Town Board Work Session Agenda
August 22, 2012
7:00 PM

I. Call to Order

II. Approval of Minutes  August 8, 2012

III. Monthly Reports - July

IV. Public Hearing – 7:30 PM
   Public Hearing #1 - To Consider an Amendment to the Zoning Ordinance and
   Zoning Map to Allow 9.83 Acres of R-1-12 Zoned Property at 1994-B and 6.61 Acres
   of Multiple Residence Zoned Property at 1994-C Empire Blvd. to be Rezoned to
   General Business – SBL#'s 093.02-1-24.997 and 092.01-1-25.1 – DiMarco Brandt
   Point LLC

V. Guests - None

VI. ACTION ITEMS
   Law and Finance
   1. 1857 Penfield Road Restaurant – Costello
   2. 1833 Penfield Road – Costello
   3. 30 Sanders Farm Dr./2041 Penfield Road – Costello

   Public Works
   1. Sherwood Forest PS Capacity Evaluation – DiFrancesco
   2. Ellison Heights Storm Water Drainage Request - Costello

   Public Safety - None

   Community Services - None

VII. INFORMATIONAL ITEMS
   Law and Finance - None

   Public Works
   1. Allen’s Creek Update – Benway

   Public Safety - None

   Community Services - None

VIII. HELD ITEMS
   1. Pond Ownership – Staff
   2. Dedication of Cloister Lane – Benway
   3. License Agreement Request – 126 Jackson Road Ext. – Dr. Alan Litvinov – DiFrancesco
   4. Southpoint Cove Apartments – Costello

IX. Old Business - None

X. New Business - None

XI. Executive Session – Real Estate, Litigation and Human Resource Matters

XII. Adjournment
A Public Hearing was held before the Penfield Town Board on Wednesday, August 22, 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  
Andy Moore  Councilman  
Robert Quinn  Councilman

Also Present:  
Lisa Grosser  Deputy Town Clerk  
Richard Horwitz  Town Attorney  
Geoff Benway  Town Engineer  
Jim Costello  Dir. of Developmental Services  
Mark DiFrancesco  Superintendent of Sewers  
Mark Valentine  Planning Department Head

Supervisor LaFountain called the meeting to order – The pledge of allegiance.

Public Hearing #1  To Consider an Amendment to the Zoning Ordinance and Zoning Map to Allow 9.83 Acres of R-1-12 Zoned Property at 1994-B and 6.61 Acres of Multiple Residence Zoned Property at 1994-C Empire Blvd. to be rezoned to General Business – SBL #'s 092.01-1-25.1 – DiMarco Brandt Point LLC (See Resolution #12T - 171)

The Deputy Town Clerk read the title of the above Public Hearing; said Notice was published in the Penfield Post on August 9, 2012 and was posted on the Town Clerk Bulletin Board and Website. 133 postcards were mailed and three (3) Homeowners Associations were notified.

Supervisor LaFountain confirmed with Town Attorney Horwitz that this Public Hearing is properly before the Board. Supervisor LaFountain reviewed that this is the first time the Town Board has heard this application. This project started in discussions 3 – 5 years ago. After tonight’s discussion the Board will decide if we should move forward with the rezoning or some alternative. The Board has received e-mails both for and against the rezoning. The Planning staff keeps the Town website current with all items pertaining to this application: (http://www.penfield.org/index.php?pr=Bay_Towne.)

Speaking on behalf of the applicant were Thomas Greiner Jr., Nixon Peabody, Paul Colucci, VP Development DiMarco Group, John DiMarco, President and COO DiMarco Group and Ashley Champion, Nixon Peabody who worked on the SEQRA process with both the Planning Board and the DiMarco Group.

Mr. Greiner commended the Planning Board for their work as Lead Agency on the SEQRA process. The process was a thorough and conscience effort. The Town should be proud, and staff has done an excellent job of keeping the website up-to-date.

Mr. Greiner stated that when the application was first submitted, the Town was already working on the 2007 North Penfield Crossroads Plan and the land use for that area. On page 3 of the presentation he referenced the following: “While there is no proposed change in land use or zoning for the majority of the lands within the study area, there are some areas that, through initial development or re-development, the land use and density could change.” The DiMarco plan to redevelop a super Wal-Mart and a street of shops was proposed in January 2009, and included rezoning 20 acres (CP-41). The Town then began the SEQRA review.
Penfield Town Board, August 22, 2012

(Public Hearing #1 – Continued)

and in 2010 CP-41 was rejected and the DiMarco Group began working on an alternative.

Mr. Greiner continued by stating that the DiMarco Group was working on the DEIS (Draft Environmental Impact Statement) and the Planning Board commenced the Environmental Review. In August of 2010 the DiMarco Group submitted a supplement to the DEIS. Also, in 2010, the Town of Penfield completed their update of the Comprehensive Plan.

Mr. Greiner continued to say that an amended plan (COM-54) was submitted in 2010 requesting rezoning of just over 11 acres. This amended plan was also rejected. The Planning Department then began working on the SEQR review.

Mr. Greiner went on to say the Planning Board issued the Findings Statement Preferred Plan (CP-02) on May 15, 2012. The suggestion was to rezone less than 10 acres. The DiMarco Group agreed that this would work, and includes the minimum amount of land to be rezoned.

Mr. Greiner went on to say the SEQRA process is a three (3) year review, and he detailed step-by-step the timeline of the process.

A flowchart of the process is available on our website at: http://www.penfield.org/media/dpt_planning_SEQR_Process_Flowchart_10.22.09.pdf

Paul Colucci, also using the presentation (copy attached) summarized the Planning Board’s SEQRA process review:

- Res-48 Relo – was rejected the street of shops and the town center were eliminated.
- Res-28 – included a relocation of Wal-Mart, rezoning of 6 acres of R-1-12 to GB, 28 Single Family Homes, no street of shops, loss of buffer.
- Res-15 – MR to GB, R-1-12 to GB, this included the first appearance of the street of shops, no buffer and no berm.
- Com-50 – MR to GB, 11 acres, R-1-12 to GB. Eliminates the single family homes. Includes conservation area/forever wild, street of shops, 100 foot vegetative buffer and engineered berm.
- Com-54 – Higher parking ratio, complied with current zoning and no parking variance would be required.
- CP-41 – All 64 plus acres zoned GB.
- CP-02 – Includes an extensive vegetative buffer.

Mr. Colucci then reviewed the DEIS Alternatives Comparison (page 12 of the attachment.) He also commended the Planning Board and staff on work they have done.

Mr. Colucci continued to say with this new plan through mitigation we will adequately provide protective measures and solve existing traffic problems, as well as accommodate the project. A connection will be provided to Sovran Drive. This will eliminate left turns at Creek Street. Monroe County would allow a signal at Sovran Drive and this would provide a much safer ingress/egress for residents. This entrance would allow access to the frontage parcels on Empire Boulevard. The NYSDOT has agreed to put a signal light at Brandt Point Drive. This would allow a better ingress/egress and protect the left hand turn. This would create four (4) access points and would distribute traffic.
Mr. Colucci spoke regarding noise. Following his video presentation, he explained that the noise of a garbage truck had been measured in decibel levels at Jewelberry Drive and Seabury Boulevard. He noted a reduction in noise from the RES-48 design to the COM-54 design. A similar evaluation was made using the noise of a parking lot sweeper, which also showed a reduction in the decibel level with the COM-54 design.

Mr. Greiner stated that the two (2) largest issues brought before the Planning Board were noise and traffic. He reviewed the excerpts from the Planning Board Findings Statement listed on page 16 of the presentation and the attachment. He stated the Findings Statement is used to create a balance between the environmental impacts and socioeconomic benefits. Impacts are reduced over the current status with this proposal for rezoning. The Planning Board concluded that the CP-02 plan was the best.

Mr. Colucci reviewed the Baytowne Plaza Redevelopment – DEIS Alternative Comparison on page 12 of the presentation and the attachment. He reviewed the Plan Comparison and detailed each item on the CP-02 plan as compared to the original and amended plans.

Mr. Greiner reiterated that noise from the proposed development will be less than it currently is. Mr. Greiner went on to say there were three (3) pillars that we wanted addressed: A first class retail center, we wanted the environmental impacts to be no worse or as good as they are today. With this plan they will be better than they currently are. We also want to increase revenue to the Town and he then reviewed the Real Estate and Sales Tax Revenue Differential on page 19 of the presentation and the attachment. This shows significant increase in both real estate and sales tax revenue over both the current zoning, option of residential and the 108,666 square feet of new shop space.

Mr. Greiner stated in conclusion we are achieving these three (3) pillars with the project. He urged the Town Board to issue its own Findings Statement and move ahead with the rezoning.

Councilman Quinn inquired how long has this plaza been there?

Mr. Greiner said it opened 22 years ago, and the DiMarco Group is the original owner.

Councilman Quinn asked if this property had ever been developed or rezoned?

Mr. Greiner said in 1990 the property was rezoned to accommodate the existing Wal-Mart. The street of shops was approved in 2009 by the Planning Board.

Councilman Quinn asked when were the MR and R-1-12 zoned properties acquired?

Mr. DiMarco stated both the R-1-12 and the MR properties were acquired as a result of the Daniels Creek development in 1991-1992. All of this land has been held for several decades. The Ukrainian Home was purchased in 2006.

Mr. DiMarco continued to say the street of shops was approved in early 2009. At that time the MR zoning was approved for multiple family residential properties.

Councilman Quinn inquired if there had been any other applications for either of these two (2) properties?
Mr. DiMarco stated in 2001-2002 St. Ann’s Home reviewed the property for senior housing, and additional housing on all 26 acres, but didn’t like the visibility of the other structures on Empire Boulevard as they entered the proposed housing development. Consequently the project was moved to Webster.

Councilman Quinn said was there proposal to develop the R-1-12 as currently zoned?

Mr. Colucci said yes, as Providence Landing in 1994.

Councilwoman Metzler inquired about page 19 the Real Estate and Sales Tax Differential. Does this chart show the Town’s portion or total combined?

Mr. Greiner said it shows combined County/Town and School. Mr. Greiner also stated the sales tax estimate would be the Town’s portion of 4%.

Bill Durdel, Baldwin Real Estate prepared the chart that is being discussed and confirmed the chart shows Penfield’s portion of the sales tax.

Councilwoman Metzler asked how did you achieve these projected sales tax figures? Are they based on current tenant’s sales?

Mr. Durdel explained that he used gross sales from existing tenants and industry standards. He went on to say this is a conservative estimate based on current tenants.

Councilwoman Metzler inquired about the noise studies. What time of day is this based on and what was the frequency?

Mr. Colucci said they took into consideration the time of day based on the existing Property Maintenance Agreement. The PMA restricts hours for deliveries, garbage pick up and the parking lot sweeper.

Councilwoman Metzler asked how frequency was used in the calculation?

Mr. Colucci said we estimated based on single/daily garbage pick up at both commercial locations. This could vary if there are multiple garbage collectors.

Councilwoman Metzler asked what does the current PMA allow?

Mr. DiMarco stated that the Property Maintenance Agreement allows activity between the hours of 7:00 AM and 11:00 PM.

Councilwoman Metzler asked how frequency of the noise in a residential area could be compared to the frequency in this commercial area.

Mr. Colucci said the noise study reflects both the instantaneous noise of the garbage truck and the prolonged noise of the sweeper. It does not reflect the frequency. It is based on a comparable noise that is generated and based on the new plan the noise will be reduced.
Public Participation

Margaret Cooley, 306 Wexford Place, a 20 year resident, supports the DiMarco Group plan. This plan will provide additional revenue for both the towns of Penfield and Webster. This is an asset that needs upgrading. She urged the Town Board to approve this plan.

Virginia Nolan, 206 Wexford Place, supports the rezoning and stated that the plaza needs upgrading.

Louie Schnorr, 323 Wexford Place, a 10 year resident, supports the rezoning. He would like the DiMarco Group to take care of the property. The new store would be a real asset to the Town.

Flo Fustaino, 187 Wexford Place, Mr. DiMarco has gone above and beyond to please everyone. She recently visited the revitalized Northgate Plaza. She spoke to the Manager and he has put 400 people to work. She hopes to see that progress here.

Steven Nowak, 22 Triple Diamond Way, is concerned about noise. He hears trucks for deliveries and the sweeper that goes on for hours. He feels it would be better to move Wal-Mart closer to Empire Boulevard and add houses as additional buffers.

David Chojnowski, 67 Lazy Creek Circle, works in commercial real estate and leases for Baytowne Plaza and the DiMarco Group. He submitted two (2) letters from prospective tenants in favor of development, Buffalo Wild Wings and Party City.

Steve Dawe, 85 Seabury Boulevard, asked if Buffalo Wild Wings would be going into the DiBella’s location?

Mark Valentine, Planning Department Head, confirmed, it would be going into that location.

Mr. Dawe asked where will DiBella’s be relocating to? He is concerned about traffic and Seabury Boulevard. The 2010 Comprehensive Plan sites safety as an element in the quality of life. He suggests that the Comprehensive Plan be referred to when a project like this comes up. The issue is safety for the 21 homes on Seabury Boulevard and he would like to make sure no project vehicles use that street. Mr. Dawe stated there should be no left turn on Brandt Point to Seabury Boulevard. He also said there should also be no right turn at the exit on Brandt Point heading east, at the cost of the applicant. Mr. Dawe suggests cameras are installed at the two (2) lots owned by the DiMarco Group on Seabury Boulevard to collect violators. He also requests speed bumps be installed on Seabury Boulevard at the expense of the applicant. Mr. Dawe requests that assessments be lowered for the residents of Seabury Boulevard during this project. He feels these controls should be in place for the safety of the Seabury Boulevard residents.

Trish Rissone, 609 Hosta Circle, is from Baldwin Real Estate property management for existing tenants. She submitted two (2) letters in favor of development from Jackson Hewitt Tax Services and the UPS Store.

Patrick Pagano, 6446 Lake Bluff Road, the owner of Premier Fitness endorses the proposal which began two (2) years ago. He wants to know when this plan is going to happen. He feels it is a good fit to integrate fitness with lifestyle and shopping for all tenants to be successful. For current tenants to be successful this improvement needs to be approved. He currently employs 20 local people. With this improvement he would be able to create jobs to help our neighbors. This plan is the best compromise and he hopes the Town moves quickly on this decision.
Peter Nowak, 35 Forest Creek Drive, he and his wife own Baytowne Liquor and support this plan. The current tenants of Baytowne Plaza are struggling. He commented that the approval process is quite a process. In 2007 the North Cross Road Plan was adopted and that was the Town’s acknowledgment that change needs to happen, he has faith in that process. The 17 page Findings Statement was very thorough. He thanked the DiMarco Group for their work and urged the Board to take action.

Mike Monile, 15 Cedar Brook Circle, is a Mortgage Banker and supports the redevelopment, it would improve the quality of life in the area. He addressed concerns that the residents have had their property devalued by the proposal. Since January of 2009 to the present day in that area 32 homes have sold. Homes sold on average for 96.3% of their asking price. Six (6) homes actually sold at asking price or above. Mr. Monile stated that we are in a housing recession and these homes are selling for $200,000 plus. One home in Graceland sold for over $700,000. There are still buyers for these homes. A plaza of this quality will complement these residents.

Councilman Quinn asked if the home sales Mr. Monile referenced were new built homes, existing homes, or a combination of both? Mr. Monile stated that it is a combination of both.

Al Circelli, 100 Jewelberry Drive, said there are many issues personal, economic, environmental, the plan itself and the rezoning. He has had a difficult time enjoying his home. He believes the property value will decrease if Wal-Mart moves in. This will offset the increase in revenue to the Town. As far as economic benefit, Wal-Mart is already here. People are not going to come from other towns to shop here. Environmentally the estimate of water run off could be erroneous. The impact on Shipbuilders Creek could cause the water temperature to rise. Regarding noise, he has been awoken at 4:30 AM by dumpsters slamming. The sweeper noise is annoying and happens several times per week. These sound studies are not valid. In winter the air is more dense and the sound will carry further. He does not believe the sound studies. This proposal is larger than the Victor Wal-Mart. Environmentally it would be better to use the existing building. He doesn’t believe the street of shops is anymore than a bait and switch tactic. He is concerned about the traffic patterns. He believes the distance from Brandt Point to Applebee’s too close for State standards. McDonald’s will loose impulse buyers as other entrances are used. Residents that border this project will see a reduction in their home values of 10-15-20% and this will affect comps in the area. Traditionally homes sell for 5% less than the listing price. Regarding lighting they have lowered the street lights, but the big glow will engulf the neighborhood. Regarding quality of life, 20 years ago Baytowne was created and that land was designated residential, which is a traditional barrier. Regarding rezoning a small parcel surrounding by three (3) sides of homes is an inappropriate use of land. We want a successful Wal-Mart and Baytowne Plaza, but this should be done on the current footprint. The issue is buffering and appropriate land use. Your duty as a Town Board is to protect our investments. Do not rezone, preserve our neighborhood.

Thomas Frank, 68 Seabury Boulevard, if you look in the area there already is significant commercial development. The idea we need more commercial property is ridiculous. The Planning Board can destroy a neighborhood in one move. Another reason he objects is because the DiMarco Group already has enough property to build a super Wal-Mart. There should be no zoning change when the developer owns enough property to make this improvement.
(Public Participation – Continued)

Regarding noise and snowplowing; this goes on early in the morning and why wasn’t this studied? We need more residents, not commercial development. He urged the Board to put a finish on this, reject this proposal.

Tony LaDuca, 47 Angels Path, we see a dying plaza. He knows the business owners and feels sorry for them. We need competitive stores in this plaza. He supports the plan which shows a lifestyle not just a mall. This has been going on for a long time and we need to move as businesses are failing. We could have a dead mall. In real estate you want to be close to the convenient things. You don’t want to travel to Victor or Pittsford. We need those things here in Penfield.

David Sackett, 52 Angels Path, has lived here 13 years and shops in Baytowne Plaza. His heart sinks when he sees more empty stores. This plaza is on a death spiral. The plan has synergy and momentum. Since Tops Markets closed and the plaza has been down hill since. There is interest in development, which is a positive direction. We are currently running the risk of becoming another Medley Centre. We employ local residents and this improvement would add jobs. The developer and the Planning Board have done a good job of balancing the pros and cons. This is a good solution and we need to move forward.

Holly Phan, 52 Angels Path, has been a business owner in Baytowne Plaza for 15 years. When she moved her business here from Fairport the plaza was busy and business was booming. She said her customers come from other towns. She lives 1 ½ miles from the plaza and doesn’t hear the noise that has been discussed. Her sons own a home on Pen Web Park, and they do not hear noise either. One of her employees purchased a home in the area and sold it within a year and made a $40,000 profit. She doesn’t want Penfield to be like Gates when Kodak left, a ghost town. Since Tops Market left the plaza has been half empty. Her customers complain about the lack of stores in the plaza. Rezoning would be a big benefit to the plaza and would bring more jobs to the area and tax revenue to the Town. Please consider this rezoning to serve people better. The DiMarco Group will make the Town of Penfield stronger.

Jim Mathers, 126 Creek Hill Lane, stated that the communication process has been poor. He registered his email address two (2) years ago and hasn’t received a single communication. The notification for this meeting was not sufficient. This event was only listed as an item on the Town Calendar on the website. It didn’t come up as an event until today. The Final Environmental Impact Statement is a product of the Town Planning Department. Who paid for this and who paid for the consultants, was this part of the tax base? Was this my responsibility? He does not agree with the FEIS and the possibility of a super Wal-Mart. We already have Wal-Mart, we need to fix what we have and do not need more land to do so. This is the first time he’s seen the potential financial impact. There has been no communication to the public regarding financial impact. There is no reason to rezone this property. There must be an overwhelming need to rezone and there are other solutions. The problem needs to be fixed within the present boundaries of the project. Any town that is good enough to receive my tax dollars to preserve green space, should preserve zoning. Penfield is a place to live, not a street of shops. We do not need super Wal-Mart.
(Public Participation - Continued)

Steve Chamberlain, 321 Valley Green Drive, has been a resident for 41 years and approves of this project. He spoke here 22 months ago before the Planning Board. This project will create jobs and tax revenue. Two to three years is too long for the Town to make a decision, and it cannot drag on any longer. The facts are there and they can provide more information on facts if needed. The Board needs to make a decision. Don’t put this off or your will have a Northgate Plaza here in Penfield.

Terry Bauer, 1930 Empire Boulevard, said many years have gone by and it is clear no stone has been left unturned. He thanked the Town for their thoroughness. The Planning Board removed emotion and submitted the facts. He urged the Board to speed up the process this has gone on too long.

Jaime Sanchez, 115 Jewelberry Drive, built his home in 2006. When you build a home you look to the future. When you sell a home the single greatest factor is location. His home is 200 feet from this proposed development. The Planning Board did extensive research regarding traffic and noise. The DiMarco Group hired Bergmann Associates to prepare the noise analysis study and only collected daytime data from 9:00 AM to Noon. This data is assumed to represent the entire day from 7:00 AM to 11:00 PM. The night readings were taken between 4:00 AM and 5:00 AM, but assumed to represent 11:00 PM to 7:00 AM. The data needs to be validated to make appropriate decisions. Not all noise factors were considered including snowplows, deliveries and 1,000 cars a day locking and beeping. The development needs to occur within the existing parameters.

Scott Dennis, 15 E. Main St., President of R Salon Enterprises, submitted a letter to the Board in favor of the development. He has been working with the DiMarco Group on plans to relocate his salon from Webster to Baytowne Plaza. This will be a lifestyle salon co-branding with Aveda, which is owned by Estee Lauder. He will be able to double his current staff to over 50 employees. If this project is not approved he will have to relocate the salon elsewhere.

Kathleen VanHeyst, 3 Nevele Creek, has lived in this area for 30 years. She and her husband are in favor of the development, it is well thought out and all questions have been satisfied. The Board needs to step up, have a vision and make a decision. This area cannot just be fixed, they have tried. She doesn’t understand how a multiple home dwelling is better than forever wild. This is the right thing and she feels the Board has a lack of vision if this isn’t approved.

Donna Monile, 2005 Five Mile Line Road, a 13 year resident, this is a wonderful compromise of all of the issues. This is a wonderful vision and she is 100% for it - let’s go.

Derek Aspin, 100 Rodney Lane, a 22 year resident, currently shops at Baytowne and wants a one (1) stop place to shop which would save gas and time. The decibel drop is a huge improvement, though the major noise doesn’t come from the plaza, it comes from airplanes and seagulls. As a consumer there are benefits, but also there would be more jobs from this development and additional revenue for the Town. It is long over due, he supports this rezoning and would like it expedited.

Tony Soprano, 81 Valley Green Drive, is in favor of the project. We need additional business in town and additional tax revenue. This has become a neighborhood project and it should be a Town project. We need to move forward and he is in favor of it.
(Public Participation – Continued)

Anna Orosz, 128 Guygrace Lane, referred to page 19, the Real Estate and Sales Tax Revenue Differential chart and stated that this is a skewed comparison. It should be a comparison of full potential versus new development as projected income; the difference would be significantly less. There are many vacancies in the plaza; this is ample space to accommodate the businesses in favor of expansion. She asked why can’t those new business come now, this plaza needs revitalization. Ms. Orosz went on to say the mall is empty, so you request to make it bigger, that doesn’t make economic sense to me. Regarding noise it’s not just the decibel, it’s the frequency. There will be multiple businesses that have multiple deliveries and multiple garbage pick ups. In my neighborhood I hear all the noise of the plaza. Regarding traffic in the area, we had an example of what it might be like when the Bay Bridge was closed. We could have traffic like that all of the time. She doesn’t want traffic like Ridge Road in Webster, here on Empire Boulevard. Penfield is about community and schools, if we wanted business we would have chosen to live in Henrietta or Greece. Real estate is about location and you are changing where I live. Forever wild only lasts until someone comes along with a better idea. A while back the Town told the DiMarco Group that this was an inappropriate use of the land. I don’t see anything that has changed that and she strongly encourages the Board to say no to rezoning. The DiMarco Group should revitalize the area within the current parameters.

Carl Luger, 5 Piccadilly Square, has lived in the Town for 15 years and asked what is the process from here?

Supervisor LaFountain stated the Board will take all information received and make a decision. The application will be held open for several weeks to give opportunity for additional comments to be submitted. The Board won’t speak about this matter until after Labor Day at a Work Session. An email will be sent to those who registered for the Baytowne distribution list and the Planning Board recommendations will be discussed.

Mr. Luger said that this plan is thoughtful. Concerns have been accommodated and the DiMarco Group is a reputable developer. There has been so much work and so much time has been taken.

Timothy Poley, 233 Watson Road, President Blue Verizon Strategies, works with the land developer and is in favor of the project. Wal-Mart would provide an economic stimulus to the community. He referenced a recent article in Forbes regarding Wal-Mart. He also referenced studies that show properties in the area of Wal-Mart actually rose in value. Currently at 8% unemployment, Wal-Mart could add potentially 400 - 500 jobs to the area. He commended the DiMarco Group for not looking for tax incentives. This is a fully taxed investment and would create economic stimulation.

Tom deManincor, 1983, 1991, 1623 Empire Boulevard, is in favor of the redevelopment. The Planning Board deserves a pat on the back, this plan hit the nail on the head. Residential sales are booming, business not so much. Mr. deManincor owns several properties in the Empire Boulevard area. We need to see more improvements like the Lipinski’s Hardware building. We don’t need more vacancies like Sal’s Birdland in the area. Business breeds business and brings more residents to an area. With more residents, properties will turn over and values will increase. This is a forgotten corner of the Town and needs to be put back on the map. Webster has beat us to the punch with their development. Traffic has always been a concern, but every concern has been addressed. Both residents and businesses have issues, not everyone is going to be happy. Progress may not look
Like progress immediately and may take up to five (5) years if we remember back to the changes at Eastway Plaza. His fear is that if this is not approved it will become another Irondequoit Mall and the businesses will move elsewhere and values will drop.

Pam Bauer, 1930 Empire Boulevard, said look how far we have come. This has been a methodical process and she is impressed with the Planning Board’s thoroughness of the Findings Statement. If homes are built in this area it will have a negative effect on the area. This development will enhance the area and bring business and jobs. She said thank you for your due diligence, this is the best plan. The Planning Board did a good job and she urged the Town Board to go forward soon.

Al Biles, 57 Seabury Boulevard, stated that this is a comprehensive report that was well done. Regarding the noise issue and the 19 foot berm topped with an 8 foot concrete wall; sounds won’t get over that wall and it will be quieter than it is now. One question is using Sovran Drive how will you get around Uncle Bob’s storage? He also recommends putting the berm and the wall up first so residents don’t hear the construction. He supports this rezoning even though he lives close to it.

Michael Hanscom, 145 Anytrell Drive, 30 year resident stated his wife had submitted a letter to the Planning Board and he would like to read it to the Town Board. In looking at all of the plans it appears the primary goal of the developer is super Wal-Mart, the secondary goal is the revitalization of the plaza. If you don’t allow the super Wal-Mart you could still approve the street of shops and remodel the existing Wal-Mart to become a super Wal-Mart. Target has remodeled both of their stores locally without closing. Wal-Mart should also be able to do this. The current proposal looks like two (2) plazas linked by a common road. The Brandt Point access will be faster than going through the plaza. The Planning Department did a good job in support of the Planning Board. One the goal’s of the SEQR process was to have the Board in charge take a balanced approach. He feels the Planning Board took a pro-commercial development approach. Mr. Hanscom then read and elaborated on his wife Rose’s letter to the Board. He urged the Board to take these comments to heart.

Doug Tallinger, 21 Corral Drive, 20 year resident spoke in support of the development and feels it is in Penfield’s best interest. He attends Premier Fitness and looks out at all the openness and sees opportunity. The DiMarco Group has done a fine job by improving the façade. There is a decision to be made and there has been much research by both the DiMarco Group and the Town of Penfield. Residents who currently go to Webster Plaza, could go to Baytowne Plaza if there were more stores. Don’t let this plaza become Medley Center or Northgate Plaza. There is a market window of opportunity and these businesses will not wait forever, it is time for progress.

Peter Hin, 37 Alta Vista Drive, a 15 year resident, supports the project. We need more work on commercial development, not residential. This is a Town project and we need to move forward on commercial development. He is offended by the comments that the street of shops may not happen. The tax base will be increased, sales tax revenue will increase and there will be job creation.

Karin Wilson, 52 Braunston Drive, stated that property behind her home was rezoned and now there is a building outside her window. She wishes she had a berm like is proposed tonight. She applauded the Town for its due diligence. This is very different
(Public Participation – Continued)

than the process was 5 - 6 years ago. She is impressed with the DiMarco Group’s persistence. They are a quality organization, which is head and shoulders above other developers, and they are here to stay. There is an overwhelming need for development in Penfield. She urges the Board to approve this project and she can’t wait to see what is going to happen, it is going to be fabulous.

Rich Stanton, 415 Franklin Street, said he had submitted a Petition to the Board with signatures from 32 families and doesn’t feel this is a compromise. This will impact residential properties and the street. This Petition has legal significance and referenced Town law Section 265, there is not a 100 foot buffer between commercial and residential. He stated that 25% of a person’s income goes into their home. People have bought in and they do not have a lot of options. This is a transitional zone, not transitional zoning because it adds the night time nuisance factors. This is not what was agreed to with the original zoning and it has a higher density. The report for the sound studies should have been done from numerous locations in the residential area. The February 17, 2011 report submitted has not been acknowledged and should be used as a base line. Sound should be measured from the pavement. It is an illusion to say the sound source was moved away. He feels those who complained the most had the nuisances moved closer to them. The residents want to be heard and this redevelopment is based on false assumptions. There are economic impacts and you can’t assume that Wal-Mart would create 300 jobs. He will be submitting a subsequent letter to the Board with additional information. He commended Mark Valentine, Planning Department Head who was very cooperative and gave him all of the requested information.

George Karrat, 10 Starcrest Lane, is a resident and the builder of one of the nicest subdivisions in the Town. Potential buyers would ask what is going on next to the development and at the time he responded Seabury Boulevard Phase II. To put a commercial piece of property on a residentially zoned parcel is wrong. A home is a resident’s most important asset, and this will destroy the value of homes. The plaza does need to be improved. Do the right thing for the residents and say no to rezoning residential property.

Steve Ward, 74 Corral Drive, this project includes the largest and most successful retailer in the world and they want to work in Penfield. The DiMarco Group is also a premier developer and he wants to work with Wal-Mart and Penfield. We have been waiting five (5) years, three (3) million dollars in tax revenue has been lost. There have been many statistics showing that Wal-Mart saves the average American $4,000 a year. Having a super Wal-Mart in the area will bring competitors prices down. Every consumer that shops at Wal-Mart saves an average of $500 per year. Multiply that by the 35,000 residents in Penfield and what has it cost residents waiting three (3) years to get this approved. Over 500 jobs would be added to Penfield. This proposed Wal-Mart is smaller than Henrietta, Brockport, Gates, Irondequoit and Horseheads. Business breeds other business. For example if you look at Target locations, the Target in Penfield does 30% less volume than the Webster location. We need the whole package and people deserve a choice. If you look at Terrel Drive there is less than 100 feet between their homes and Eastway Wegmans. Why should these residents receive preference? You need to look at the whole community. When NYS RTE 441 had to be widened, the residents were against it, but it had to happen. If Wal-Mart wants to build, they will build. If Penfield doesn't approve this they will go to Webster or Ontario. If this rezoning is not approved, Baytowne Plaza will look like Webster Chrysler Plymouth, Medley Centre, Ames Plaza or Midtown Plaza.
(Public Participation - Continued)

Property values will be even lower next to a vacant plaza. He strongly supports this rezoning.

Terri Circelli, 100 Jewelberry Drive stated that Tops Markets didn’t leave on their own, their lease wasn’t renewed. The Chinese restaurant didn’t leave on its own. The rent was raised and they were encouraged to leave. This development is in my front yard, the noise is so disturbing. The plaza should be filled up first and then we would be more willing to agree to something new.

All documents submitted to the Board for review at this meeting have been added to the project file.

Supervisor LaFountain said the comment period will be open until September 14, 2012 at 5:00 PM.

Hearing closed at 11:25 PM.

Lisa Grosser,
Deputy Town Clerk
I. Call to Order

Present:
Supervisor LaFountain
Councilwoman Kohl
Councilwoman Metzler
Councilman Moore
Councilman Quinn

Also Present:
Jim Costello
Mark DiFrancesco
Lisa Grosser
Mark Valentine
Richard Horwitz – arrived at 7:15 PM

II. Approval of Minutes – 8/8/12
CM Moore moved for the approval of the Minutes of August 8, 2012, CW Metzler seconded the motion.

III. Monthly Reports – All reports for July are in, except for Sewer which Supervisor LaFountain will confirm is included in Engineering.

IV. Public Hearing – Minutes to follow
#1 – To Consider an Amendment to the Zoning Ordinance and Zoning Map to Allow 9.83 Acres of R-1-12 Zoned Property at 1994-B and 6.61 Acres of Multiple Residence Zoned Property at 1994-C Empire Boulevard to be Rezoned to General Business – SBL #’s 093.02-1-24.997 and 092.01-1-25.1 – DiMarco Brandt Point LLC

V. Guests – None

VI. ACTION ITEMS

Law and Finance
1. 1857 Penfield Road Restaurant – Costello
Jim Costello stated that the Public Hearing was held last week. He would like to submit a draft Resolution to the Board for review. The final Resolution will be ready for submission at the next Legislative Session on September 5, 2012.

Councilwoman Kohl stated that two (2) items were addressed at the Public Hearing both outdoor dining and parking.

Costello said he will include the items discussed in the draft Resolution. Cross Access Agreements will be encouraged with property owners in the area.
Supervisor LaFountain said this area has come together nicely, only the hydroteeing remains to be completed. He inquired if the Board was comfortable with the signage.

The Board stated they are okay with signage.

Supervisor LaFountain said after the restaurant has been open a few months, we can have another discussion regarding outdoor dining. The applicant can meet with the Board in March or April of 2013 and then can request a Special Permit for outdoor dining in May 2013. A draft Resolution will be submitted to the Board for review, and a final Resolution will be submitted at the next Legislative Session on September 5, 2012.

2. 1833 Penfield Road – Costello
Jim Costello stated that we recently had the Public Hearing for the relocation of State Farm Insurance. We will work with the applicant on dumpster location and creation of public parking. Permits for the remodeling of the building have been obtained and work has begun. A sign package will be forthcoming for the Board to review. A single wall mounted sign is allowed under Town Code. The possibility of an awning was discussed. Costello will have to review the Town Ordinance to verify how the awning sign will comply with the code requirements. He will also meet with the applicants to advise that the Penfield Jewelers sign must be uniform with the applicant’s sign. The remodel of the property is going to take several weeks.

3. 30 Sanders Farm Dr./2041 Penfield Road – Costello
Jim Costello stated that site plan approval has been granted by the Planning Board. Costello has not yet received the Resolution of approval from the Zoning Board of Appeals. He will prepare a draft Resolution for the Board to review and will incorporate the requirements outlined in the Planning Board and Zoning Board Resolutions.

Councilman Quinn asked if there were any outstanding concerns?

Mark Valentine stated that the sight distance, drainage and landscaping questions were addressed and incorporated into the Planning Resolution. All items brought to the Planning Board’s attention from the memo written by the Town Board were addressed.

Costello said he will submit the Town Board memo, the Zoning Board Resolution and the draft approval Resolution to the Board for review. The final Resolution will be submitted at the next Legislative Session on September 5, 2012.

Public Works
1. Sherwood Forest PS Capacity Evaluation – DiFrancesco
Mark DiFrancesco said we last spoke about the sewer capacity of Sherwood Forest in April. We tried to have this improvement done with new development and that didn’t work out. He would like to
have an engineering study completed to confirm capacity and look at alternatives. He sent out a RFP to engineering firms and received quotes which were summarized and submitted to the Board for review this evening. The lowest bidder was Barton and Loguidice and he would like approval to move forward.

Councilwoman Kohl asked if all quotes were for comparable services?

DiFrancesco said yes, all are to verify the storage, and include a brief report of alternatives.

Supervisor LaFountain said this is a good idea, but we should hold it for two (2) weeks and have some discussions with Town Attorney Horwitz, Costello, DiFrancesco and himself. We will have this listed as an action item for the next Work Session on September 12, 2012.

Councilwoman Metzler inquired if the cost would come out of the 2012 or 2013 budget?

DiFrancesco stated that a transfer from the Sewer budget would be done using 2012 funds.

2. Ellison Heights Storm Water Drainage Request – Costello
Jim Costello introduced Doug Eldred from BME Associates. BME Associates are working to resolve stormwater management issues for Ellison Heights. There is a piece of property owned by the Town of Penfield in a flood plain that is low and wet. BME on behalf of RSM have requested the Town of Penfield for authorization to utilize this town owned land as a stormwater control facility. The property is currently not being used by the Town and could be sold to put it back on the tax rolls. One potential agreement for the use of the land could be to have the developer install additional sidewalks along Penfield Road as part of the agreement with Ellison Heights.

Mark Valentine stated that the Penfield Road bridge is nearby and will have new sidewalks installed as part of the replacement project. This will create a gap in the sidewalk from this development to the bridge. The Town owned parcel doesn’t currently serve any needs of the Town.

Councilwoman Metzler asked if PRC had any concerns.

Costello said it was discussed and there are no concerns.

Councilman Quinn asked if this is part of the watershed.

Supervisor LaFountain stated that it is not part of the watershed.
Councilman Moore said he feels this parcel should be appraised and then sold for market value, but wants to make sure the pedestrian trails remain in tact.

LaFountain said the Town will obtain an appraisal and go from there. It makes sense to make this parcel part of the broader development and include the sidewalk component at a future date.

Public Safety - None

Community Services - None

VII. INFORMATIONAL ITEMS

Law and Finance - None

Public Works
1. Allen’s Creek Update - Benway
   This item was not discussed.

Public Safety - None

Community Services - None

VIII. HELD ITEMS
1. Pond Ownership - Staff
2. Dedication of Cloister Lane - Benway
3. License Agreement Request - 126 Jackson Road Ext - Dr. Alan Litvinov - DiFrancesco
4. Southpoint Cove Apartments - Costello

IX. Old Business - None

X. New Business - None

XI. Executive Session - Real Estate, Litigation and Human Resource Matters - No Session tonight

XII. Adjournment - Supervisor LaFountain adjourned the Work Session at 7:26 PM.