PENFIELD TOWN BOARD AGENDA
Wednesday, August 15, 2012, 7:30 PM
Supervisor R. Anthony LaFountain, presiding

I Call to Order - Pledge of Allegiance - Roll Call

II Public Hearing #1 - To Allow a Restaurant with Outdoor Dining at 1857 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 – July 18, 2012

VII Petitions

VIII Resolutions by Function

Law and Finance

#12T-176 Authorizing General Obligation Bonds of the Town of Penfield to Finance Road Improvements Within the Town, Authorizing the Issuance of Bond Anticipation Notes in Contemplation Thereof, the Expenditure of Sums for Such Purpose, and Determining Other Matters in Connection Therewith

#12T-177 Approving Construction of Street Improvement and Directing Town Engineer to Prepare Plans, Specifications and Estimate for Jomanda Way

#12T-178 Authorization for Release of a Portion of a Conservation Easement in Section III of the Arbor Ridge Subdivision – SBL #140.02-3-98 and 140.02-1-58.001

#12T-179 Setting a Public Hearing for a Special Permit and Preliminary and Final Subdivision and Site Plan Approval to Allow the Development of Twenty-Four (24) Townhouses to be Constructed on 2.05 Acres at 1200 Empire Blvd. – SBL #108.05-2-4 – Ireland USA Bay, LLC

#12T-180 Authorize the Supervisor to sign Lease Agreement with the Eastside Area Annex

#12T-181 Appointment of School Tax Collector for the 2012-2013 School Year for the Wayne Central School District
#12T-182 Establishment of Extension No. 55 to the Penfield Consolidated Sanitary Sewer District- Ashlyn Rise Subdivision

#12T-183 Authorize the Supervisor to sign a contract with RLB Planning Group, Passero Associates to Prepare an Application for Grant Funding Assistance under the Shared Municipal Services Initiative

Public Works
#12T-184 Re-appointment to Conservation Board

Public Safety
#12T-185 Authorization for Supervisor to Sign Contract for Animal Control Services

Community Services
#12T-186 Authorization for Supervisor to Sign Recreation Contacts

IX Old Business
X New Business
XI Public Participation
XII Adjournment
The Regular meeting of the Penfield Town Board was held on Wednesday, August 15, 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
              Jim Costello  Director of Developmental Services

Supervisor LaFountain called the meeting to order – The Pledge of Allegiance was led by Jim Costello.

Public Hearing #1 – To Consider the Issuance of a Special Permit to allow a Sit-down Restaurant with Outdoor Dining at 1857 Penfield Road, Located in the Four Corners (FC) Zoning District (see Resolution #12T-159)

The Town Clerk read the title of the Notice of Public Hearing, said Notice was published in the Democrat and Chronicle on August 3, 2012 and was posted on the Town Clerk Bulletin Board and Town Website.

Jose Abarca stated he currently operates a restaurant in the Town of Chili located at 4179 Buffalo Road and would like to open another sit-down Mexican restaurant at 1857 Penfield Road. Mr. Abarca would like hours of operation to be from 11:00 AM to 10:00 PM, Monday through Saturday and open on Sundays for special occasions from 12:00 PM to 7:00 PM.

Seating indoors will be available for 48 patrons at a time. Outdoor dining will be made available with six (6) tables for 12 to 20 diners during the summer months. Mr. Abarca stated he plans to have three (3) employees per shift.

There will be on-site parking for 20 vehicles. Additionally, there are plans to share parking with the property located at 1853 Penfield Road when needed.

Mr. Abarca also stated that there will be indoor music with the possibility of hiring small musician groups to perform inside the establishment once a month. He hopes to have one or two musical events outdoors during the summer season.

Mr. Abarca stated he has applied to the New York State Liquor Authority for a liquor license and believes it will be approved by December 2012. Signage will replace the existing sign that complies with the requirements of the Four Corners Zoning District and will read, Itacate, Traditional Home-made Mexican food. The backdoor canapé will also have Itacate printed on it.

Supervisor LaFountain asked Mr. Abarca if it would be an issue for him if the Board decides not to allow outdoor dining at the establishment.

Mr. Abarca said it would not be a problem and that he is flexible. Mr. Abarca stated the goal is to be part of the township of Penfield.

Mr. Abarca would eventually like to include catering in his business plan. He does plan on including take-out business. Mr. Abarca stated he would like to open the restaurant as soon as allowed and would like to open prior to receiving a liquor license, if necessary, preferably by the first week in September.
Mr. Abarca stated he has no plans for structural modifications to the building, but some cosmetic modifications have been done. He is leasing the space and has no plans to purchase the building at this time.

Mr. Abarca stated he plans on having a dumpster placed at the end of the property and plans to build an enclosure.

Terence Williams, owner of the property adjacent to the Mexican restaurant stated he has parking issue concerns and hopes everyone will be able to share the parking and not have anything hindering that option.

Hearing closed.

Communications and Announcements

1. Passport night was held on Thursday, August 2, 2012 in the Town Hall Auditorium. 23 passports were issued and 12 mail-in renewals were processed.

2. Town Clerk Amy Steklof thanked Part Time Animal Control Officer Dick Seiler for the excellent job he is doing for the Town. A call was received today, from a resident commending ACO Seiler for his help on Sunday in solving a difficult animal issue in her yard. She stated that Mr. Seiler went “above and beyond” the call of duty.

3. The American Red Cross Blood Drive in Penfield will be held Thursday, August 23, 2012 at the Penfield Community Center, 1985 Baird Road from 2:00 to 7:00 PM. For more information, call 1-800-RED-CROSS (1-800-733-2767.)

4. Penfield’s annual Tastin’ the Blues will be held Saturday, September 15, 2012 from Noon to 4:00 PM at the Penfield Amphitheater and Kiwanis stage.

5. The Penfield Library Annual used book sale presented by the Friends of Penfield Public Library will be held September 12–15, 2012. For more information visit www.penfieldlibrary.org.

6. Town offices will be closed on Monday, September 3, 2012 in observance of Labor Day.

7. A summary of the 2013 Tentative Budget will be presented at the next Town Board Legislative meeting on Wednesday, September 5, 2012 at 7:30 PM.

8. The Penfield Trails Committee will sponsor a free public hike at Smith Pioneer Cemetery, south of Sweets Corners Road on Gloria Drive, Saturday, September 8, 2012 beginning at 9:00 AM. For more information call Penfield Recreation at 340-8655.

9. The Penfield 5k challenge will be held on Sunday, September 30, 2012 with an 8:00 AM check in time and a 9:00 AM start time. For more information and to download the registration form visit www.penfield.org.

10. The Fall Program brochure can be viewed online and will be in the mail this week. Registration begins September 4, 2012.

11. The Penfield Players Theatre Company will hold auditions for its fall production “Dearly Departed,” by David Bottrell and Jesse Jones on Tuesday, September 4, and Wednesday, September 5, 2012 at 7:00 PM at the Penfield Community Center. Performances will be on Fridays, November 2, 9 and 16 and Saturdays, November 3, 10 and 17 at 8:00 PM at the Penfield Community Center. For more information or a copy of the script call the play’s director, Wyatt Doremus at (315)-524-2368 or go to www.penfieldplayers.org.
Public Participation - None

Additions and Deletions to Agenda

Councilman Moore moved to add Resolution #12T-187 under New Business, Councilwoman Kohl seconded.

Approval of Minutes

Councilwoman Kohl moved to approve the Minutes of July 18, 2012, Councilwoman Metzler seconded and all voted "Aye."

Petitions - None

Resolutions by Function

Law and Finance

#12T-176 Authorizing General Obligation Bonds of the Town of Penfield to Finance Road Improvements Within the Town, Authorizing the Issuance of Bond Anticipation Notes in Contemplation Thereof, the Expenditure of Sums for Such Purpose, and Determining Other Matters in Connection Therewith by Moore

WHEREAS, the Town of Penfield, New York has duly authorized improvements to Jomanda Way Road, pursuant to §200 of the Town Law; and

WHEREAS, the Town hereby determines and finds the purpose hereinafter described to be a Type II action under the State Environmental Quality Review Act and the applicable regulations promulgated thereunder ("SEQRA"), which will not have a significant impact on the environment and is not subject to any further environmental review under SEQRA; now therefore be it

RESOLVED BY THE TOWN BOARD OF THE TOWN OF PENFIELD, NEW YORK, (hereinafter referred to as the "Town"), by the favorable vote of not less than two-thirds of all of the members of such Board, as follows:

Section 1. The Town of Penfield shall undertake certain capital improvements to Jomanda Way Road, in the Town of Penfield, New York, consisting of reconstruction to comply with the Town’s design specifications for a dedicated road, and other incidental improvements that may be required in connection therewith (hereinafter referred to as "purpose"), and general obligation serial bonds in an aggregate principal amount not to exceed $165,000 and bond anticipation notes in anticipation thereof (and renewals thereof) of the Town are hereby authorized to be issued to finance said purpose.

Section 2. The estimated aggregate maximum cost of said purpose, including preliminary costs and costs incidental thereto and costs of the financing thereof, are estimated to be $165,000 and said amount is hereby appropriated therefore. The plan for financing of said purpose is to provide all of such maximum cost by issuance of bonds or bond anticipation notes as herein authorized.

Section 3. It is hereby determined and declared that (a) said purpose is one of the class of objects or purposes described in Subdivision 20 (c) of Paragraph (a) of Section 11.00 of the Local Finance Law, and that the period of probable usefulness of said purpose is fifteen (15) years, (b) the proposed maximum maturity of said bonds authorized by this Resolution will be in excess of five years, (c) current funds required to be provided prior to the issuance of the bonds or notes herein authorized, pursuant to Section 107.00 of the Local Finance Law, to the extent applicable, if any, will be provided, (d) the notes herein authorized are issued in anticipation of bonds for an assessable improvement, and (e) there are presently no outstanding bond anticipation notes issued in anticipation of the sale of said bonds.
Section 4. The bonds and notes authorized by this Resolution shall contain the recital of validity prescribed in Section 52.00 of the Local Finance Law and such bonds and notes shall be general obligations of the Town and all the taxable real property in the Town is subject to the levy of ad valorem taxes to pay the principal thereof, and interest thereon, without limitation as to rate or amount, subject to applicable statutory limitations, if any.

Section 5. It is hereby determined and declared that the Town reasonably expects to reimburse the general fund, or such other fund as may be utilized, not to exceed the maximum amount authorized herein, from the proceeds of the obligations authorized hereby for expenditures, if any, from such fund that may be made for the purpose prior to the date of the issuance of such obligations. This is a declaration of official intent under Treasury Regulation §1.150-2.

Section 6. The power to further authorize the sale, issuance and delivery of said bonds and notes and to prescribe the terms, form and contents of said bonds and notes, including, without limitation, the consolidation with other issues, the determination to issue bonds with substantially level or declining annual debt service, all contracts for, and determinations with respect to, credit or liquidity enhancements, if any, and to sell and deliver said bonds and notes, subject to the provisions of this Resolution and the provisions of the Local Finance Law, is hereby delegated to the Town Supervisor, the Town’s Chief Fiscal Officer. The Town Supervisor and the Town Clerk or Deputy Clerk are hereby authorized to sign by manual or facsimile signature and attest any bonds and notes issued pursuant to this Resolution, and are hereby authorized to affix to such bonds and notes the corporate seal of the Town of Penfield.

Section 7. The faith and credit of the Town of Penfield, New York, are hereby irrevocably pledged for the payment of the principal of and interest on such bonds and notes as the same respectively become due and payable. Such bonds and notes shall be payable from a levy on real property in the area benefitted, in the manner provided by law, but if not paid from such source, all the taxable real property within said Town shall be subject to the levy of an ad valorem tax, without limitation as to rate or amount, subject to applicable statutory limitations, if any, sufficient to pay the principal of and interest on said bonds and notes. An annual appropriation shall be made in each year sufficient to pay the principal of and interest on such obligations becoming due and payable in such year.

Section 8. This Resolution, or a summary hereof, shall be published in full by the Town Clerk of the Town of Penfield together with a notice in substantially the form prescribed by Section 81.00 of said Local Finance Law, and such publication shall be in each official newspaper of the Town, in the manner prescribed by law. The validity of said bonds or of any bond anticipation notes issued in anticipation of the sale of said bonds may be contested only if such obligations are authorized for an object or purpose for which said Town is not authorized to expend money, or the provisions of law which should be complied with, at the date of publication of this Resolution are not substantially complied with, and an action, suit or proceeding contesting such validity is commenced within twenty (20) days after the date of such publication; or if said obligations are authorized in violation of the provisions of the Constitution.

Section 9. This Resolution shall take effect immediately upon its adoption.
Penfield Town Board, August 15, 2012

(Resolution #12T-176 - Continued)

Moved: Moore
Seconded: Kohl

Vote:

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Adopted

#12T-177 Approving Construction of Street Improvement and Direction of Town Engineer to Prepare Plans, Specifications and Estimate for Jomanda Way by Moore

WHEREAS, a petition dated July 14, 2012 has been duly presented to the Town Board of the Town of Penfield, New York proposing that the Town Board approve the improvement of Jomanda Way hereinafter described, by the reconstruction of the road and appurtenant drainage system; and

WHEREAS, said Town Board duly adopted on the 18th day of July, 2012, an order reciting in general terms the filing of the petition, the improvement proposed, the maximum amount proposed to be expended for said improvement and the area benefitted in said petition, and specifying that said Town Board shall hold a Public Hearing at the Penfield Town Hall, 3100 Atlantic Avenue, Penfield, New York 14526 on the 8th day of August 2012 at 7:30 PM, to consider said petition and hear all persons interested in the subject matter thereof, concerning the same; and

WHEREAS, from the evidence offered at such time and place the Town Board has determined that it is in the public interest to make the said improvement; and

WHEREAS, the Penfield Town Board is best suited to act as "lead agency" within the meaning of the State Environmental Quality Review Act (SEQRA) and thus does hereby designate itself as "lead agency" pursuant to SEQRA; and

WHEREAS, the subject application is determined to be a Type II action pursuant to the State Environmental Quality Review Act (SEQRA) and therefore no additional environmental review of the proposed action is necessary;

NOW, THEREFORE, BE IT RESOLVED, that the Town Board of the said Town of Penfield does hereby authorize and approve the improvement to Jomanda Way by the reconstruction of the road and appurtenant drainage system; and be it further

RESOLVED, that the maximum amount to be expended for the said improvement is $165,000; and be it further

RESOLVED, that said Town Engineer shall survey said street and establish the lines of the grades thereof, and file copies of such survey and a profile of the grade in the office of the Town Clerk.

Moved: Moore
Seconded: Quinn

Vote:

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Adopted
BE IT RESOLVED, that the Town Board of the Town of Penfield hereby
authorizes the Supervisor to sign a Release of Easement to permit a
release of a portion of an existing conservation easement on Lots 22 and
23 in Phase III of the Arbor Ridge Subdivision, as shown on a map
titled "Arbor Ridge Section III" prepared by BME Associates, July 19,
2012. The conservation easement was filed in the Monroe County Clerk's
Office as Liber 10825 Page 578 as a condition of approval in Phase I of
the subject subdivision and releasing a portion of it is necessary to
address modifications to the layout of Phase III of the Arbor Ridge
Subdivision; and

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

Moved: Moore
Seconded: Metzler

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

Adopted

WHEREAS, an application has been received by the Penfield Town Board
for the issuance of a Special Permit and Preliminary and Final
Subdivision and Site Plan Approval pursuant to Articles III-3-94,
VIII-8-2 and IX-9-2 of the Code to allow the development of twenty-
four (24) townhouses on 2.05 acres, at 1200 Empire Blvd., located in
the LaSalle’s Landing Development (LLD) zoning district;

NOW, THEREFORE, BE IT RESOLVED, that the Town Board, acting as lead
agency pursuant to the requirements of the State Environmental
Quality Review Act (SEQRA) has determined the subject application to
be an Unlisted Action pursuant to Section 617.4 of the State
Environmental Quality Review Act (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 September 5, 2012, at 7:30 PM on
said date, to consider said application and to hear all persons
interested on the question of the issuance of a Special Permit and
Preliminary and Final Subdivision and Site Plan Approval pursuant to
Articles III-3-94, VIII-2 and IX-9-2 of the Code to allow the
development of twenty-four (24) townhouses on 2.05 acres, at 1200 Empire Blvd., in the LaSalle’s Landing Development (LLD) 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: Kohl
(Resolution #12T-179 – Continued)

Adopted

#12T-180 Authorize the Supervisor to sign Lease Agreement with the Eastside Area Annex by Moore

WHEREAS, the Town of Penfield desires to continue a Lease Agreement with the Eastside Area Annex to provide office & meeting space;

NOW BE IT RESOLVED, that the Supervisor is authorized to sign a Lease Agreement with the Eastside Area Annex for office & meeting space located in the Don Mack Building, 1587 Jackson Road, Penfield beginning on August 1, 2012 and ending on July 31, 2015.

Moved: Moore
Seconded: Quinn

Adopted

#12T-181 Appointment of School Tax Collector for the 2012-2013 School Year for the 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 2012-2013 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: Moore
Seconded: Metzler

Adopted

#12T-182 Establishment of Extension No. 55 to the Penfield Consolidated Sanitary Sewer District – Ashlyn Rise Subdivision by Moore

WHEREAS, a Public Hearing was held at the Penfield Town Hall, 3100 Atlantic Avenue, Penfield, New York, on August 8, 2012 at 7:30 PM, to consider the Petition and to hear all persons interested in the establishment of Extension No. 55 to the Penfield Consolidated Sanitary Sewer District – Ashlyn Rise Subdivision, and

WHEREAS, the Town Board received no negative or substantive comments relating to this matter; and
WHEREAS, all of the cost of said sewer district improvements shall be borne solely by the property owner or developer.

NOW, THEREFORE BE IT RESOLVED, that the annexed Order be executed by the Supervisor and the members of the Town Board to establish Extension No. 55 to the Penfield Consolidated Sanitary Sewer District - Ashlyn Rise Subdivision.

Moved: Moore
Seconded: Kohl

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

Adopted

#123T-183 Authorize the Supervisor to sign a contract with RLB Planning Group, Passero Associates to Prepare an Application for Grant Funding Assistance under the Shared Municipal Services Initiative by Moore

WHEREAS, the Town of Penfield and the Penfield Central School District have an interest to explore a Local governmental Efficiency (LGE) Grant that would allow funding for a joint maintenance and repair facility; and

WHEREAS, the Town of Penfield and the Penfield Central School District have agreed to enter into an Agreement with the RLB Planning Group and Passero Associates, 100 Liberty Pole Way, Rochester, NY, to prepare an application for grant funding assistance from the New York State Department of State, under the Shared Municipal Services Initiative (SMSI) Grant Program for Local Government Efficiency Project, and

WHEREAS, the cost of this grant application will be split equally between the Town of Penfield and Penfield Central School District,

NOW BE IT RESOLVED, that the Supervisor is authorized to sign a contract, in a form to be approved by the Town Attorney, with RLB Planning Group and Passero Associates for the SMSI Grant Preparation at a cost to the Town of Penfield not to exceed $3,000.00.

Moved: Moore
Seconded: Quinn

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

Adopted

Public Works

#12T-184 Re-appointment to Conservation Board by Metzler

BE IT RESOLVED, that Patricia Schichler, 44 Belvista Drive, Penfield, be re-appointed to the Conservation Board for a term expiring December 31, 2012 at annual salary as established by the Town Board.

Moved: Metzler
Seconded: Moore

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

Adopted
Public Safety

#12T-185 Authorization for Supervisor to Sign Contract for Animal Control Services by Quinn

BE IT RESOLVED, that the Town Board authorizes the Town Supervisor to sign the following contract for Animal Control Services related to harvesting "problem coyotes" in the Town of Penfield consistent with the Environmental Conservation Law:

Steven M. Welch
40 Green St.
Canandaigua, NY 14424

Moved: Quinn
Seconded: Metzler

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

Adopted

Community Services

#12T-186 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:

The following persons to provide service as Boys Basketball Camp Instructors, 7/30/12 – 8/03/12, for the fee of $22.50 per day: Voucher to be submitted 8/15/12.

Gregory Witkowski, 28 Grouse Pt., Webster, NY 14580
Scott Huddle, 42 Helmsford Way, Penfield, NY 14526
Mark Huddle, 42 Helmsford Way, Penfield, NY 14526
Evan Burnett, 129 Clearview Dr., Penfield, NY 14526
Alex Bezek, 53 Wheelock Rd., Penfield, NY 14526
Dahnny Rogers, 14 Helmsford Way, Penfield, NY 14526
Nick Kimmins, 40 South Village Trail, Fairport, NY 14450
Mitch Cote, 1683 Five Mile Line Rd., Penfield, NY 14526

The following persons to provide service as Girls Soccer Camp Instructors, 7/30/12 – 8/03/12, for the fee of $22.00 per day: Voucher to be submitted 8/15/12.

Lindsey Igoe, 74 Hillcrest Drive, Penfield, NY 14526
Jamie Forken, 12 Pipes Meadow Trail, Penfield, NY 14526
Tess Puliano, 79 Lazy Trail, Penfield, NY 14526
Annette Cappellino, 32 Saybrooke Dr., Penfield, NY 14526
Elizabeth Marks, 65 Edenfield Rd., Penfield, NY 14526

Amend Resolution #12T-108 to read: Penfield Art Center, Drawing Your Dreams – 8/6/12 – 8/8/12 for a fee of $100 per participant. Voucher to be submitted 8/15/12.

The following persons to officiate soccer games for the Penfield Recreation Women’s Fall Soccer League, 9/8/12 – 11/3/12, for a fee of $38.00 per game:

Kathleen Buckley, 71 Valewood Run, Penfield, NY 14526
Michael Eckert, 34 May St., Rochester, NY 14620
Vitaliano Santoli, 177 Sunny Mill Lane, Rochester, NY 14626
Ilan Sankowski, 18 Terrain Dr., Rochester, NY 14618
Ofer Sankowski, 58 Pacer Dr., Henrietta, NY 14467
David Weaver, 14 Brightford Heights Road, Rochester, NY 14610

Vouchers to be submitted 10/17/12.
Penfield Racquet Club, 667 Panorama Trail W, Rochester, NY 14625, Pre Natal Aqua & Exercise, Water Yoga, Swim Lessons - 6 month - Age 3, Junior Racquetball, Boot Camp with Phil, Noontime Workout, Personal Training Package, Yoga Sculpt and Adult Racquetball Lessons, 9/20/12 - 12/22/12, for a fee of 70% of the total program revenue. Vouchers to be submitted 10/3, 11/7 and 12/20/12.

Pisces School of Dive, Inc., 783 Fairport Road, East Rochester, NY 14445, Discover Scuba Diving, 9/22/12 for a fee of 70% of the total revenue less expenses. Voucher to be submitted 10/3/12.

Danielle Staversky, 626 Cranberry Lane, Macedon, NY 14502, Jazzy Dance, 12/26/12 - 12/28/12, for the fee of $52.00 per day. Voucher to be submitted 12/19/12.

Dave Rogachefsky, 2199 East Main Street, Rochester, NY 14609, Friday Gym Frolics and K-21 Sports of all Sorts, 9/21/12 - 11/16/12 for a fee of 70% of the total program revenue. Vouchers to be submitted 10/3 and 11/7/12.

TrueNorth Equestrian Center, 3476 Atlantic Avenue, Penfield, NY 14526, Horseback Riding Intro, 9/24/12 - 10/24/12, for a fee of 70% of the total program revenue. Voucher to be submitted 10/17/12.

Gymnastics Training Center, 2051 Fairport Nine Mile Point Road, Penfield, NY 14526, Gymnastics - Beginner and Gymnastics for Tiny Tumblers - 9/24/12 - 10/29/12 for a fee of 70% of the total program revenue. Voucher to be submitted 11/7/12.

Genesee Conservation League, 1570 Old Penfield Road, Rochester, NY 14625, Youth Basic Air-Rifle Instruction, 9/8/12 - 11/10/12 for a fee of 75% of the total program revenue. Vouchers to be submitted 9/19/12 and 11/7/12.

Maureen Ward, 46 Reynolds Road, Webster, NY 14580, Handmade Holiday Cards, 9/25/12 - 11/13/12 for a fee of 70% of the total program revenue. Vouchers to be submitted 10/3/12 and 11/21/12.

Martha Sweeney, 74 Redwood Drive, Penfield, NY 14526, Painting and Drawing, 9/19/12 - 11/14/12, for a fee of 70% of the total program revenue. Vouchers to be submitted 10/3/12 and 11/7/12.

Kathryn Boone, KB Dog Training, 28 Landing Park, Rochester, NY 14625, Beginner Dog Obedience, 9/8/12 - 10/13/12 for a fee of 70% of the total program revenue less expenses. Vouchers to be submitted 9/19/12 and 10/17/12.

Richard Engelbrecht, 27 Tilsit Way, Webster, NY 14580, Introduction to Digital Photography, 10/15/12 - 11/5/12 for a fee of 70% of the total program revenue. Voucher to be submitted 11/7/12.

Diane DiRoberto, P.O. Box 10621, Rochester, NY 14610, Photo Tips from the Pros - 10/6/12, for a fee of 70% of the total program revenue. Voucher to be submitted 10/17/12.

Rees & Company, Inc., 147 Morgan Road, Scottsville, NY 14546, Remodeling Your Kitchen: Getting Started, 9/20/12 for a fee of 70% of the total program revenue. Voucher to be submitted 10/3/12.

Lara Haase, 87 City View Drive, Rochester NY 14625, Cardio Hoop, 9/19/12 - 12/12/12, for a fee of 70% of the total program revenue. Vouchers to be submitted 10/3/12 and 12/5/12.

Rhonda Flint, 560 Helendale Road, Rochester, NY 14609, Gentle Yoga and Pilates Mat Class, 9/11/12 - 12/11/12 for a fee of 75% of the total program revenue per class for 10 or less registrants or a fee of 70% of the total program revenue per class for over 10 registrants. Vouchers to be submitted 9/19, 10/17 and 12/5/12.
(Resolution #12T-186 – Continued)

Anne Freitas, 85 Harwood Circle, Rochester, NY 14625, Get Fit with Fun, 9/11/12 - 12/20/12, for a fee of 70% of the total program revenue. Vouchers to be submitted 9/19, 10/17, 11/21 & 12/19/12.

Sandra Sanzotta, 911 Lothario Circle, Webster, NY 14580, Low Impact Aerobics, 9/8/12 - 12/15/12 for a fee of 70% of the total program revenue. Vouchers to be submitted 9/19, 11/7 and 12/19/12.

Marilyn Kerstjens, 42 Peaceful Harbor Lane, Webster, NY 14580, Vinyasa Yoga, 9/17/12 - 12/3/12 for a fee of 70% of the total program revenue. Vouchers to be submitted 10/3, 11/7 and 12/5/12.

Glenda Bondy, 16 St. Ebbas Drive, Penfield, NY 14526, Zumba Gold - Wednesdays, 9/12/12 - 11/28/12 for a fee of 70% of the total program revenue. Vouchers to be submitted 9/19, 10/17 and 12/5/12.

Lisa Valcore, 57 Country Lane, Penfield, NY 14526, Zumba Gold – Fridays, 9/14/12 - 11/30/12 for a fee of 75% of the total program revenue per class for 10 or less registrants or a fee of 70% of the total program revenue per class for over 10 registrants. Vouchers to be submitted 9/19, 10/17 and 12/5/12.

Marcia Orlandini, 11 Brookside Drive, Fairport, NY 14450, Volleyball Co-ed Play, 9/13/12 - 12/13/12, for a fee of $25.00 per class. Vouchers to be submitted 10/3 and 11/21/12.

Moved: Kohl
Seconded: Quinn

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Adopted

Old Business

New Business

#12T-187 Setting a Public Hearing for Adoption of Local Law No. 1 of 2012 to be Known as “A Local Law to Effect a Moratorium and Prohibition Within the Town of Natural Gas and Petroleum Exploration and Extraction Activities, Underground Storage of Natural Gas, and Disposal of Natural Gas or Petroleum Extraction, Exploration and Production Wastes by Moore

WHEREAS, the Town Board of the Town of Penfield wishes to consider adopting proposed Local Law No. 1 of 2012 which would put into effect a moratorium and prohibition within the Town of Penfield of natural gas and petroleum exploration and extraction activities, underground storage of natural gas and disposal of natural gas or petroleum extraction, exploration and production wastes; and

WHEREAS, the Penfield Town Board is best suited to act as “lead agency” within the meaning of the State Environmental Quality Review Act (SEQRA) and thus does hereby designate itself as “lead agency” pursuant to SEQRA; and

WHEREAS, the subject application is determined to be a Type II action pursuant to the State Environmental Quality Review Act (SEQRA);
NOW, THEREFORE, BE IT 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 5, 2012, at 7:30 PM on said date, to consider the said proposal and to hear all persons interested on the question of the adoption of Local Law No. 1 of 2012 which would put into effect a moratorium and prohibition within the Town of Penfield of natural gas and petroleum exploration and extraction activities, underground storage of natural gas and disposal of natural gas or petroleum extraction, exploration and production wastes, a copy of which is attached hereto and made a part hereof known as Schedule “A”; 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 three (3) nor more than thirty (30) 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.

See Schedule "A" at end of Minutes

Moved: Moore
Seconded: Kohl

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

Adopted

Public Participation - None

Adjournment

Supervisor LaFountain adjourned the meeting at 8:10 PM.

Amy Steklof
Town Clerk
LOCAL LAW FILING

(Use this form to file a local law with the Secretary of State)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County

City

Town of Penfield

Village

Local Law No. 1 of the year 2012.

A local law “to effect a Moratorium and Prohibition Within The Town of Natural Gas And Petroleum Exploration And Extraction Activities, Underground Storage Of Natural Gas, And Disposal Of Natural Gas Or Petroleum Extraction, Exploration, And Production Wastes.”

Be it enacted by the Town Board of the

County

City

Town of Penfield, as follows:

Village

Section 1. TITLE

This Local Law shall be known as the “Moratorium on and Prohibition of Gas And Petroleum Exploration And Extraction Activities, Underground Storage Of Natural Gas, and Disposal Of Natural Gas Or Petroleum Extraction, Exploration, And Production Wastes.”

Section 2. AUTHORITY AND INTENT; FINDINGS; PURPOSE

A. The Town Board of the Town of Penfield hereby adopts this Local Law pursuant to the authority described at Section 1. of Appendix A attached hereto, which Appendix A is hereby incorporated and made a part of this Local Law for all purposes by this reference.
B. The Town Board has found, determined, and made the declarations of findings set forth at Section 2. of Appendix A attached hereto.

C. The Purposes underlying the Town Board’s passage of this Local Law, as articulated, found, and declared by the Town Board, are set forth at Section 3. of Appendix A attached hereto.

Section 3. DEFINITIONS

For purposes of this Local Law, the following terms shall have the meanings respectively set forth below:

Agriculture Use--- Land used for the production of crops and/or livestock and livestock products (as those terms are defined at Section § 301 of the New York State Agriculture and Markets Law).

Board of Appeals --- The Zoning Board of Appeals of the Town.

Below-Regulatory Concern --- Radioactive material in a quantity or of a level that is distinguishable from background (as that phrase is defined at 10 CFR §20.1003), but which is below the regulation threshold established by any regulatory agency otherwise having jurisdiction over such material in the Town.

Injection Well --- A bored, drilled or driven shaft whose depth is greater than the largest surface dimension, or a dug hole whose depth is greater than the largest surface dimension, through which fluids (which may or may not include semi-solids) are injected into the subsurface and less than ninety (90) percent of such fluids return to the surface within a period of ninety (90) days.

Land Application Facility --- A site where any Natural Gas Exploration And/Or Petroleum Production Wastes are applied to the soil surface or injected into the upper layer of the soil.

Natural Gas --- Methane and any gaseous substance, either combustible or non-combustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at standard temperature and pressure conditions, and/or gaseous components or vapors occurring in or derived from petroleum or other hydrocarbons.

Natural Gas And/Or Petroleum Exploration Activities --- Geologic or geophysical activities related to the search for natural gas, petroleum or other subsurface hydrocarbons including prospecting, geophysical and geologic seismic surveying and sampling techniques, but only to the extent that such activities involve or employ core, rotary, or any other type of drilling or otherwise making any penetration or excavation of any land or water surface in the search for and evaluation of natural gas, petroleum, or other subsurface hydrocarbon deposits.

Natural Gas And/Or Petroleum Extraction Activities --- The digging or drilling of a well for the purposes of exploring for, developing or producing natural gas, petroleum or other subsurface hydrocarbons, including without limitation any and all forms of shale fracturing.

Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes --- Any of the following in any form, and whether or not such items have been excepted or exempted from the
coverage of any federal or state environmental protection laws, or have been excepted from statutory or regulatory definitions of "industrial waste," or "hazardous" or "toxic" substances, materials, or wastes, and whether or not such substances are generally characterized as waste: (a) below-regulatory concern radioactive material, or any radioactive material which is not below-regulatory concern, but which is in fact not being regulated by the regulatory agency otherwise having jurisdiction over such material in the Town, whether naturally occurring or otherwise, in any case relating to, arising in connection with, or produced by or incidental to the exploration for, the extraction or production of, or the processing, treatment, or transportation of, natural gas, petroleum, or any related hydrocarbons; (b) natural gas or petroleum drilling fluids; (c) natural gas or petroleum exploration, drilling, production or processing wastes; (d) natural gas or petroleum drilling treatment wastes (such as oils, frac fluids, produced water, brine, flowback, sediment and/or any other liquid or semi-liquid material); (e) any chemical, waste oil, waste emulsified oil, mud, or sediment that was used or produced in the drilling, development, transportation, processing or refining of natural gas or petroleum; (f) soil contaminated in the drilling, transportation, processing or refining of natural gas or petroleum; (g) drill cuttings from natural gas or petroleum wells; or (h) any other wastes associated with the exploration, drilling, production or treatment of natural gas or petroleum. This definition specifically intends to include some wastes that may otherwise be classified as "solid wastes which are not hazardous wastes" under 40 C.F.R. § 261.4(b). The definition of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes does not include (i) recognizable and non-recognizable food wastes, or (ii) waste generated by Agriculture Use.

Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Disposal/Storage Facility --- Any of the following: (a) tanks of any construction (metal, fiberglass, concrete, etc.); (b) impoundments; (c) pits; (d) evaporation ponds; or (e) other facilities, in any case used for the storage or treatment of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes that: (i) are being held for initial use, (ii) have been used and are being held for subsequent reuse or recycling, (iii) are being held for treatment, or (iv) are being held for storage.

Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump --- Land upon which Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes, or their residue or constituents before or after treatment, are deposited, disposed, discharged, injected, placed, buried or discarded, without any intention of further use.

Natural Gas And/Or Petroleum Support Activities --- Shall mean and be any one or more of the following: (a) Natural Gas Compression Facility; (b) Natural Gas Processing Facility; (c) Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Disposal/Storage Facility; (d) Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump; (e) Land Application Facility; (f) Underground Injection; or (g) Underground Natural Gas Storage.

Natural Gas Compression Facility --- Those facilities or combination of facilities that move natural gas or petroleum from production fields or natural gas processing facilities in pipelines or into storage; the term shall include equipment for liquids separation, natural gas dehydration, and tanks for the storage of waste liquids and hydrocarbon liquids.

Natural Gas Processing Facility --- Those facilities that separate and recover natural gas liquids (NGLs) and/or other non-methane gases and liquids from a stream of produced natural gas, using equipment for any of the following: cleaning or stripping gas, cooking and dehydration, residual refinement, treating or removing oil or condensate, removing water, separating NGLs, removing
sulfur or carbon dioxide, fractionation of NGLs, or the capture of CO₂ separated from natural gas streams.

Person — Any individual, public or private corporation for profit or not for profit, association, partnership, limited liability company, limited liability partnership, firm, trust, estate, and any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

Radioactive Material — Material in any form that emits radiation, but only if such material has been moved from its naturally occurring location through an industrial process. Such material is “radioactive material” for purposes hereof, whether or not it is otherwise exempt from licensing and regulatory control pursuant to the NYS Department of Labor, the US Nuclear Regulatory Commission, the US Environmental Protection Agency, the US Department of Energy, the US Department of Transportation, or any other regulatory agency.

Radiation — The spontaneous emission of particles (alpha, beta, neutrons) or photons (gamma) from the nucleus of unstable atoms as a result of radioactive decay.

Subsurface — Below the surface of the earth, or of a body of water, as the context may require.

Town — The Town of Penfield, Monroe County, New York.

Town Board — The Town Board of the Town.

Underground Injection — Subsurface emplacement of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes by or into an Injection Well.

Underground Natural Gas Storage — Subsurface storage, including in depleted gas or oil reservoirs and salt caverns, of natural gas that has been transferred from its original location for the primary purpose of load balancing the production of natural gas. Includes compression and dehydration facilities.

Section 4. MORATORIUM AND PROHIBITION.

A. From and after the date of this Local Law, no application for a permit, zoning permit, special permit, zoning variance (except as contemplated by Section 8 of this Law), building permit, site plan approval, subdivision approval or other Town-level approval shall be accepted, processed, approved, approved conditionally, or issued for the construction, establishment, or use or operation of any land, body of water, building, or other structure located within the Town for any of the following: (i) any Natural Gas And/Or Petroleum Extraction Activities; or (ii) any Natural Gas And/Or Petroleum Support Activities.

B. From and after the date of this Local Law, no Person shall use, cause, or permit to be used, any land, body of water, building, or other structure located within the Town for any of the following: (i) any Natural Gas And/Or Petroleum Extraction Activities; or (ii) any Natural Gas And/Or Petroleum Support Activities.
C. The moratorium and prohibition set forth above in Sections A. and B. of this Section 4. are not intended, and shall not be construed, to: (a) prevent or prohibit the right to use roadways in commerce or otherwise for travel; (y) prevent or prohibit the transmission of natural gas through utility pipes, lines, or similar appurtenances for the limited purpose of supplying natural gas to residents of or buildings located in the Town; or (z) prevent or prohibit the incidental or normal sale, storage, or use of lubricating oil, heating oil, gasoline, diesel fuel, kerosene, or propane in connection with legal Agriculture, residential, business, commercial, and other uses within the Town.

D. This moratorium and prohibition shall be in effect beginning on the effective date of this Local Law and shall expire on the earlier of (i) that date which is one year after said effective date, or (ii) the effective date of a duly enacted repeal of this Local Law.

E. This moratorium and prohibition shall apply to all real property within the Town.

F. Under no circumstances shall the failure of the Town Board of the Town, the Zoning Board of Appeals of the Town, the Planning Board of the Town, or the Code Enforcement Officer for the Town to take any action upon any application for a permit, zoning permit, special permit, zoning variance, building permit, site plan approval, subdivision approval, or other Town-level approval constitute an approval by default or an approval by virtue of expiration of time to respond to such application.

Section 5. PENALTIES.

A. Failure to comply with any of the provisions of this Local Law shall be an unclassified misdemeanor as contemplated by Article 10 and Section 86.05 of the New York State Penal Law, and, upon conviction thereof, shall be punishable by a fine of not more than One Thousand Five Hundred Dollars ($1,500) or imprisonment for not more than 10 days, or both, for the first offense. Any subsequent offense within a three month period shall be punishable by a fine of not more than Two Thousand Five Hundred Dollars ($2,500) or imprisonment for a period of not more than 30 days, or both. For purposes of this Clause A., each day that a violation of this Local Law exists shall constitute a separate and distinct offense.

B. Compliance with this Local Law may also be compelled and violations restrained by order or by injunction of a court of competent jurisdiction, in an action brought on behalf of the Town by the Town Board. In the event the Town shall seek any such equitable relief, the Town shall not be required to: (i) show or prove the lack of an adequate remedy in law; or (ii) post any bond or undertaking.

C. In the event the Town desires or is required to take legal action to enforce this Local Law the violator will be responsible for any and all necessary costs and expenses incurred by the Town relative thereto, including attorneys', engineering, consulting, and experts' fees; however, any responsibility or liability therefor, and the amount thereof, shall be determined by a Court or other tribunal of competent jurisdiction, and this clause shall be interpreted, construed, and applied only to the maximum extent permitted by applicable law.

Section 6. "GRANDFATHERING" OF LEGAL, PRE-EXISTING NON-CONFORMING USE

Page 5 of 9
Notwithstanding any provision hereof the contrary, any Natural Gas And/Or Petroleum Extraction Activities that are being conducted in the Town as of the effective date of this Local Law shall be subject to the following:

A. If, as of the effective date of this Local Law, substantive Natural Gas And/Or Petroleum Extraction Activities are occurring in the Town, and those activities are in all respects being conducted in accordance with all applicable laws and regulations, including without limitation pursuant to and in compliance with all valid permits required to be issued by the New York State Department of Environmental Conservation ("DEC") and all other regulating agencies, then and only then such Activity shall be considered a pre-existing, non-conforming use and shall be allowed to continue, subject, however, to the provisions of Clauses B. and C. of this Section 6.

2. Natural Gas And/Or Petroleum Extraction Activities that are being conducted in the Town as of the effective date of this Local Law and which do not qualify for treatment under the preceding Clause A. 1. of this Section 6 shall not be grandfathered, and shall in all respects be prohibited as contemplated by Section 4 hereof.

B. Upon the depletion of any well which is allowed to remain in operation after the effective date of this Local Law by virtue of Clause A. 1. of this Section 6, or upon any other substantive cessation of Natural Gas And/Or Petroleum Extraction Activities (otherwise grandfathered by virtue of Clause A. 1. of this Section 6) for a period of more than twelve (12) months, then in such event the non-conforming use status of such Activity shall terminate, and thereafter such Natural Gas And/Or Petroleum Extraction Activities shall in all respects be prohibited as contemplated by Section 4 hereof.

C. Notwithstanding any provision hereof to the contrary, the pre-existing, non-conforming status conferred and recognized by Clause A. 1. of this Section 6 is not intended, and shall not be construed, to authorize or grandfather any Natural Gas And/Or Petroleum Extraction Activities extending beyond whatever well bore is authorized in any DEC permit in existence as of the effective date of this Local Law. Any expansion or attempted or purported expansion shall not be grandfathered under Clause A. 1. of this Section 6, and instead shall in all respects be prohibited as contemplated by Section 4 hereof. 'Grandfathered' and allowed lawful pre-existing uses neither have nor possess any right to expand such non-conforming use, whether above or below ground, and no such right shall be deemed, construed, or implied to exist.

Section 7. INVALIDITY OF ANY CONFLICTING APPROVALS OR PERMITS.

Except as contemplated by Section 8 of this Local Law, no permit or approval issued by any local agency, department, commission or board shall be deemed valid when or to the extent that such permit or approval purports to allow or permit any activity that would violate the prohibitions set forth at Section 4 of this Local Law.

Section 8. HARDSHIP USE VARIANCE.

The Board of Appeals of the Town is hereby authorized to accept and review (after public notice and hearing and in accordance with the requirements of law and of this Local Law) requests for a hardship use variance from application of the provisions of this Local Law by
persons aggrieved hereby.

No such use variance shall be granted by the Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship.

A. Unnecessary Hardship. In order to prove such unnecessary hardship the applicant is required to demonstrate to the Board of Appeals that, with respect to every permitted use under the zoning regulations for the particular district where the property is located, each of the following four criteria is satisfied: (i) the applicant cannot realize a reasonable return on the entire parcel of property, and such lack of return is substantial as demonstrated by competent financial evidence; (ii) the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; (iii) the requested use variance, if granted, will not alter the essential character of the neighborhood; and (iv) the alleged hardship has not been self-created.

B. Reasonable Rate of Return. In evaluating whether the applicant can realize a reasonable rate of return, the Board of Appeals must examine whether the entire original or expanded property holdings of the applicant are incapable of producing a reasonable rate of return (and not just the site of the proposed development project). No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Board of Appeals finds that the applicant has clearly demonstrated, by detailed “dollar and cents” proof, the inability to obtain a reasonable return for the entire parcel (and not just the site of the proposed project) and for each and every permitted use in the district (including those uses permitted by special use permit).

C. Unique Hardship. No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Board of Appeals finds that the entire parcel of which the project is a part possesses unique characteristics that distinguish it from other properties in the area.

D. Essential Character of the Neighborhood. In making its determination of whether the proposed development project will alter the essential character of the neighborhood, the Board of Appeals shall take into account factors that are of vital importance to the citizens of the Town including without limitation: (i) the rural residential, agricultural and historic character of the area and the Town, (ii) its irreplaceable recreation and tourism sites, (iii) the extent of hazard to life, limb or property may result from the proposed development project, (iv) health impacts, (v) the social and economic impacts of traffic congestion, noise, dust, odors, emissions, solid waste generation and other nuisances, (vi) the impact on property values, and (viii) whether the applicant will use a style of development that will result in degradation to the air quality, water quality and environment of the Town. In order to find that the proposed development project does not alter the essential character of the neighborhood, the Board of Appeals shall interpret the public interest in said essential character of the neighborhood to require, at a minimum, that the project will not do any of the following: (x) pose a threat to the public safety, including public health, water quality or air quality, (y) cause an extraordinary public expense, or (z) create a nuisance.

E. Self-Created Hardship. The Board of Appeals may find that the applicant suffers from a self-created hardship in the event that the Board finds that (i) the applicant’s inability to obtain a reasonable return on the property as a whole results from having paid too much for the property, or that such inability arises from a poor investment decision; (ii) the applicant previously divided
the property and is left with only a portion which suffers from some unique condition for which relief is sought and which did not apply to the parcel as a whole; or (iii) when the applicant purchased the property, he or she knew or should have known the property was subject to the zoning restrictions.

In the event the Board of Appeals grants a hardship use variance from the provisions of this Local Law to the applicant, the applicant shall be required to comply with all provisions of the Town’s then applicable zoning laws and other laws and regulations, together with any amendments to such law or regulations which may be enacted during the term of this Local Law. Any hardship use variance that is granted shall grant only the minimum variance that the Board of Appeals deems necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Section 9. SEVERABILITY.

If any word, phrase, sentence, part, section, subsection, or other portion of this Local Law, or the application thereof to any person or to any circumstance, is adjudged or declared invalid or unenforceable by a court or other tribunal of competent jurisdiction, then, and in such event, such judgment or declaration shall be confined in its interpretation and operation only to the provision of this Local Law that is directly involved in the controversy in which such judgment or declaration is rendered, and such judgment or declaration of invalidity or unenforceability shall not affect or impair the validity or enforceability of the remainder of this Local Law or the application hereof to any other persons or circumstances. If necessary as to such person or circumstances, such invalid or unenforceable provision shall be and be deemed severed herefrom, and the Town Board of the Town hereby declares that it would have enacted this Local Law, or it a whole; or (iii) when the applicant purchased the property, he or she knew or should have known the property was subject to the zoning restrictions.

Section 10. SUPERSEDING INTENT AND EFFECT.

During the time this Local Law is in effect, it is the specific intent of the Town Board, pursuant to Municipal Home Rule Law § 10(1)(ii)(d)(3) and §22, to supersede: (a) any inconsistent provisions set forth in Town Law § 265-a; § 267; § 267-a, § 267-b, § 268; §274-a, §274-b, § 276, § 277, § 278, and § 279; (b) any other inconsistent provisions set forth in Article 16 of the Town Law; (c) any inconsistent provisions of the Zoning Ordinance of the Town of Penfield; and (d) any inconsistent provisions of any and all other local ordinances, local laws, or local resolutions or other legislation or policies of the Town of Penfield.

Section 11. GENERAL PROVISIONS.

A. The Building/Code Compliance Inspector is hereby designated as the authorized enforcement officer for purposes of interpreting and enforcing this Local Law. The Town Board reserves the right, by resolution to change or designate additional enforcement officers.

B. The section and other headings and titles to clauses and phrases in this Local Law are for convenience only, and shall not be used or construed to limit or define the scope or application of the
classes and phrases so following such headings or titles. Each section of this Local Law, whether in the nature of a preamble or otherwise, is a material part of this Local Law.

Section 12. EFFECTIVE DATE.

This Local Law shall take effect immediately upon filing with the New York Department of State.

__________________________________________________________
I hereby certify that the local law annexed hereto, designated as Local Law No. __________ of 2012 of the Town of Penfield, was duly passed by the Town Board on __________ in accordance with the applicable provisions of law.

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1 above.

Amy Steklof, Town Clerk
Date: __________

(Seal)

STATE OF NEW YORK
COUNTY OF MONROE

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Richard Horwitz, Esq.,
Town Attorney for the Town of Penfield
Date: __________
APPENDIX A
ATTACHED TO AND FORMING A PART OF
TOWN OF PENFIELD (NY) LOCAL LAW NO. 1 OF THE YEAR 2012,
known as:
"Moratorium on and Prohibition of
Gas And Petroleum Exploration And Extraction Activities,
Underground Storage Of Natural Gas,
and Disposal Of
Natural Gas Or Petroleum Extraction, Exploration, And Production Wastes."

The "Moratorium on and Prohibition of Gas And Petroleum Exploration And Extraction Activities, Underground Storage Of Natural Gas, and Disposal Of Natural Gas Or Petroleum Extraction, Exploration, And Production Wastes" to which this Appendix A is attached is herein sometimes referred to as "this Local Law" or "this Law."

This Appendix A is a part of the Local Law to which it is attached for all purposes.

Section 1. Authority and Intent. This Local Law is intended to be consistent with and is adopted pursuant to the authority granted to the Town Board of the Town of Penfield under the New York State Constitution, and the Laws of the State of New York, including but not limited to the following authorities: New York State Constitution Article IX, Section 2 (c)(ii)(6), (10); Municipal Home Rule Law § 10(1)(j); Municipal Home Rule Law § 10(1)(ii)(a)(6), (11), (12), and (14); Municipal Home Rule Law § 10(1)(ii)(d)(3); Municipal Home Rule Law § 10(2); Municipal Home Rule Law § 10(3); Municipal Home Rule Law § 10(4)(a), and (b); Statute of Local Governments §10(1), (6), and (7); Town Law § 64(17-a), (20-b), and (23); Town Law § 130(5), (6), (7), (8), (11), (14), (15), and (23); Town Law § 135; Town Law Article 16 (Zoning & Planning) inclusive; Environmental Conservation Law § 17-1101, §27-0711; and New York State Law, Public Health Law § 228 (2), and (3).

This Law is a police power and land use regulation. This Law is intended and is hereby declared to address matters of local concern, and it is declared that it is not the intention of the Town to address matters of statewide concern. This Local Law is intended to act as and is hereby declared to exercise the permissive "incidental control" of a land use law that is concerned with the broad area of land use planning and the physical use of land and property within the Town, including the physical externalities associated with certain land uses, such as negative impacts on roadways and traffic congestion and other deleterious impacts on a community.

Section 2. Findings of Fact.

1. Penfield is a community in Monroe County that takes great pride in and assigns great
value to its quality of life, and cultural, recreational, scenic and other natural resources.

A. Penfield, New York is a residential community of 34,000 with a small town atmosphere and abundant natural resources including vital waterways and hundreds of acres of parks and trails. The town is regarded as "a great place to raise a family" because of its honored agricultural heritage, quiet neighborhoods, innovative library, excellent schools, variety of faith communities, accessible small business districts and a culture of wellness that provides rich recreation opportunities for all ages. Penfield residents are informed, motivated and civically engaged; nearly 150 neighbors serve on the town’s many boards and advisory committees.

Penfield is steeped in its agricultural tradition and is committed to historic preservation; it also looks to the future with community-based long-term comprehensive planning. With a strong public mandate from a 2002 Open Space referendum, Penfield has protected more than 1,200 acres for agriculture and recreational use to date. Penfield has earned its reputation as a statewide leader in Open Space preservation*, and the town serves as a role model for other communities wishing to protect their natural resources. The 2012 Open Space committee is currently reviewing additional land for future protection.

The Town of Penfield and its residents consistently demonstrate their commitment to the preservation of land, natural resources and quality of life for future generations, and together present a collective desire to conserve these critical assets and protect them from natural gas drilling and all associated intended – and unintended – industrial activities.

*In September 2002, the Town of Penfield received an award from the Upstate New York Chapter of the American Planning Association for its Open Space Plan. The Town was awarded the 2002 Outstanding Planning Project - Implementation, for its efforts toward resource preservation.

B. There are ten watershed districts in the town of Penfield. All watersheds directly affect the health of Irondequoit Bay, and three have a significant impact on the health of the waters of Lake Ontario. The Town of Penfield is a regional leader in Stormwater Management and committed to public education and protection of waterways.

2. Many residents are dependent upon aquifers and wells for irrigation and agricultural purposes, and various businesses are dependent upon aquifers for the operation of their businesses; maintaining the quality of water resources within the Town is critical to protecting the natural environment of the Town, the general health and welfare of Town residents, and the local economy.

3. Preservation of the Town’s irreplaceable recreational and scenic sites, high-quality agricultural land, air quality and water quality, and priceless and unique character, is of
significant value to the inhabitants of the Town and to the tourists who visit here.

4. The Town’s rich natural environment is a valuable asset that creates a sense of identity and well-being for residents of the area. Preserving and protecting the scenic, recreational, and other natural resources of the Town is important for both a healthy environment and vibrant economy. Aesthetic issues are real and evoke strong reactions from people. They deeply affect the way people feel about a place – whether or not businesses will want to locate, or people will want to live in and visit a place.

5. Allowing the activities prohibited by Section 4. of the Local Law could impair the existing character of the Town, because by their very nature such activities have the potential to produce a combination of negative impacts upon the environment and people living in or in proximity to the communities in which they are located. Such negative impacts may include, without limitation, traffic, noise, vibrations, fumes, damage to roadways, degradation of water quality, degradation of air quality, decreased availability of affordable housing, damage to and loss of agricultural lands and soils, damage to and loss of open space, natural areas, and scenic views, decreased recreational opportunities, and damage to the tourism industries.

6. If one or more of the activities prohibited by Section 4. of the Local Law are conducted within the Town, traffic generated thereby could be hazardous or inconvenient to the inhabitants of the Town and could be dangerous to pedestrians (especially children), cyclists, and motorists, and could result in traffic congestion that could delay emergency response times for medical emergencies, fires and accidents. Roads are a critical public resource and constitute a major investment of the public’s money. The Town is not in a position to bear the high costs associated with the road use impacts that accompany many of the activities prohibited by Section 4. of the Local Law. Accidents involving heavy trucks have greater potential for death than those involving smaller vehicles. Increased truck traffic increases air pollution and noise levels, and decreases the quality of life and property values for those living nearby.

7. If one or more of the activities prohibited by Section 4. of the Local Law are conducted within the Town, the air pollution, dust and odors generated thereby (whether onsite or by truck traffic to and from the proposed site of such activities) could be hazardous or inconvenient to the inhabitants of the Town. Air pollution is a known hazard to the public health.

8. Allowing one or more of the activities prohibited by Section 4. of the Local Law to be conducted within the Town could negatively impact the quality of water resources within the Town. Water pollution is hazardous to the public health. If a domestic water source is contaminated, remediation is time and cost intensive, and may not restore the water resource to a quality acceptable for domestic use.

9. If one or more of the activities prohibited by Section 4. of the Local Law are conducted within the Town, noise, vibrations, and light pollution typically caused by such Activities could be hazardous or inconvenient to the inhabitants of the Town. Noise,
traffic congestion, nighttime lighting, and vibrations can have negative effects on human health and wildlife.

10. The creation, generation, keeping, storage or disposal of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes (as that term is defined at Section 3. of the Local Law) within the Town could have a negative impact on the public health, safety and welfare of the inhabitants of the Town.

11. The high costs associated with the disposal of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes (as that term is defined at Section 3. of the Local Law) have in other localities resulted, and could in our Town result, in persons seeking to avoid such costs by depositing such material along roadways, in vacant lots, on business sites, in the private dumpsters of others, or in other unauthorized places. Such activities could pose a hazard to the public health, safety, and welfare of the inhabitants of the Town.

12. The explicit proscription of the activities prohibited by Section 4. of the Local Law is a legitimate goal of land use laws. There is no question that exclusion of specified industrial uses is a legitimate goal of such laws:

As the United States Supreme Court stated in Town of Belle Terre v. Borass, 416 U.S. 1 (1974):

> the concept of public welfare is broad and inclusive.... The values that it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the [local] legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.

416 U.S. at 6.

And see also Matter of Gernatt Asphalt Products, Inc. v. Town of Sardinia, 87 N.Y. 2d 668 (1996), where the Court of Appeals, New York State’s highest court, evaluated a claim that a town’s prohibition of mining throughout the town was in effect unconstitutional ‘exclusionary zoning,’ and held as follows:

> We have never held, however, that the ... ['exclusionary zoning'] test, which is intended to prevent a municipality from improperly using the zoning power to keep people out, also applies to prevent the exclusion of industrial uses... A municipality is not obliged to permit the exploitation of any and all natural resources within the town as a permitted use if limiting that use is a reasonable exercise of its police power to prevent damage to the rights of others and to promote the interests of the community as a whole. 87 N.Y. 2d at 683, 684 (emphasis added.)
Section 3. Purposes. The purpose of the Local Law is to enable the Town of Penfield to stay the construction, operation, and establishment of, and the submission and processing of applications for permits, zoning permits, special permits, zoning variances, building permits, operating permits, site plan approvals, subdivision approvals, certificates of occupancy, certificates of compliance, temporary certificates, and other Town-level approvals respecting, the activities prohibited by Section 4. of the Local Law, for a reasonable time, so as to allow the Town time to study the impacts, effects, and possible controls over such activities and to consider amendments to the Town’s zoning laws to address the same. The Town Board finds that a moratorium of one year duration, coupled with a mechanism for an ‘unnecessary hardship’ variance procedure, will achieve an appropriate balancing of interests between (on the one hand) the public need to safeguard the character and other resources of the Town of Penfield and the health, safety and general welfare of its residents, and the rights of individual property owners or businesses desiring to conduct such activities (on the other) during such period.

--- END ---
617.20  
Appendix C  
State Environmental Quality Review  
SHORT ENVIRONMENTAL ASSESSMENT FORM  
For UNLISTED ACTIONS Only  

<table>
<thead>
<tr>
<th>PART 1 - PROJECT INFORMATION (To be completed by Applicant or Project sponsor)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. APPLICANT/SPONSOR: Town of Penfield</td>
</tr>
<tr>
<td>2. PROJECT NAME: Adopting Local Law to Effect Moratorium for Gas Exploration</td>
</tr>
<tr>
<td>3. PROJECT LOCATION: County: Monroe</td>
</tr>
<tr>
<td>Municipality: Town of Penfield</td>
</tr>
<tr>
<td>4. PRECISE LOCATION (Street address and road intersections, prominent landmarks, etc., or provide map): The proposed moratorium will encompass the entire corporate limits of the Town of Penfield approximately 36 square miles.</td>
</tr>
<tr>
<td>5. IS PROPOSED ACTION:</td>
</tr>
<tr>
<td>☑ New ☐ Expansion ☐ Modification/alteration</td>
</tr>
<tr>
<td>6. DESCRIBE PROJECT BRIEFLY: The town Board of the Town of Penfield proposes to adopt Local Law No. 1 of 2012 to effect a moratorium and prohibition within the town of natural gas and petroleum exploration and extraction activities, underground storage of natural gas and disposal of natural gas or petroleum extraction and production wastes.</td>
</tr>
<tr>
<td>7. AMOUNT OF LAND AFFECTED: 36 ± square miles</td>
</tr>
<tr>
<td>Initially: acres Utimately: acres</td>
</tr>
<tr>
<td>8. WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER EXISTING LAND USE RESTRICTIONS?</td>
</tr>
<tr>
<td>☑ Yes ☐ No If no, describe briefly: Such activities are not a permitted use within the Town of Penfield.</td>
</tr>
<tr>
<td>9. WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT?</td>
</tr>
<tr>
<td>☑ Residential ☑ Industrial ☑ Commercial ☑ Agriculture ☑ Park/Forest/Open space ☐ Other</td>
</tr>
<tr>
<td>Describe: The moratorium will encompass all land uses within the Town of Penfield.</td>
</tr>
<tr>
<td>10. DOES ACTION INVOLVE A PERMIT APPROVAL OR FUNDING NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (FEDERAL, STATE OR LOCAL)?</td>
</tr>
<tr>
<td>☑ Yes ☐ No If yes, list agency(s) and permit/approvals</td>
</tr>
<tr>
<td>11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL?</td>
</tr>
<tr>
<td>☑ Yes ☐ No If yes, list agency name and permit/approval</td>
</tr>
<tr>
<td>12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT/APPROVAL REQUIRE MODIFICATION?</td>
</tr>
<tr>
<td>☑ Yes ☐ No</td>
</tr>
<tr>
<td>I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE</td>
</tr>
<tr>
<td>Applicant/sponsor name: Town of Penfield</td>
</tr>
<tr>
<td>Date: August 1, 2012</td>
</tr>
<tr>
<td>Signature:</td>
</tr>
</tbody>
</table>

If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment.
PART II – ENVIRONMENTAL ASSESSMENT (To be completed by Agency)

A. DOES ACTION EXCEED ANY TYPE I THRESHOLD IN 6 NYCRR, PART 617.12? If yes, coordinate the review process and use the FULL EAF.

☐ Yes ☐ No

B. WILL ACTION RECEIVE COORDINATED REVIEW AS PROVIDED FOR UNLISTED ACTIONS IN 6 NYCRR, PART 617.6? If No, a negative declaration may be superseded by another involved agency.

☐ Yes ☐ No

C. COULD ACTION RESULT IN ANY ADVERSE EFFECTS ASSOCIATED WITH THE FOLLOWING: (Answers may be hand written, if legible)

C1. Existing air quality, surface or groundwater quality or quantity, noise levels, existing traffic patterns, solid waste production or disposal potential for erosion, drainage or flooding problems: Explain briefly.

The proposed moratorium will preserve existing conditions within the Town.

C2. Aesthetic, agricultural, archaeological, historic, or other natural or cultural resources; or community or neighborhood character? Explain briefly.

The proposed moratorium will preserve existing conditions within the Town.

C3. Vegetation or fauna, fish, shellfish or wildlife species, significant habitats, or threatened or endangered species? Explain briefly.

The proposed moratorium will preserve existing conditions within the Town.

C4. A community’s existing plans or goals as officially adopted, or a change in use or intensity of use of land or other natural resources? Explain briefly.

The Town’s current Comprehensive Plan does not permit the extraction of natural gas and petroleum extraction, disposal or storage activities.

C5. Growth, subsequent development, or related activities likely to be induced by the proposed action? Explain briefly.

None are anticipated


The purpose of the moratorium is to protect the environment under existing conditions until such time as a coordinated policy can be developed relating to such extraction activities.

C7. Other impacts including changes in use of either quantity or type of energy? Explain briefly.

D. WILL THE PROJECT HAVE AN IMPACT ON THE ENVIRONMENTAL CHARACTERISTICS THAT CAUSED THE ESTABLISHMENT OF A CRITICAL ENVIRONMENTAL AREA (CEA)?

☐ Yes ☐ No If Yes, explain briefly

E. IS THERE, OR IS THERE LIKELY TO BE, CONTROVERSY RELATED TO POTENTIAL ADVERSE ENVIRONMENTAL IMPACTS?

☐ Yes ☐ No If Yes, explain briefly

PART III – DETERMINATION OF SIGNIFICANCE (To be completed by Agency)

INSTRUCTIONS: For each adverse effect identified above, determine whether it is substantial, large, important or otherwise significant. Each effect should be assessed in connection with its (a) setting (i.e. urban or rural); (b) probability of occurring; (c) duration; (d) reversibility; (e) geographic scope; and (f) magnitude. If necessary, add attachments or reference supporting materials. Ensure that explanations contain sufficient detail to show that all relevant adverse impacts have been identified and adequately addressed. If question D of Part II was checked yes, the determination and significance must evaluate the potential impact of the proposed action on the environmental characteristics of the CEA.

☐ Check this box if you have identified one or more potentially large or significant adverse impacts which MAY occur. Then proceed directly to the FULL EAF and/or prepare a positive declaration.

☐ 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 AND provide on attachments as necessary, the reasons supporting this determination:

Town Board of the Town of Penfield

Name of Lead Agency

R. Anthony LaFountain

Print or Type Name of Responsible Officer In Lead Agency

Signature of Responsible Officer in Lead Agency

August 1, 2012

Date

Penfield Town Supervisor

Title of Responsible Officer

Signature of Preparer (if different from responsible officer)