

The Regular meeting of the Penfield Town Board was held on Wednesday, September 22, 2021 at 7:00 PM at the Penfield Town Hall, 3100 Atlantic Avenue, Penfield, New York.

Present:	R. Anthony LaFountain	Supervisor
	Debbie Drawe	Councilwoman
	Linda Kohl	Councilwoman
	Andrew Moore	Councilman
	Bob Ockenden	Councilman

Also Present:

Amy Steklof	Town Clerk
Richard Horwitz	Town Attorney
James Costello	Director of Developmental Services
Eric Tait	Director of Public Works

Supervisor LaFountain called the meeting to order - Pledge of Allegiance

Budget Officer's Message and Information Presentation on the 2022 Tentative Budget

Supervisor LaFountain recognized Finance Director, Barbara Chirido who gave an overview of the Tentative Budget for fiscal year 2022. The proposed Tentative Budget totals \$21,689,100. This is an increase from the 2021 Adopted Budget primarily due to the purchase of large equipment. However, the levy for 2022 will decrease, so there is no additional tax burden as part of next year's budget. We are again below the allowable increase for the New York State tax levy cap by \$519,000 and continue to be able to provide all our services. After this meeting, the 2022 Tentative Budget becomes the Preliminary Budget and is available for public review on the town website, in the Town Clerk's office and the Penfield Public Library. The 2022 budget timeline can be seen below.

2022 BUDGET TIMELINE

June to September 2021 - Town Supervisor, Town Comptroller, and staff conduct budget work sessions; prepare 2022 Tentative Budget

September 22, 2021 - Town Supervisor, Town Comptroller present a summary of the 2022 Tentative Budget to the Town Board and community; document made public for review (during this period, Tentative Budget becomes the Preliminary Budget)

September 23-October 15, 2021 - Public comment period

October 6, 2021 - Public hearing on 2022 Preliminary Budget; public comments received

October 7-15, 2021 - Town Board reviews comments, develops a Final Budget

October 20, 2021 - Town Board legislative meeting, adoption of a Final 2022 Budget

October 22, 2021 - Town submits the Penfield Adopted 2022 Budget to County of Monroe, Adopted Budget made public

Supervisor LaFountain stated, as Ms. Chirido indicated, the town budget is broken into three components; The General Fund, Highway Fund and Library Fund. The details can be found on the town website. Supervisor LaFountain stated that the town board will accept comments regarding this budget before, during and after the Public Hearing. All comments will be placed on the town website with answers. Supervisor LaFountain thanked all department heads for their help in putting together their portion of the budget. He thanked Ms. Chirido for her presentation.

Public Hearing #1: To Consider Amending the Zoning Ordinance and Map for Rezoning 5.16+/- Acres from Limited Business to General Business of 2218, 2222 and 2226 Penfield Road.

The Town Clerk read the title of the above Public Hearing; said Notice was published in the Democrat and Chronicle on September 9, 2021 and was posted on the Town Website and Town Clerk's bulletin board. 10 postcards were mailed.

Jerry Goldman, Attorney for Dr. Tahmtan Hormozdyan, owner of the properties at 2218, 2222 and 2226 Penfield Road, introduced David Cox, project engineer from Passero Associates. Mr. Goldman stated they would like to rezone the subject property from the current limited business to general business. The property is immediately adjacent to general business zoned property to the west and limited business zoned property to the east which provides a buffer, as is intended, under the Town Code and the Town Comprehensive Plan.

He stated there has not been any active business on the property for some time. As a result there does not appear to be any limited business use that would effectively utilize this property. However, the change of zoning could stimulate the use of the property.

There is currently a proposal for the use of the frontage of this property for a Royal Car Wash which would be for general business use.

Mr. Goldman stated the property is next to a shopping Center and the only area of the property that is in close proximity to residential property, is the north-east corner adjacent to the Pembroke Apartments.

Mr. Goldman stated that a benefit for rezoning this area to general business is that the town code has a requirement of a 100 foot buffer for general business while the town code requires only a 50 foot buffer for limited business.

Mr. Goldman stated from a legal point of view there is no impediment to this rezoning request. Also comment letters relative to the site have been received. All comment letters will be made part of the record.

Mr. Goldman spoke briefly about the Royal Car Wash application and stated there is ample space to utilize for the carwash.

Danny Daniele, owner of the Royal Car Wash stated they are looking to put a Royal Car Wash on the front lot and keep the building that is already located there. They have no desire to develop anything on the third parcel in the back. He stated they have conducted numerous sound studies in different towns and, in regards to the car wash, it generates approximately 50-60 sound decibels. The sound spectrum goes from 0-180. General traffic generates approximately 80 sound decibels, rock concert 100 decibels and fireworks generate 180 decibels. They also have conducted a traffic study which can be made available upon request. Mr. Goldman stated that much of the traffic is considered as drive-by traffic and does not necessarily attract new trips of any substantial amount.

Supervisor LaFountain stated he is in receipt of the Monroe County Planning and Development memo dated September 13, 2021 regarding this property and asked Mr. Goldman to address the first comment on the memo.

Mr. Goldman stated he has seen this comment before and stated the county specifically says that rezoning needs to be consistent with the Town Comprehensive Plan. He reiterated that the Town of Penfield Comprehensive Plan does not distinguish between various grades of commercial, but talks about commercial in general and does not go into the gradations of the various commercial properties.

Councilman Ockenden asked what the feedback has been in the current limited business category when searching for tenants.

Mr. Goldman stated the brokers have said the market at this time, is not there for office commercial. He went on to say that post Covid, most office users are shrinking down their office space as opposed to increasing the size of their space. Mr. Goldman said the back parcel has been marketed for over a year and a half with no success. The front parcel has been actively marketed for the last nine months, also with no success.

Councilman Ockenden asked what the intentions are for lot 2. Mr. Danielle stated that if they could take down the front structure that is currently 8000 square feet, the structure they would be developing would only be approximately 4000 square feet giving view to the back parcel.

Councilman Moore asked Mr. Danielle how this potential development would look compared to their other location in Webster at the corner of Jackson Road and Ridge Road.

Mr. Danielle stated it would be almost identical with a colonial look to fit in with the general topography and look of the area.

Councilman Moore inquired about cross access through Pen fair Plaza.

Mr. Daniele stated the site has multiple means of egress where you can enter from Route 441 or enter from the plaza. It would not be necessary to access the car wash from Route 441. There is a cross access easement from Tim Hortons, located next door. However, they already have two means of egress and that would be a third, so there is flexibility if the Town Board would like to get rid of that egress.

Councilwoman Drawe asked if the applicant would consider keeping the third lot as just grass.

Mr. Danielle stated it would not be in their best interest and that it most likely would be considered for an office building and not for retail due to it being so far back in location.

Supervisor LaFountain asked if the intent of the applicant is to acquire all three properties.

Mr. Danielle stated, yes.

Councilwoman Drawe stated it would be a nice buffer for the residents behind the lot if nothing was developed on the back lot.

Mike Columbo from Flaum Management, has been marketing the property for over a year. He stated the existing building on lot #2 has a limited amount of parking. Lot #3 could be used for additional parking if needed.

Town Clerk Steklof summarized a letter sent in by the law firm of Morgenstern and DeVoiesick, representing Dr. Manish Sanon who objects to the rezoning proposal. The letter has been made part of the record.

Supervisor LaFountain read other email letters into the record from Dr. Sanon and Mr. Om Popli of Popli Architecture, Engineering and Surveying firm, stating their objections to the rezoning proposal.

All letters will be made part of the record as well.

Mr. Goldman stated he will address all comments received in writing.

Supervisor LaFountain stated the next opportunity the town board will discuss this application will be on October 13, 2021, which will give the opportunity for Mr. Goldman to prepare input and feedback for the discussion.

Marie Cinti, 8 S. Village Trail stated she objects to the proposed car wash. She feels that the change in zoning would not protect the neighborhoods. She also feels it would set a bad precedent. She also questions whether there would be an adverse impact, sound wise, from the car wash dryers and vacuums especially during the winter months when there is no foliage on the trees allowing sound to travel more. She stated she would need to see additional information to feel more comfortable with the proposal.

Supervisor LaFountain went over next steps.

Hearing Closed

Communications and Announcements

1. The Penfield Ecumenical Food Shelf (PEFS) is in need of non-perishable items. Some of the most needed items are applesauce, cake mixes, cans of tuna and cans of peas, mayonnaise, boxed potatoes, dish soap and toothpaste. For a complete listing of items needed, please visit pefs.org or call 234-0799. Donations can be made at the PEFS Facility located at 1618 Jackson Road.
2. On September 13, 2021, the Shepard Home held its annual golf tournament fundraiser at Shadow Lake in Penfield. It was a fun filled day raising money for a great cause. Though Covid has significantly increased the need for the Sheperd Home's hospice care services, it just as significantly restricted their fundraising events. This golf tournament was their first fundraiser as they re-open to receive residents again starting next week on Monday, September 27, 2021. This opening could not happen without the support of everyone in the community. On behalf of the Shepherd Home, it's volunteers and staff we thank you for all your support and kindness.
3. The first of the four county crosswalks that are being redone with flashing lights has been completed at the intersection of Five Mile Line Road and Liberty Street. It will help the drivers notice when pedestrians are in the crosswalk.
4. The Community Bike Drop will be held Saturday October 2, 2021 from 10:00AM - 1:00PM at the Penfield Community Center. This is a joint effort with Penfield Rotary and "Our Community Bikes". For more information please contact Councilwoman Kohl at Kohl@Penfield.org

Public Participation

Additions and Deletions to Agenda

Councilman Moore moved for the addition of resolutions #21T-183 and #21T-184 as New Business. Councilwoman Kohl seconded.

Approval of Minutes - No Minutes to approve

Petitions - None

Resolutions by Function

Law and Finance

#21T - 179 Setting a Public Hearing for Adoption of Local Law No.1 of 2021 to be Known as "A Local Law Opting Out of Allowing Cannabis On-site Consumption Sites in the Town of Penfield"

WHEREAS, the Town Board of the Town of Penfield wishes to consider adopting proposed Local Law No. 1 of 2021 which would allow the Town of Penfield to opt out of allowing cannabis on-site consumption sites as authorized under Cannabis Law Article 4; 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 October 20, 2021, at 7:00 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 2021 which would authorize the Town of Penfield to opt out of allowing cannabis on-site consumption sites as authorized under Cannabis Law Article 4. A copy of said law is attached hereto and made a part hereof as Schedule "A"; and be it further

RESOLVED, that the Town Clerk be and she hereby is directed to publish and post a Notice of the Public Hearing on the official signboard of the Town in the manner prescribed by Law, the first publication thereof to be not less than five (5) days and not more than thirty (30) days before the date set for the said public hearing, as aforesaid.

SCHEDULE "A"

TOWN OF PENFIELD LOCAL LAW NO. 1 OF 2021

A LOCAL LAW

OPTING OUT OF ALLOWING CANNABIS ON-SITE CONSUPTION SITES AS AUTHORIZED UNDER CANNABIS LAW ARTICLE 4 IN THE TOWN OF PENFIELD

Section 1. Legislative Intent

It is the intent of this local law to opt out of allowing cannabis on-site cannabis consumption sites in the Town of Penfield that would otherwise be allowed under Cannabis Law Article 4.

Section 2. Authority

This local law is adopted pursuant to Cannabis Law §131 which expressly authorizes the Town Board to adopt a local law requesting the Cannabis Control Board to prohibit the establishment of on-site cannabis consumption licenses within the jurisdiction of the town and is subject to a permissive referendum, the procedure of which is governed by Municipal Home Rule Law §24.

Section 3. Local Opt-Out

The Town Board of the Town of Penfield hereby opts out of allowing on-site cannabis consumption sites from being established and operated within the town's jurisdiction.

Section 4. Severability

If any clause, sentence, paragraph, subdivision, or part of this Local Law or the application thereof to any person, firm or corporation, or circumstance, shall be adjusted by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgement shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or part of this Local Law or in its application to the person, individual, firm or corporation or circumstance, directly involved in the controversy in which such judgement or order shall be rendered.

Section 5. Permissive Referendum/Referendum on Petition

This local law is subject to a referendum on petition in accordance with Cannabis Law §131 and the procedure outlined in Municipal Home Rule Law §24.

Section 6. Effective date

This local law shall take effect immediately upon filing with the Secretary of State.

Moved: Moore
Seconded: Kohl

Vote:	Drawe	Aye	Kohl	Aye
	LaFountain	Aye	Moore	Aye

Ockenden Aye

Adopted

#21T-180 Authorization for Supervisor to Sign a License and Hold Harmless Agreement to Allow a Fence Within a Storm Sewer Easement at 44 Brass Castle - SBL#094.01-5-23

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 Christopher Porter and Mary Presutti, owners of property of 44 Brass Castle, to permit a portion of a fence to encroach into the Storm Sewer easement to the Town of Penfield located at 44 Brass Castle in a form and substance acceptable to the Town Attorney.

Moved: Moore
Seconded: Drawe

Vote:	Drawe	Aye	Kohl	Aye
	LaFountain	Aye	Moore	Aye
	Ockenden	Aye		

Adopted

Public Works

#21T-181 Advertising for Bids for Janitorial Services at the Town Hall, Town Library, and Department of Public Works

BE IT RESOLVED, that the Director of Public Works, be and hereby is authorized to advertise in the manner prescribed by law for sealed proposals to furnish the Town of Penfield with the following:

Janitorial Services for the Town Hall, the Town Library, and the Department of Public Works

NOW THEREFORE, BE IT FURTHER RESOLVED, the service contract shall be in accordance with specifications prepared by the Director of Public Works. Sealed proposals are to be received in the office of the Town Clerk until October 15th, 2021 at 11:00am local time and there and then to be opened and read publicly by the Town Clerk.

Moved: Drawe
Seconded: Ockenden

Vote:	Drawe	Aye	Kohl	Aye
	LaFountain	Aye	Moore	Aye
	Ockenden	Aye		

Adopted

#21T-182 Advertising for Bids for Turf Mowing Services for Town Properties

BE IT RESOLVED, that the Director of Public Works, be and hereby is authorized to advertise in the manner prescribed by law for sealed proposals to furnish the Town of Penfield Department of Public Works with the following:

Turf Mowing Services for Various Town Properties

NOW THEREFORE, BE IT FURTHER RESOLVED, the service contract shall be in accordance with specifications prepared by the Director of Public Works. Sealed proposals are to be received in the office of the Town Clerk until October 22nd, 2021 at 11:00am local time and there and then to be opened and read publicly by the Town Clerk.

Moved: Drawe
 Seconded: Moore

Vote:	Drawe	Aye	Kohl	Aye
	LaFountain	Aye	Moore	Aye
	Ockenden	Aye		

Adopted

Public Safety - None

Community Services - None

Old Business - None

New Business

#21T-183 Resolution Implementing the Determination of the Appellate Division, Fourth Department's Memorandum and Order dated April 30, 2021

WHEREAS, the Town Board served a Notice of Charges containing four charges of misconduct and/or incompetency and insubordination on then Town employee Y.G. on May 6, 2019 pursuant to Section 75 of the New York State Civil Service Law; and

WHEREAS, the Town Board designated Allan Berry as its hearing officer (Resolution #19T-159) to conduct a hearing regarding the charges filed against Y.G. pursuant to Section 75 of the New York State Civil Service Law and to provide the Board with a report and recommendations as to whether Y.G. was guilty of some or all of the charges that were filed against Y.G. and, if so, what penalty was recommended;

WHEREAS, after a hearing, Hearing Officer Allan Berry issued a Report and Recommendation finding Y.G. guilty of all four charges specified in the Notice of Charges; and

WHEREAS, the Town Board, after due consideration of the Hearing Officer's Report and Recommendation, the transcript of the Section 75 hearing and all exhibits that were admitted into evidence at that hearing, and the post-hearing briefs that were submitted to the Hearing Officer, determined that Y.G. was guilty of all four charges and determined that her employment should be terminated effective November 20, 2019 (Resolution #19T-205); and

WHEREAS, upon appeal, the Appellate Division, Fourth Department issued a Memorandum and Order on April 30, 2021 ordering that the determination of the Town Board be modified by annulling the part of the determination finding Y.G. guilty under the first two of the four charges contained in the Notice of Charges, vacating the penalty of termination, and directing the Town Board to impose a less severe penalty; and

WHEREAS, the Town timely appealed the Appellate Division, Fourth Department's Memorandum and Order to the New York Court of Appeals on May 26, 2021; and

WHEREAS, on September 9, 2021, the New York Court of Appeals dismissed the appeal *sua sponte* on the grounds that the Order appealed from does not finally determine the proceeding within the meaning of the Constitution;

NOW, THEREFORE, BE IT RESOLVED that, in accordance with the Appellate Division, Fourth Department's April 30, 2021 Memorandum and Order, the Town Board imposes the less severe penalty on Y.G. of suspension without pay for a period of two months; and

BE IT FURTHER RESOLVED that the Town Board does not waive any rights it has with respect to appealing the Appellate Division, Fourth

Department's Memorandum and Order to the New York Court of Appeals or utilizing any applicable stay of enforcement provisions contained Rule 5519 of the New York Civil Practice Law and Rules.

Moved: Moore
Seconded: Kohl

Vote:	Drawe	Aye	Kohl	Aye
	LaFountain	Aye	Moore	Aye
	Ockenden	Aye		

Adopted

#21T-184 Setting a Public Hearing for a Special Permit to Allow the New Ownership and Operatorship of 2567 Browncroft Blvd. - SBL# 123.08-1-30- OGRE LLC

WHEREAS, an application has been received by the Penfield Town Board for the issuance of a Special Permit pursuant to Chapter 250-6.2-1 of the Code, and Town Board Resolution 19T-104 of 2019, to allow for new ownership and operatorship of the historically designated property located at 2567 Browncroft Blvd, located in the R-1-20 zoning district;

NOW, THEREFORE, BE IT

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

RESOLVED, that the subject application is determined to be a Type II action pursuant to the requirements of the State Environmental Quality Review Law; 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 October 20, 2021, at 7:00 PM on said date, to consider the said application and to hear all persons interested on the question of the issuance of a Special Permit to allow the change in ownership and operatorship of the historically designated property at 2567 Browncroft Blvd., located in the R-1-20 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: Drawe

Vote:	Drawe	Aye	Kohl	Aye
	LaFountain	Aye	Moore	Aye
	Ockenden	Aye		

Adopted

Public Participation

Executive Session

Next Meeting - October 6, 2021

Adjournment

Supervisor LaFountain moved to adjourn the meeting at 8:06PM

Amy M. Steklof, RMC/CMC
Town Clerk