PENFIELD TOWN BOARD AGENDA  
Wednesday, May 1, 7:30 PM  
Supervisor R. Anthony LaFountain, presiding  

I Call to Order - Pledge of Allegiance - Roll Call  

II Public Hearing #1 – To Consider Applicant’s request for relief from Condition #7 of Resolution #13T-81 and to hear all persons interested on the Question of Granting Relief from Condition #7 of Resolution #13T-81 to Allow Later Hours of Operation of the Proposed Outdoor Dining Area of the Proposed Jeremiah’s Tavern at 2164 Fairport Nine Mile Point Road  

III Communications and Announcements  

IV Public Participation  

V Additions and Deletions to Agenda  

VI Approval of Minutes – April 3, 2013  

VII Petitions  

VIII Resolutions by Function  

Law and Finance  

13T-111 Awarding Contract for Geographic Information System (GIS) Services to MRB Group, P.C.  
13T-112 Employee Handbook Revisions  
13T-113 Approval of Issuance of a Conditional Use Permit to Allow a Restaurant With Outdoor Dining at 2084 Five Mile Line Road  
13T-114 Approval of Issuance of a Conditional Use Permit to Allow a Landscaping Office at 1739 Penfield Road  
13T-115 William and Debbie S. Wickham, Tax Certiorari Settlement  
13T-116 Setting a Public Hearing for a Conditional Use Permit to Allow Dog Grooming at 1850 Penfield Road  
13T-117 Setting a Public Hearing for a Conditional Use Permit to Allow a Day Spa at 1788 Penfield Road  

Public Works  
13T-118 Recognizing May 2013 as National Historic Preservation Month  

Public Safety- None  

Community Services  
13T-119 Authorization for Supervisor to Sign Recreation Contracts  

IX Old Business  

X New Business  

XI Public Participation  

XII Adjournment
Penfield Town Board, May 1, 2013

The Regular meeting of the Penfield Town Board was held on Wednesday, May 1, 2013 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 Ed Lindskoog.

Supervisor LaFountain requested a moment of silence for Sue Kreiser, a member of the Planning Board, Zoning Board and Watershed Management Committees. Ms. Kreiser passed away on April 21, 2013, after a courageous 22 year battle with cancer.

Izzy Kunde who sang the Star Spangled Banner on opening day for Penfield Little League baseball, sang the National Anthem at the Town Board meeting by request from Supervisor LaFountain.

The Month of May has been declared Building Safety Month. Councilman Andy Moore read a Proclamation honoring Building Safety Inspector, Wayne Cichetti.

Regina Nichols, Program Director for Delta Laboratories, Inc. a not-for-profit environmental organization that provides education, guidance and resources for communities and individuals in order to preserve and protect the environment helped out during the Town’s Spring pick up on April 20, 2013.

Ms. Nichols gave an update on the pollution and stormwater management and how it fits in with the work the Town has been doing in reference to protecting our ponds. Ms. Nichols stated Delta Laboratories, Inc. mainly focuses on their Earth Day Clean Up program pertaining to watershed and their adopt-a-stream program which pertains to water testing and teaching the community on how to look at the water and look for indicators to determine whether the water is clean or dirty.

Ms. Nichols also stated that there is an opportunity for citizens to volunteer to participate in the 2013 community-wide Greater Rochester Early Day Clean Up event. For more information call 234-1726.

Supervisor LaFountain thanked Ms. Nichols and Delta Laboratories, Inc. for their participation in last Saturday’s Town Spring pick up event.

Public Hearing #1 To Consider Applicant’s Request for Relief from Condition #7 of Resolution #13T-081 and to hear all persons interested on the Question of Granting Relief from Condition #7 of Resolution #13T-081 to Allow Later Hours of Operation of the Proposed Outdoor Dining Area of the Proposed Jeremiah’s Tavern at 2164 Fairport Nine Mile Point Road.

The Town Clerk read the title of the above Public Hearing; said Notice was published in the Penfield Post on, April 18, 2013 and was posted on the Town Clerk Bulletin Board and Website. Three (3) Homeowners Associations were notified and 74 postcards were mailed.
Jeff Reddish, owner of Jeremiah’s Tavern asked that the curfew for the patio be lifted. Currently, the curfew is set for 10:00 PM.

Councilwoman Metzler asked Mr. Reddish to clarify the makeup of the neighborhoods adjacent to his existing restaurants.

Mr. Reddish handed out information to the Town Board that showed the distance between his two (2) restaurants and the homes surrounding those areas as well as the proposed Penfield location.

Councilman Moore asked Mr. Reddish to describe what he envisions for the outdoor dining experience to be?

Mr. Reddish replied that he envisions it to be a destination location that will benefit the Town and surrounding areas.

Councilwoman Metzler asked whether Mr. Reddish would be willing to go forward as the Resolution states, but be open to revisiting the curfew condition in six (6) months to a year? This would allow time for the restaurant to prove that there will not be any problems if the patio was to be open later.

Mr. Reddish stated that it would put him at a disadvantage and that he would feel he is being penalized for something that has not happened yet.

Councilwoman Metzler stated the Board would like to be consistent with what they have done in the past with other similar businesses within the Town.

Mr. Reddish stated that with the amount of money he is putting into the building, the patio is a large part of the overall vision.

Councilman Quinn asked how late would he like the patio to stay open?

Mr. Reddish stated 1:00 AM on weekends and 12:00 AM on weekdays.

Councilman Quinn also asked if the landscaping or any other changes have been made to help mitigate the sound coming from the patio?

Mr. Reddish stated he envisions facing speakers out towards the road and planting some type of green space as well as put up a four (4) foot wall.

Supervisor LaFountain asked what type of plantings are planned?

Mr. Reddish stated small arborvitaes, but he is willing to take suggestions.

Supervisor LaFountain stated that the intent of the Board is to strike a balance between the businesses needs and the needs of the neighborhood.

Mr. Reddish stated that the restaurant will have a casual atmosphere with background music, a couple of TV’s and a fire pit.

Mr. Reddish handed Town Clerk Steklof letters of support to be submitted into the record.

Councilman Moore asked whether there will be a children’s menu included?

Mr. Reddish stated yes, and that Jeremiah’s Tavern is family friendly.

Councilwoman Kohl and Supervisor LaFountain asked whether patrons will need to go through the restaurant in order to get to the patio?

Mr. Reddish stated yes.
Councilwoman Metzler asked what the outside walls will be made of?

Mr. Reddish stated brick or stone.

Town Attorney Horwitz asked if the restaurant will host any special events during the summer that would possibly cause louder than normal noise?

Mr. Reddish stated not that he can think of, but if the issue ever comes up he will handle it appropriately.

Public Participation

Monica Gorlick, 54 S. Village Trail, stated that she does not believe Jeremiah’s is a family restaurant because the plans show it will have a free standing bar. She is concerned about the noise that will come from the outside patio and believes the patio should close by 10:00 PM. Ms. Gorlick also stated that after doing some research she found that most area businesses close by 9:30 PM or 10:00 PM and that no businesses close as late as 2:00 AM in that neighborhood. Ms. Gorlick also voiced concern about Jeremiah’s patrons wandering onto her property.

Ann Kubus, 52 S. Village Trail, stated she has the same concerns as Ms. Gorlick. She wishes Jeff Reddish had prepared figures showing the amount of business he believes he would lose if the patio closed by 10:00 PM. She would like to see no relief given from Condition #7 of Resolution #13T-081, however if there are no issues once the business opens she feels the Town Board could revisit Condition #7 to give some relief.

Supervisor LaFountain clarified that this Public Hearing is only to consider granting the applicant relief from Condition #7 of Resolution #13T-081 that was passed on February 20, 2013.

Ms. Kubus stated that the mention of speakers and televisions placed in the patio area was not mentioned before and she is concerned about that. She also stated there is no buffer between the business and the Coventry Manor Subdivision.

Mike Young, 46 Braunston Drive, stated he is familiar with the business and therefore believes the patrons that would frequent the outdoor patio after 10:00 PM would be a younger, rowdier crowd and not be respectful of the neighborhood.

Suzanne Wilson, 38 Canterbury Trail, stated she is also concerned about the noise generated from the restaurant’s patio. She was surprised to hear that the applicant is planning to have speakers on the patio because the original Resolution states that there was to be no amplified entertainment to the exterior without approval by the Board.

Ms. Wilson also stated that when they built their home in 1986, they paid a premium to be on that side of the street. She feels that if the Town Board decides to allow relief from Condition #7 she would consider it to be an infringement. Ms. Wilson feels that the patio staying open past 10:00 PM would negatively impact their quality of life.

Dr. Christopher Galbreath, 40 Canterbury Trail, stated that it is his understanding that the Town’s quiet hours are from 11:00 PM to 7:00 AM and therefore does not understand why the Town would consider allowing a business to operate in the open air during the Town’s quiet hours.

Gene Fegadel, 36 Canterbury Trail, stated she does not understand how this application can be approved if tax payers are opposed to it.
Karin Wilson, 52 Braunston Drive, stated she loves Jeremiah’s and is happy that Penfield is attracting this type of business. She also stated that the way the plan is laid out, she does not see a problem with the noise coming from the patio because of where the road is. She suggested letting Mr. Reddish start out by staying open late and if there is a problem then shut the patio down. She also stated that she has confidence in the Town Board and the Code Enforcer to handle any problems that may arise. Ms. Wilson stated she appreciates that Mr. Reddish is willing to make concessions including putting in additional landscaping to mitigate the sound.

Gary Cummings, 17 Fox Hill Dr., stated he is in favor of Jeremiah’s patio staying open later. He has been to the patio at Don’s Original down the street on NYS RTE 250 and has been there past 10:00 PM. He does not see a difference between the two (2) businesses.

Tom Emmick, 108 Pennicott Circle, is in favor of Jeremiah’s staying open past 10:00 PM.

Bill Meagher, 1853 Penfield Road, business owner of Peapods Daycare on Penfield Road stated he is in favor of Jeremiah’s opening in Penfield. He believes it is great for the Penfield Community and the tax base. He also stated he plays on sports teams in the evenings and feels Jeremiah’s would be a great place to go after the games.

Larry Nagle, 46 Canterbury Trail feels that more studies need to be done on the issue of sound before a decision is made on the patio’s hours of operation.

Rose Marie Carey, 24 Canterbury Trail stated she is not opposed to Jeremiah’s and that it would be a great addition to the community, but would like the Board to take into account that a number of residents that spoke this evening will not be effected by the opening of the proposed Jeremiah’s Tavern due to the fact that they do not live in the neighborhood. She feels that the speakers and televisions should be located inside Jeremiah’s and that Jeremiah’s should not encourage a sound level that is disruptive to the neighborhood. She is disappointed that when asked to compromise in the hours of operation, Mr. Reddish would not do so. She supports businesses in Penfield but not when they interfere with the true nature of the neighborhood.

Keith Wilson, 38 Canterbury Trail, addressed the technical aspects of the sound issue. He stated that sound travels 1,100 feet per second and that the closest neighbor is 900 feet away. He stated there are only two (2) ways to stop sound, you can block it or reflect it. The trees will reflect some of the sound but they have to be the right type of trees. He also stated that the four (4) foot wall will do nothing to block the sound.

Monica Gorlick stated that most of the people who spoke in favor of having the patio stay open past 10:00 PM do not live in the neighborhood.

Mike Young stated that no one is asking Mr. Reddish to close his restaurant after 10:00 PM, but just to close the patio after 10:00 PM.

Mr. Reddish stated that in response to some of the comments this evening it was implied that he ignored the neighbors. He stated that he had met with two (2) neighbors in their homes to address their concerns. He also stated that he is very sensitive to the noise issue and that at his other two (2) locations he has given those neighbors his contact information and they know they can also call the General Managers of his establishment anytime with concerns. He stated they are very accessible.

The Town Clerk’s office is in receipt of 6 letters and 2 emails for and against the proposed Relief of Condition #7 which are on file in the Town Clerk’s office.
Communications and Announcements

1. The Town Assessor or her designee will be in attendance with the Tentative Assessment Roll in the Assessor’s office on the following dates and times:
   - Tuesday, May 7, 2013, 9:00 AM to 1:00 PM
   - Wednesday, May 8, 2013, 4:00 PM to 8:00 PM
   - Thursday, May 16, 2013, 9:00 AM to 1:00 PM
   - Saturday, May 18, 2013, 8:00 AM to 12:00 PM
   For more information or to make an appointment, please call 340-8610.

2. Residents with taxes due will receive a reminder notice from the Monroe County Treasury Office this week. For more information please contact the Tax Department at 340-8625.

3. The 10th Annual Ride of Silence will be held Wednesday, May 15, 2013 at 6:20 PM. Please meet at the Penfield Highway Department parking lot on Jackson Road. For more information contact Andy Stewart at 729-7008 or onetenth@earthlink.net.

4. When riding a bike please remember to inspect your bike to make sure all parts are secure and working properly. Other safety tips:
   - Wear a helmet
   - See and be seen
   - Control your bicycle
   - Watch for and avoid road hazards
   - Avoid riding on very busy streets
   For more bike safety tips, please visit: www.bicyclesafe.com.

5. Councilman Quinn gave a shout out to the Penfield Volunteer Ambulance for setting an all time record for the month of April for their call coverage of 93.8%. Councilman Quinn is a volunteer for the Penfield Ambulance and provides coverage every week.

6. The Town of Penfield will hold a Jazz and Food Rodeo at the Penfield Amphitheater and Kiwanis Stage on Friday, May 31, 2013, 4:30 PM to 7:00 PM. For more information please visit www.penfieldrec.org.

7. The Penfield Players announce its annual spring melodrama “The Villain Took a Chip Shot” by Craig Sodaro and directed by Debbie Barsel and Leslie Shroyer. The production opens Friday, May 3, 2013 and runs through Saturday, May 18, 2013 and will be held at the Penfield Community Center, 1985 Baird Road. Tickets can be purchased by calling 340-8655 or on the Penfield Recreation website at www.penfieldrec.org. Visit Penfield Players’ website for more information at www.penfieldplayers.org.

8. The Town of Penfield Annual Memorial Day Ceremony of Remembrance will take place on Monday, May 27, 2013 at 10:30 AM at the Penfield Amphitheater and Kiwanis Stage. To honor a Veteran, living or deceased, in the Presentation of Roses please call or email Sabrina Renner at srenner@penfield.org or 340-8651.

9. This past Sunday the wait staff at Steve’s Diner on Old Penfield Road donated all of their tips to five (5) different charities for their Annual “Servers for Service” Day. The total amount in donations raised was $1,480.00.
10. The Penfield Trails Committee will sponsor a free guided hike at Harris Whalen Park, 2126 Penfield Road on Saturday, May 4, 2013, 9:00 AM to 11:00 AM. Participants are asked to pre-register by calling Penfield Recreation at 340-8655.

11. The Penfield Trails Committee will sponsor a Free Guided Canoe and Kayak Paddle on Saturday, May 11, 2013 from 9:00 AM to 11:00 AM. For complete details and to register call Penfield Recreation at 340-8655 or visit www.penfieldrec.org.

12. Councilman Moore acknowledged Penfield Little League for their opening season which began last Saturday with the Annual Little League Parade and congratulated the Board of Directors for the start of a great season. Councilman Moore commended the partnership between the Town of Penfield and Penfield Little League. Over 500 children participate in the Penfield Little League Program.

13. Resident Spring Drop off will be held Thursday, May 9, 2013 and Friday, May 10, 2013 from 8:00 AM to 5:00 PM and on Saturday, May 11, 2013 from 8:00 AM to 3:00 PM at the Highway Garage, 1607 Jackson Road. For a list of items that will be accepted and not accepted, please visit our website at www.penfield.org.

14. Councilwoman Kohl’s next Community Chat is scheduled for May 21, 2013 from 5:30 PM to 7:00 PM at the Penfield Library, 1985 Baird Road.

15. The Penfield Community Victory Garden has beds available to rent for the 2013 growing season. For more information visit www.penfieldrec.org.

Public Participation - None

Additions and Deletions to Agenda

Councilman Moore moved to add #13T-120 under New Business.

Approval of Minutes

Councilwoman Kohl moved to approve the Minutes of April 3, 2013, Councilman Quinn seconded and all voted “Aye.”

Petitions - None

Resolutions by Function

Law and Finance

#13T-111 Awarding Contract for Geographic Information System (GIS) Services to MRB Group, P.C. by Moore

WHEREAS, the Town of Penfield was one of the first municipalities to utilize GIS to manage its infrastructure, and

WHEREAS, the Town of Penfield has developed a public portal through its website to allow access to their mapping inventory, and

WHEREAS, the Town of Penfield desires to continue building on the many layers of data and information available to its employees and residents, and

WHEREAS, the Town received three (3) proposals from qualified engineering firms to provide the necessary services to update the web portal and provide continued mapping services, and

WHEREAS, MRB Group, P.C. was selected to provide the GIS services to the Town of Penfield for 2013
NOW, THEREFORE, BE IT RESOLVED that the Supervisor is authorized to sign the contract with MRB Group, P.C. at the hourly rates noted in their proposal dated April 2, 2013.

Moved: Moore  
Seconded: Kohl

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

Adopted

#13T-112 Employee Handbook Revisions by Moore

WHEREAS, the Penfield Town Board adopted an Employee Handbook on January 3, 1989 and the Board is committed to keeping this information up to date,

NOW, THEREFORE, BE IT RESOLVED, that the following revisions, additions and deletions on file with the Town Clerk are approved for inclusion in the Employee Handbook effective May 1, 2013.

REVISIONS:

Page IV-10

Family and Medical Leave

- Military Caregiver Leave (M.C.L.)

Military Care Leave allows an eligible employee who is the spouse, son, daughter, parent, or “next to kin” of a covered veteran with a serious injury or illness.

a. M.C.L. allows employees to take up to a total of 26 workweeks of unpaid leave during a “single 12-month period to provide care for the veteran.”

A veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness is a covered veteran if he or she:

a. was a member of the Armed Forces (including a member of the National Guard or Reserves); or

b. was discharged or released under conditions other than dishonorable; and

c. was discharged within the five-year period before the eligible employee first takes FMLA military caregiver leave to care for him or her; *

* For a veteran who was discharged prior to March 8, 2013, the effective date of the FMLA Final Rule, the period between October 28, 2009 and March 8, 2013 will not count towards the determination of the five-year period. For example, if a service member retired on October 28, 2007, he or she would have had three (3) years remaining of the five-year period on October 28, 2009. The family member requesting FMLA will have three (3) years to begin military caregiver leave starting on March 8, 2013. Likewise, if a service member was discharged on December 1, 2010, the five-year period will begin on March 8, 2013 and extend until March 8, 2018.
Airline Flight Crew Employees

FMLA entitles Airline Flight Crew eligible employees of covered employers to take unpaid, job protected leave for specified family and medical reasons.

How to File a Complaint

The U.S. Department of Labor’s Wage and Hour Division (WHD) is responsible for administering and enforcing the Family and Medical Leave Act for most employees.

If you have questions, or you think your rights under the FMLA have been violated, you can contact WHD at 1-866-487-9243. To contact the Wage and Hour Division office nearest you, visit: www.dol.gov/whd/america2.htm.

The employees’ guide to “Military Family Leave” under the Family and Medical Leave Act is available in the Personnel Office or by accessing Paychex's “e-service” link, company information, web links.

Moved: Moore
Seconded: Quinn

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

Adopted

#13T-113 Approval of Issuance of a Conditional Use Permit to Allow a Restaurant With Outdoor Dining at 2084 Five Mile Line Road

By Moore

WHEREAS, an application has been received by the Penfield Town Board for the issuance of a Conditional Use Permit, pursuant to Article III-3-97 of the Code to allow a sit-down restaurant with outdoor dining at 2084 Five Mile Line Road, located in the Four Corners (FC) zoning district; and

WHEREAS, the Town Board of the said Town of Penfield held a Public Hearing at the Town Hall, 3100 Atlantic Avenue, in the Town of Penfield, New York on April 17, 2013 at 7:30 PM on said date, to consider the application and hear all persons interested on the question of the issuance of a Conditional Use Permit to allow a sit-down restaurant with outdoor dining at 2084 Five Mile Line Road, in the Four Corners (FC) zoning district and the Public Hearing was closed and decision was reserved.

NOW, THEREFORE, BE IT RESOLVED, that the applicants’ request for a CONDITIONAL USE PERMIT to allow a sit-down restaurant with outdoor dining at 2084 Five Mile Line Road is hereby GRANTED subject to the following conditions:

1. The applicants shall obtain a CONDITIONAL USE PERMIT from the Town Clerk and pay the appropriate fee. The CONDITIONAL USE PERMIT is non-transferable. Any subsequent owner or operator shall be required to apply for and obtain a CONDITIONAL USE PERMIT from the Town Board to operate a restaurant at this location.
2. The applicants propose to initially operate the restaurant primarily for breakfast and lunch with the potential for early dinners. The applicants may expand their hours at a later date and may do so, however, the restaurant shall be closed to the public at midnight on a nightly basis in compliance with the requirements of the Four Corners District.

3. The applicants shall comply with the occupancy requirements that have been established by the Penfield Fire Marshal in accordance with the New York State Building Code and obtain any/all necessary permits from the Building Department.

4. Adequate on-site parking and off-site shall be available at all times to accommodate the applicant’s business. At no time shall adjacent property owners or the other tenants of the subject property be adversely impacted by those patronizing this business.

5. The applicants shall obtain a Liquor License from the New York State Liquor Authority prior to serving alcohol at this location; furthermore, the applicant shall ensure that the primary use of the property remains as a sit-down restaurant and that the sale of alcohol is secondary and incidental to the sale of food.

6. The applicants have requested outdoor dining for 24 patrons (6 tables with 4 seats at each table) on the front porch and 16 patrons (4 tables with 4 seats at each table) on the proposed patio to the rear entrance of the restaurant. The applicants shall be required to comply with the requirements of the Penfield Fire Marshal regarding the use of outdoor dining area to ensure proper accessibility in those areas. All tables and chairs shall be removed from the outdoor dining area at the end of the season and stored internally on or off the site. The proposed patio to be used as the outdoor dining area shall be approved by the Director of Development Services and a building permit shall be obtained prior to its installation.

7. The applicants do not propose to have any type of entertainment to the exterior of the restaurant and none is permitted. The applicant shall only be permitted to have “piped” background music within the restaurant. No background music is permitted in the outdoor dining areas.

8. The applicants shall be responsible for the continuous maintenance of the hood and exhaust system and at no time shall odors emanate from the site that may cause a nuisance to area property owners.

9. The applicants, the owner and the other tenants who utilize the dumpster on the site shall be responsible for constructing a dumpster enclosure on the property that is properly sized to enclose the dumpster, cardboard container and grease container. The location, design and size of said enclosure shall be approved by the Director of Developmental Services.

10. The applicants shall obtain a Sign Permit from the Building Department to install the freestanding sign panel approved by the Town Board and Historic Preservation Board. Any future modification to the approved sign shall be reviewed and approved by both Boards prior to its installation.

11. The applicants propose to purchase the subject property at a future date. Prior to the sale of said property, the applicants and the owner shall provide the Town with a cross access and parking easement, in the Town’s format, to ensure that all parties currently sharing the common parking lot and points of ingress and egress continue to be served by those facilities.
12. The applicants have stated that they would like to utilize the second floor of the building for small parties. The second floor does not currently comply with the requirements of the New York State Building Code, as it has no means of secondary access. The applicants shall not be permitted to utilize the second floor of the building for any purpose other than storage space until such time as they are able to comply with the Building Code. In addition, the applicants will be required to obtain a Conditional Use Permit from the Town Board to utilize that area. The Board will review parking conditions at the site in its review of the Conditional Use Permit.

13. This operation shall comply with all Federal, State, County and Town Codes.

14. Failure to comply with the conditions set forth hereinabove may result in the revocation of this Conditional Use Permit pursuant to the requirements of the Zoning Ordinance.

AND BE IT FURTHER RESOLVED, that the applicants' proposal is classified as a Type II action pursuant to the requirements of the State Environmental Quality Review Act (SEQRA) and no additional environmental review regarding this proposal is necessary.

The Town Board, in granting the Conditional Use Permit, does so based on its following findings:

1. The applicants have leased the building formerly occupied by a restaurant known as Elegant Expressions.

2. The applicants propose to operate a primarily breakfast and lunch business, with light dinners. They may open for later dinners once established and will comply with the permitted hours of operation within the Four Corners District.

3. The applicants also propose to provide outdoor dining with 24 seats on the front porch and 16 seats in a proposed patio to be installed adjacent to the rear entrance. The applicants will obtain approval from the Director of Developmental Services and will obtain a building permit prior to the installation of the proposed patio.

4. There are adequate parking facilities on site to accommodate this business, as the current owner has informally permitted shared parking and access to the site for all of the businesses operating from it. The applicants propose to purchase the restaurant from the owner at a future date and prior to sale of the property, the Board will require the execution of a shared access and parking easement over the owners’ properties to ensure that shared access and parking facilities are provided to all those operating businesses from these sites. Failure to execute such easement will result in revocation of the applicants’ Conditional Use Permit to operate from this site.

5. The applicants stated that they will comply with all applicable State codes and regulations pertaining to the operation of a sit-down restaurant and sale of alcohol in the Town of Penfield.

6. The dumpster serving the owners’ properties is not currently enclosed as per Town Code. The owner, the applicants and all others who benefit from the use of the dumpster shall be responsible for its enclosure at the direction of the Director of Developmental Services. Said dumpster shall be enclosed by June 1, 2013.
7. The applicants do not propose to have any live entertainment on the premises at any time and the Board has required that no live music be permitted on the site. The applicants propose the use of "piped" background music within the restaurant and that shall be permitted. No piped music shall be permitted in the outdoor dining areas.

8. The applicants shall not be permitted to utilize the second floor of the building for any purpose other than storage space until such time as they are able to comply with the Building Code. In addition, the applicants will be required to obtain a Conditional Use Permit from the Town Board to utilize that area. The Board will review parking conditions at the site in its review of the Conditional Use Permit.

9. The applicants’ proposal is consistent with and furthers the goals and objectives of the Four Corners zoning district.

Moved: Moore
Seconded: Metzler

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

Adopted

#13T-114 Approval of Issuance of a Conditional Use Permit to Allow a Landscaping Office at 1739 Penfield Road by Moore

WHEREAS, an application has been received by the Penfield Town Board for the issuance of a Conditional Use Permit, pursuant to Article III-3-97 of the Code to allow a landscaping office at 1739 Penfield Road, located in the Four Corners (FC) zoning district; and

WHEREAS, the Town Board of the said Town of Penfield held a Public Hearing at the Town Hall, 3100 Atlantic Avenue, in the Town of Penfield, New York on April 17, 2013, at 7:30 PM on said date, to consider the application and hear all persons interested on the question of the issuance of a Conditional Use Permit to allow a landscaping office at 1739 Penfield Road, in the Four Corners (FC) zoning district and the Public Hearing was closed.

NOW, THEREFORE, BE IT RESOLVED, that the applicant’s request for a CONDITIONAL USE PERMIT to allow a landscaping office at 1739 Penfield Road is hereby GRANTED subject to the following conditions:

1. The applicant shall obtain a CONDITIONAL USE PERMIT from the Town Clerk and pay the appropriate fee. The CONDITIONAL USE PERMIT is non-transferable. Any subsequent owner or operator shall be required to apply for and obtain a CONDITIONAL USE PERMIT from the Town Board to operate a business at this location.

2. The applicant shall comply with the occupancy requirements that have been established by the Penfield Fire Marshal in accordance with the New York State Building Code and obtain any/all necessary permits.

3. The applicant shall not be permitted to install any form of decorative structures to the exterior of the office without approval from the Town Board.

4. The applicant shall submit a sign package for the property for the Town Board’s review and approval. Upon receiving approval from the Town Board, the applicant shall obtain a Sign Permit from the Building Department and pay the appropriate fee prior to the installation of any signage.
5. The applicant shall continue his efforts to bring his property at 2343 Penfield Road into compliance with the requirements of the Town Project Review Committee’s memo dated March 6, 2013 to the satisfaction of the Town Building Inspector. The PRC memo outlines specific timeframes to bring various issues on that site into compliance with Town Code.

6. This operation shall comply with all Federal, State, County and Town Codes.

7. Failure to comply with the conditions set forth hereinabove may result in the revocation of this Special Permit pursuant to the requirements of Article XI-11-14 of the Zoning Ordinance.

AND BE IT FURTHER RESOLVED, that the applicant’s proposal is classified as a Type II action pursuant to the requirements of the State Environmental Quality Review Act (SEQRA) and no additional environmental review concerning this proposal shall be required.

The Town Board, in granting the Special Permit, does so based on its following findings:

1. The applicant proposes to lease the building at 1739 Penfield Road for the purpose of installing the office component of his landscaping business at this location. In addition, he has additional space which he proposes to lease to a Certified Public Accountant or like professional and a local charity.

2. The site has adequate parking facilities to accommodate his business as well as his tenants as no vehicles associated with the landscaping business are proposed to be and are not permitted to be stored on site at any time.

3. The Town Board has requested the applicant to submit a sign package for the property (particularly the proposed freestanding sign) to ensure that the sign is compatible with the neighborhood and the existing signs in close proximity to it. Upon review and approval of the sign package, the applicant will be permitted to obtain a Sign Permit from the Building Department and install signage as approved.

4. The applicant does not propose a dumpster at the site at this time. In the event a dumpster is needed at a later date, the dumpster shall be placed on the site in a location that is buffered from Penfield Road and the adjacent properties. The dumpster will be required to be screened to the satisfaction of the Building Inspector.

5. The applicant’s operational component of his landscaping business is located at 2343 Penfield Road. That property has been in violation of the Town’s Code pertaining to Customary Agricultural Operations and Property Maintenance Articles in the Penfield Zoning Ordinance. The applicant is in the process of bringing that site into compliance with the requirements of the Town Code at the direction of Town staff. The applicant shall continue his efforts to bring the site into compliance as directed in the Town PRC memo dated March 6, 2013. Failure to do so will result in revocation of this Conditional Use Permit to conduct business at 1739 Penfield Road.

6. This office is properly scaled to accommodate the site with respect to use and parking needs.
Penfield Town Board, May 1, 2013

(Resolution #13T-114 – Continued)

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

Adopted

#13T-115 William and Debbie S. Wickham, Tax Certiorari Settlement
   By Moore

WHEREAS, heretofore commenced proceedings against the Assessor and the
Board of Assessment Review and other respondents for a review of the
Assessment for the years 2012/2013; for the premises located at 1350
Sweet Corners Road (Tax map number: 125.01-1-10.1) located within the
Town of Penfield, and

WHEREAS, after negotiations between the Attorney for the Town and the
Attorneys for the Petitioner, a tentative agreement has been reached
between parties on the terms of a proposed settlement subject to the
approval of the Town Board and to the approval of the Supreme Court of
the State of New York, which terms of settlement are set forth in the
Stipulation on file in the Office of the Town Assessor, and

WHEREAS, upon due consideration of all facts and circumstances, the Town
Board finds that the proposed settlement is fair and reasonable and
should be approved.

THEREFORE, BE IT RESOLVED, that the proposed settlement for the Tax
Certiorari proceedings brought by WILLIAM S. AND DEBBIE S. WICKHAM for
the years 2012/2013; be and hereby are approved.

BE IT FURTHER RESOLVED, that the Attorney representing the Town be and
hereby is directed to make application to the Supreme Court of the State
of New York for approval of such settlement and that upon obtaining such
approval, the Assessor of the Town of Penfield be and she hereby is
directed to make the necessary adjustments in the Assessment Rolls for
the Town of Penfield to reflect the terms of such settlement.

Moved: Moore
Seconded: Quinn

Adopted

#13T-116 Setting a Public Hearing for a Conditional Use Permit to
   Allow Dog Grooming at 1850 Penfield Road – WITHDRAWN

#13T-117 Setting a Public Hearing for a Conditional Use Permit to
   Allow a Day Spa at 1788 Penfield Road by Moore

WHEREAS, an application has been received by the Penfield Town Board for
the issuance of a Conditional Use Permit pursuant to Article III-3-97 of
the Code to a day spa at 1788 Penfield Road, located in the Four Corners
(FC) zoning district;

NOW, THEREFORE, BE IT RESOLVED, that the Penfield Town Board is best
suited to act as “lead agency” within the meaning of the State
Environmental Quality Review Act (SEQRA) and thus does hereby designate
itself as “lead agency” pursuant to SEQRA; and be it further
Penfield Town Board, May 1, 2013

(Resolution #13T-117 – Continued)

RESOLVED, that the Town Board of the said Town of Penfield shall hold a Public Hearing at the Penfield Town Hall, 3100 Atlantic Avenue, in the Town of Penfield, New York on June 5, 2013 at 7:30 PM on said date, to consider the said application and to hear all persons interested on the question of the issuance of a Conditional Use Permit to allow a day spa at 1788 Penfield Road, in the Four Corners (FC) zoning district; and be it further

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

Moved: Moore
Seconded: Kohl

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

Adopted

Public Works

#13T-118 Recognizing May 2013 as National Historic Preservation Month by Metzler

WHEREAS, historic preservation is an effective tool for managing growth, revitalizing neighborhoods, fostering local pride and maintaining community character while enhancing livability; and

WHEREAS, historic preservation is relevant for communities across the nation, both urban and rural, and for Americans of all ages, all walks of life and all ethnic backgrounds; and

WHEREAS, it is important to celebrate the role of history in our lives, and the contributions made by dedicated individuals, in helping to preserve the tangible aspects of the heritage that has shaped us as a people

NOW, THEREFORE BE IT RESOLVED, that the Town Board of the Town of Penfield does hereby proclaim May 2013 as National Historic Preservation Month and call upon the people of the Town of Penfield to join their fellow citizens across the United States in recognizing and participating in this special observance.

Moved: Metzler
Seconded: Moore

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

Adopted

Public Safety - None
Community Services

#13T-119  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:

SVM Avenue Marketing, 1758 Penfield Rd., Penfield, NY 14526, Instructor for Getting Started on Facebook 7/20/13, and Facebook for Business, 7/27/13, for a fee of 70% of program revenue. Voucher to be submitted 8/7/13.

It’s My Party c/o John Giotto, PO Box 423, Penfield, NY 14526 to provide It’s My Party, Saturday, August 3, 2013 at Penfield Amphitheater for a fee of $500.00. Voucher to be submitted on 7/3/13.

Dick Stacey, 87 Chappel Hill Dr, Rochester, NY 14617, musical entertainment for senior picnic on 5/7/13 for a fee of $250.00. Voucher to be submitted on 5/1/13.

Moved: Kohl
Seconded: Quinn

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

Adopted

Old Business - None

New Business

#13T-120  Authorization for Supervisor to Sign a License and Hold Harmless Agreement to Allow a Portion of a Deck to Remain Within a Drainage Easement at 35 Autumn Trail SBL #093.15-2-20.1 – Herbert C. and Marguerite R. Pfuhl by Moore

BE IT RESOLVED, that the Town Board of the Town of Penfield hereby authorizes the Supervisor to sign a License and Hold Harmless Agreement with Herbert C. and Marguerite R. Pfuhl, owners of property at 35 Autumn Trail, to permit a portion of a deck to encroach into a drainage easement to the Town of Penfield located at 35 Autumn Trail, subject to submission of an additional easement in a form and substance acceptable to the Town Attorney to provide additional access to Town drainage facilities located at 35 Autumn Trail.

Moved: Moore
Seconded: Kohl

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

Adopted

Public Participation

Ed Lindskoog, 18 High School Drive, stated that last year there was a recycling container placed in Schaufelberger Park. He is wondering why it is not there now.

Supervisor LaFountain replied that it has not yet been delivered, but he will make sure it will be delivered tomorrow morning.

Mr. Lindskoog also stated that the forms that are in the newly installed traffic signals are still in place and that they are a tripping hazard. He believes the contractors should remove them and replace with cones.
Supervisor LaFountain stated they are working with the NYS DOT to correct the situation.

Mr. Lindskoog spoke of the Resolutions approved this evening pertaining to 2084 Five Mile Line Road and 1739 Penfield Road and that the Resolutions did not address enclosed dumpsters.

Supervisor LaFountain stated that one application does call for an enclosed dumpster the other is an office that will be using a tote. Supervisor LaFountain also stated that the Board will continue to address the enclosed dumpster issue in the Four Corners area.

Mr. Lindskoog stated that the Four Corners gas station (Formerly Duffy’s) was supposed to have an enclosed dumpster, but they still do not have one.

Supervisor LaFountain stated that an update is forthcoming and they will put this on the Agenda as a line item.

Supervisor LaFountain closed the meeting by congratulating Brian Delameter, Cable TV Coordinator Assistant, and his wife Kathleen on the birth of their daughter.

Adjournment

Supervisor LaFountain adjourned the meeting at 9.25 PM.

Amy Steklof, RMC
Town Clerk