The setback/buffer area shall not be used
for any use in conjunction with the excavation and appurtenant activities except for one public
notice sign for identifying use, buffering, and those conditions stated in the permit.

All equipment, structures, and other operational facilities including sedimentation ponds, shall not
be closer than 100 feet from the public right-of-way or from an adjoining property line.

Access and haul roads shall be constructed of a stone base able to support an H-20 loading, as
defined by the American Association of State Highway and Transportation Officials (AASHTO).
All access and haul roads leading to public highways shall be dust and mud free. Mining/topsoil
screening operations shall be located to minimize impacts of noise and dust to adjoining residents.
Contractor/operator shall provide dust control measures at all times.

Verification of volume of materials to be removed and sufficient reserve of topsoil for restoration
work shall be provided, in writing, from a licensed professional engineer, surveyor, or landscape
architect.

Fencing shall be required on all sides of the excavation area with a depth greater than four (4) feet
(vertical).

The hours of operation for mining and topsoil sales operations shall only be permitted between
7:00 AM and 5:00 PM Monday through Friday and between 8:00 AM and 1:00 PM on Saturday,
Hauling trucks shall enter and exit the premises only within the hours permitted. All equipment operations shall be restricted to the above hours.

All public roadways shall be cleaned of spillage or windblown materials, as ordered by the Town representative. Owner shall have sweeper and water truck on site within 24 hours of request by Town officials.

All equipment, buildings, structures, etc. shall be removed from the site within two (2) months of termination of the permit.

6-6. Inspections.
The Town reserves the right to inspect all operations to verify that the terms and conditions of any permit are being complied with. Failure to allow access to Town personnel or their agents may be grounds to revoke the permit. The cost of Town inspections shall be reimbursed to the Town by the applicant.

The applicant shall provide for inspections in accordance with the current NYS Department of Environmental Conservation SPEDS Permit for Stormwater Discharges. Any disturbance of one (1) acre or more shall require the filing of a Notice of Intent (NOI) with the NYSDEC prior to the start of work. A copy of the NOI shall be provided to the Town in an approved Stormwater Pollution Prevention Plan (SWPPP).

The active mining and topsoil sales area shall not exceed five (5) acres at any one time. Applicant may request a five (5) acre disturbance waiver from the Town Board. All provisions of the current NYS Department of Environmental Conservation SPEDS Permit for Stormwater Discharges shall be followed.

6-7. Exceptions.
A permit shall not be required in the following instances:

a) Nothing contained in this article shall be construed to prevent a person from removing topsoil from one part of their land to another part of the same premises when such removal is necessary as an accessory use or is made for the purpose of improving said property,

b) Sites subject to Town subdivision and site plan review process, provided that the application has received approval by the appropriate board or authorized official,

c) Excavation for the purpose of constructing a basement wall, building, or utility, or part thereof, for which a permit has been issued by the Town of Penfield Building Department,

d) Any capital or public works project authorized by the Town of Penfield, NYSDOT, or Monroe County, and

e) Agricultural activities not located in an environmental protection overlay district (EPOD).

6-7. Penalties for offenses.
The Authorized Official shall notify the applicant, in writing, of any violations of this article. Applicant shall have seven (7) calendar days to remedy any violations.

Any person, firm, or corporation who or which violates any provisions of this article shall be subject to the penalties set forth in section 14-28 of the Zoning Ordinance, or as may be amended.

6-8. Repealer.
Article VI, entitled “Excavation and Topsoil Removal” is hereby repealed upon the effective date of this article.