PENFIELD TOWN BOARD RESOLUTION NO. 14T-206       DATE December 17, 2014

BY Councilman Moore                     Law & Finance COMMITTEE

NAME Adopting Local Law No. 1 of 2014 - Establishing a Severability Clause; Confirming and Clarifying that any Uses Not Expressly Permitted are Prohibited; Articulating Certain Explicitly Prohibited Uses; Adding Certain New Definitions, and Changing Certain Existing Definitions; and Modifying, Clarifying, and Adding to the Provisions Regarding Variances (Ban on Hydrofracking)

WHEREAS, the Town Board of the Town of Penfield wishes to amend the Penfield Zoning Ordinance through the adoption of Local Law No. 1 of 2014 which establishes a Severability Clause; confirming and clarifying that any uses not expressly permitted are prohibited; articulating certain explicitly prohibited uses; adding certain new definitions, and changing certain existing definitions; and modifying, clarifying, and adding to the provisions regarding variances; 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 has designated itself as “lead agency” pursuant to SEQRA; and

WHEREAS, the subject application has been determined to be an Unlisted action pursuant to the State Environmental Quality Review Act (SEQRA), and is determined not to result in any significant adverse impact on the environment; and

WHEREAS, the Town Board of the said Town of Penfield held a public hearing at the Penfield Town Hall, 3100 Atlantic Avenue, in the Town of Penfield, New York on December 3, 2014, at 7:30 PM on said date, to consider the said proposal and to hear all persons interested on the question of the adoption of Local Law No. 1 of 2014, and the public hearing was closed and decision was reserved;

NOW, THEREFORE, BE IT

RESOLVED, AND HEREBY IS ENACTED BY THE TOWN BOARD OF THE TOWN OF PENFIELD AS FOLLOWS: Local Law No. 1 of 2014, hereinafter set forth in Schedule A, attached hereto; and

BE IT FURTHER

RESOLVED, This Local Law shall be effective upon filing with the office of the Secretary of State, and the Town Clerk is directed to immediately file a copy of this Local Law with the New York State Secretary of State as required by law.
Moved: 
Seconded: 
Vote: Kohl 
LaFountain 
Metzler 
Moore 
Quinn
**SCHEDULE A**

Town of Penfield
Local Law No. 1 of the Year 2014

A local law to amend and supplement
The Town of Penfield Zoning Ordinance adopted in 1981
(as heretofore amended),
By:

Establishing a Severability Clause;
Confirming and Clarifying that any Uses not Expressly Permitted are Prohibited;
Articulating Certain Explicitly Prohibited Uses;
Adding Certain New Definitions, and Changing Certain Existing Definitions; and
Modifying, Clarifying, and Adding to the Provisions Regarding Variances.

Be it enacted by the Town Board of the Town of Penfield as follows:

Article I. General Provisions

Section 1.1. Authority for Adoption

The Town Board hereby adopts this Local Law pursuant to the authority described at Section 1. of Appendix A attached hereto, which Appendix A is hereby incorporated and made a part of this Local Law for all purposes by this reference.

Section 1.2. Findings of Fact

The Town Board has heretofore made certain findings, determinations, and declarations relative to the matters set forth in this Local Law, and a copy of the text of such findings, determinations, and declarations is set forth at Section 2. of Appendix A attached hereto.

Section 1.3. Purpose & Intent

The Purposes and Legislative Intent underlying the Town Board’s passage of this Local Law are set forth at Section 3. of Appendix A attached hereto.

Section 1.4. Definition of “Existing Zoning Law,” this “Local Law,” and “this “Law”

As used in this Local Law, the term “Existing Zoning Law” shall mean and be the Town of Penfield Zoning Ordinance adopted in 1981, as amended to date.
As used herein, the term this “Local Law” shall mean and be this Local Law No. 1 of 2014.

As used in Article II of this Local Law, the term “this Law,” “this chapter,” this “Chapter,” “this Zoning Chapter,” and “herein” shall mean, be, and refer to the Existing Zoning Law as amended by this Local Law.

**Section 1.5. Interpretation**

The statements of purpose, intent and findings are legislatively adopted along with the formal text of the amendments to the Existing Zoning Law effected by this Local Law. They are intended as a legal guide to the administration and interpretation of this Local Law and shall be treated as legislative history.

This Local Law is intended to supersede any provision of the New York State Town Law that is inconsistent herewith.

**Article II. Amendments of Existing Zoning Law**

**2.1. Amendments to Article I of the Existing Zoning Law**

A. § 1-3 of the Existing Zoning Law is hereby amended, so as to delete the words “master plan” from the second paragraph thereof, and to substitute the words “comprehensive plan” therefor.

B. Article I of the Existing Zoning Law is hereby further amended, so as to add a new Section thereto (to be numbered ‘§ 1-4’), said new Section to be inserted immediately after the text of present § 1-3 of the Existing Zoning Law, and immediately prior to Article II of the Existing Zoning Law:

“§ 1-4. Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this Law, or the application thereof to any person or to any circumstance, is adjudged or declared invalid or unenforceable by a court or other tribunal of competent jurisdiction, then, and in such event, such judgment or declaration shall be confined in its interpretation and operation only to the provision of this Law that is directly involved in the controversy in which such judgment or declaration is rendered, and such judgment or declaration of invalidity or unenforceability shall not affect or impair the validity or enforceability of the remainder of this Law or the application hereof to any other persons or circumstances. If necessary as to such person or circumstances, such invalid or unenforceable provision shall be and be deemed severed herefrom, and the Town Board hereby declares that it would have enacted this Law, or the remainder thereof, even if, as to particular provisions and
persons or circumstances, a portion hereof is severed or declared invalid or unenforceable.”

2.2. Amendments to Article II of the Existing Zoning Law

A. § 2-2 of the Existing Zoning Law is hereby amended so as to delete the present defined term “Accessory Facility or Structure”, and to substitute the defined term “Accessory Facility or Structure (Communication Tower)” therefor.

B. § 2-2 of the Existing Zoning Law is hereby amended so as to delete the present definition of “Accessory Structure or Use” in its entirety, and to substitute the following text therefor:

“Accessory Structure - a structure customarily incidental and subordinate to the principal building on the same lot, where the principal building is lawful and where there is unity of ownership between the principal building and accessory structure. A structure which dominates the principal building in area is not eligible to qualify as an accessory structure.

“Accessory Use - a use customarily incidental and subordinate to the principal use, where the principal use is lawful, where there is unity of ownership between the principal and accessory use, and where the principal and accessory uses are located on the same lot. A use which dominates the principal use in area, extent or purpose is not eligible to qualify as an accessory use. Under no circumstances shall any Explicitly Prohibited Use qualify as an accessory use.”

C. The second sentence of the definition of “Authorized Official” set forth at § 2-2 of the Existing Zoning Law (beginning “Building and Zoning Administrator ...”) is hereby amended, so as to insert the words “This term includes without limitation” immediately before the (present) words “Building and Zoning Administrator...”).

D. § 2-2 of the Existing Zoning Law is hereby further amended, so as to insert the following text regarding the terms “Commercial; Commercial Uses” therein, said text to be inserted immediately after the definition of “Civic Event” and immediately before the definition of “Communication Tower”:

“Commercial; Commercial Uses - Notwithstanding any provision hereof to the contrary, for purposes of this Law in no event shall the terms “commercial,” “commercial uses,” or any variation thereof, be construed to mean, be, include, or authorize within the Town any Explicitly Prohibited Use.”

E. § 2-2 of the Existing Zoning Law is hereby further amended, so as to insert the following definition of “Comprehensive Plan” therein, said definition to be inserted immediately after the newly added text regarding the term “Commercial; Commercial Uses” therein and immediately before the definition of “Communication Tower”:

“Comprehensive Plan - any document, styled comprehensive or master plan
or otherwise, adopted by the Town Board for the protection, enhancement, growth, and
development of the Town, immediate as well as long-range, specifically pursuant to § 272-
a of the NYS Town Law, together with all other materials, written and/or graphic, including
but not limited to maps, charts, studies, resolutions, reports and other descriptive material,
adopted by the Town Board, that identify the goals, objectives, principles, guidelines,
policies, standards, devices and instruments for the protection, enhancement, growth and
development of the Town."

F. § 2-2 of the Existing Zoning Law is hereby further amended, so as to add the following
text to the present definition of “Customary Agricultural Operations,” said text to be
inserted immediately following the end of the sentence that begins “When in
conjunction...”:

“In no event shall ‘Customary Agricultural Operations’ be construed to mean, be, include,
or authorize within the Town Natural Gas and/or Petroleum Exploration Activities, Natural
Gas and/or Petroleum Extraction Activities, a Land Application Facility, a Natural Gas
And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility,
a Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump, or
any other Explicitly Prohibited Use.”

G. § 2-2 of the Existing Zoning Law is hereby further amended, so as to insert the following
text regarding the term “Excavation” therein, said text to be inserted immediately after the
definition of “Escort Agency” and immediately before the definition of “Expandables”:

“Excavated Materials; Excavation; Excavating - Notwithstanding any
provision hereof to the contrary, for purposes of this Law in no event shall the term
“excavated materials,” “excavation,” “excavating” or any variation thereof be construed to
mean, be, or include Natural Gas, or to authorize within the Town Natural Gas and/or
Petroleum Extraction Activities or any other Explicitly Prohibited Use.”

H. § 2-2 of the Existing Zoning Law is hereby further amended, so as to insert the following
text regarding the term “Explicitly Prohibited Use(s)” therein, said text to be inserted
immediately after the definition of “Expandables” and immediately before the definition of
“Exterior Property Line”:

“Explicitly Prohibited Use(s) - Shall mean and be the Explicitly Prohibited
Uses defined and described in Article IIIA of this Law.”

I. § 2-2 of the Existing Zoning Law is hereby further amended, so as to add the following
text to the present definition of “Filling,” said text to be inserted immediately following the
end of the sentence that begins “The depositing of natural...”:

“In no event shall ‘Filling’ be construed to mean, be, include, or authorize within the Town a
Land Application Facility, a Natural Gas And/Or Petroleum Exploration, Extraction Or
Production Wastes Disposal/Storage Facility, a Natural Gas And/Or Petroleum Extraction,
Exploration Or Production Wastes Dump, or any other Explicitly Prohibited Use.”
J. § 2-2 of the Existing Zoning Law is hereby further amended, so as to insert the following text regarding the terms “Industrial; Industrial Uses; Industry” therein, said text to be inserted immediately after the definition of “Ideological Sign” and immediately before the present definition of “In-Law”:

“Industrial; Industrial Uses; Industry - Notwithstanding any provision hereof to the contrary, for purposes of this Law in no event shall the terms “industrial,” “industrial uses,” “industry,” or any variation thereof contained in this Law be construed to mean, be, include, or authorize within the Town any Explicitly Prohibited Use.”

K. § 2-2 of the Existing Zoning Law is hereby further amended, so as to insert the following definition of “Injection Well” therein, said text to be inserted immediately after the newly added text regarding the terms “Industrial; Industrial Uses; Industry” and immediately before the definition of “In-Law”:

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

L. § 2-2 of the Existing Zoning Law is hereby further amended, so as to insert the following text regarding the term “Irrevocable Letter of Credit” therein, said text to be inserted immediately after the definition of “In-Law” and immediately before the definition of “In-Law Apartment”:

“Irrevocable Letter of Credit - Notwithstanding any provision hereof to the contrary, for all purposes of this Law the term “Irrevocable Letter of Credit” shall mean and be a letter of credit in form and content (including without limitation the conditions to draw), and from an issuer, acceptable to the Attorney for the Town of Penfield in his or her reasonable discretion.”

M. § 2-2 of the Existing Zoning Law is hereby further amended, so as to add the following text to the present definition of “Junkyards,” said text to be inserted immediately following the end of the sentence that begins “A place where waste...”:

“In no event shall ‘Junkyards’ be construed to mean, be, include, or authorize within the Town a Land Application Facility, a Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility, a Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump, or any other Explicitly Prohibited Use.”

N. § 2-2 of the Existing Zoning Law is hereby further amended, so as to insert the following definition of “Land Application Facility” therein, said text to be inserted immediately after the definition of “Kennel” and immediately before the definition of “Landmark Site”: 
“Land Application Facility - A site where any Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes are applied to the soil surface or injected into the upper layer of the soil.”

O. § 2-2 of the Existing Zoning Law is hereby further amended, so as to insert the following text regarding the terms “Mine; Mining” therein, said text to be inserted immediately after the definition of “Microwave” and immediately before the present definition of “Mobile/Manufactured Home”:

“Mine; Mining - Notwithstanding any provision hereof to the contrary, for purposes of this Law in no event shall the term “mine,” “mining” or any variation thereof contained in this Law be construed to mean, be, include, or authorize within the Town any Natural Gas And/Or Petroleum Extraction Activities, or any other Explicitly Prohibited Use.”

P. § 2-2 of the Existing Zoning Law is hereby further amended, so as to insert the following definitions of (i) “Natural Gas,” (ii) “Natural Gas and/or Petroleum Exploration Activities,” (iii) “Natural Gas and/or Petroleum Extraction Activities,” (iv) “Natural Gas and/or Petroleum Exploration, Extraction or Production Wastes,” (v) “Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility,” (vi) “Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump,” (vii) “Natural Gas Compression Facility,” and (viii) “Natural Gas Processing Facility” therein, said definitions to be respectively inserted immediately after the definition of “Multiple Section Mobile/Manufactured Home” and immediately before the definition of “Nudity or a state of Nudity”:

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

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

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

- Any of the following in any form, and whether or not such items have been excepted or exempted from the coverage of any federal or state environmental protection laws, or have been excepted from statutory or regulatory definitions of "industrial waste," "hazardous," or "toxic," and whether or not such substances are generally characterized as waste: (a) natural gas or petroleum drilling fluids; (b) natural gas or petroleum exploration, drilling, production or processing wastes; (c) natural gas or petroleum drilling treatment wastes (such as oils, frac fluids, produced water, brine, flowback, sediment and/or any other liquid or semi-liquid material); (d) any chemical, waste oil, waste emulsified oil, mud, or sediment that was used or produced in the drilling, development, transportation, processing or refining of natural gas or petroleum; (e) soil contaminated in the drilling, transportation, processing or refining of natural gas or petroleum; (f) drill cuttings from natural gas or petroleum wells; or (g) any other wastes associated with the exploration, drilling, production or treatment of natural gas or petroleum. This definition specifically intends to include some wastes that may otherwise be classified as “solid wastes which are not hazardous wastes” under 40 C.F.R. § 261.4(b). The definition of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes does not include (i) recognizable and non-recognizable food wastes, or (ii) waste generated by Customary Agricultural Operations.

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

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

Natural Gas Compression Facility - A facility constructed or operated to compress natural gas that originates from a gas well or collection of such wells, operating as a midstream facility for delivery of gas from a gas field for entry into the transmission pipeline system; the term shall not include the transmission pipeline itself; the term shall include equipment for liquids separation, natural gas dehydration, and tanks for the storage of waste liquids and hydrocarbon liquids.

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

Q. § 2-2 of the Existing Zoning Law is hereby further amended, so as to insert the following text regarding the term “Naturally Occurring Material(s)” therein, said text to be inserted immediately after the newly added definition of “Natural Gas Processing Facility” and immediately before the definition of “Nudity or a state of Nudity”:

“Naturally Occurring Material(s) - Notwithstanding any provision hereof to the contrary, for purposes of this Law in no event shall the term "naturally occurring material" or any variation thereof be construed to mean, be or to include Natural Gas, or to authorize within the Town any Explicitly Prohibited Use.”

R. § 2-2 of the Existing Zoning Law is hereby further amended, so as to delete the text of the definition of “Person (which begins “Any individual, ...)” in the entirety, and to substitute the following text therefor:

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

S. § 2-2 of the Existing Zoning Law is hereby further amended, so as to insert the following definition of “Public Utility; Public Utility Facility; Utility” therein, said text to be inserted immediately after the definition of “Public Officer” and immediately before the definition of “PWF”:

“Public Utility; Public Utility Building; Public Utility Facility; Utility - An entity which operates as a monopoly, and whose rates charged to customers are established by a utility commission. A public utility or utility facility, structure, or use is a facility, structure, or use which is operated by a public utility, and which provides electric, gas, steam, CATV, telephone or other communication service, water or sewerage directly to the general public. In no event shall ‘Public Utility,’ ‘Public Utility Building,’ ‘Public Utility Facility,’ or ‘Utility’ be construed to mean, be, include, or authorize within the Town a Natural Gas Compression Facility, Natural Gas Processing Facility, or any other Explicitly Prohibited Use.”

T. § 2-2 of the Existing Zoning Law is hereby further amended, so as to insert the following definitions of (i) “Radiation”, and (ii) “Radioactive Material” therein, said definitions to be respectively inserted immediately after the definition of “PWF” and immediately before the present definition of “Ramada”:

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

Radioactive Material - Material in any form that emits radiation. This definition specifically includes NORM (naturally occurring radioactive material), but only if
such naturally occurring material has been moved from its naturally occurring location through a mechanical or other man-made process. All such material is “radioactive material” for purposes hereof, whether or not it is otherwise exempt from licensing and regulatory control pursuant to the NYS Department of Labor, the US Nuclear Regulatory Commission, the US Environmental Protection Agency, the US Department of Energy, the US Department of Transportation, or any other regulatory agency.”

U. § 2-2 of the Existing Zoning Law is hereby further amended so as to insert the following definition of “Subsurface” therein, said definition to be inserted immediately after the present definition of “Substantial Improvement” and immediately before the present definition of “Telecommunications”:

“**Subsurface** - Below the surface of the earth, or of a body of water, as the context may require.”

V. § 2-2 of the Existing Zoning Law is hereby further amended so as to insert the following definitions of “Underground Injection” and “Underground Natural Gas Storage” therein, said definitions to be inserted immediately after the present definition of “Usable Satellite Signal” and immediately before the present definition of “Variance”:

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

**Underground Natural Gas Storage** - Subsurface storage, including in depleted gas or oil reservoirs and salt caverns, of natural gas that has been transferred from its original location, whether for the purpose of load balancing the production of natural gas or for any other reason, including without limitation short-term, long-term, or intermittent storage for product quality, processing, or transportation purposes, or because of market conditions. Without limitation, this term includes compression and dehydration facilities.”

W. § 2-2 of the Existing Zoning Law is hereby further amended so as to delete the present definition of “Variance” in the entirety, and to substitute the following definitions of “Variance,” “Variance, Area,” and “Variance, Use” therefor, said definitions to be inserted after the definition of “Usable Satellite Signal” and immediately prior to the definition of “Watercourse”:

“**Variance** - An area variance or a use variance, as the context may admit.

**Variance, Area** - The authorization by the Zoning Board of Appeals for the use of land in a manner that is not otherwise allowed by the dimensional or physical requirements of the applicable zoning regulations.

**Variance, Use** - The authorization by the Zoning Board of Appeals of the Town for the use of land for a purpose that is otherwise not otherwise allowed or is prohibited by the applicable zoning regulations.”
2.3. Amendments to Article III of the Existing Zoning Law

A. Article III of the Existing Zoning Law is hereby amended so as to replace the present title of such Article ("Zoning Districts of the Town of Penfield") with the words "Zoning Districts of the Town of Penfield; Any Use Not Specifically Permitted is Prohibited.")

B. § 3-1 of the Existing Zoning Law is hereby amended so as to replace the present title of such Section ("Application of District Regulations") with the words "Application of District Regulations; Any Use Not Specifically Permitted is Prohibited."

C. § 3-1 of the Existing Zoning Law is hereby further amended so as to delete the present first sentence of text thereof (beginning "No activity shall ..."), and to substitute the following text therefor:

“Any use not specifically set forth as a permitted use (as of right, accessory, or upon special permit or conditional use permit, as the context may admit) in any zoning district shall be expressly prohibited in that district. A use specifically set forth as a permitted use in one district shall not be permitted in another district unless it is specifically set forth as a permitted use in said other district. No structure shall hereafter be erected or altered to exceed the height, to accommodate or house a greater number of families, to occupy a greater percentage of lot area or to have narrower or smaller rear yards, front yards, or side yards, than is specified for the district in which such building is located on within this zoning ordinance, and what is specified within this ordinance as to dimensional and similar area requirements is further limited and qualified by any restrictions imposed by any applicable additional requirements, standards, and/or regulations contained in this Law.”

D. § 3-6 of the Existing Zoning Law is hereby amended so as to insert the following text – as a standalone paragraph - immediately after the title caption (‘Purpose’) of present § 3-6 of the Existing Zoning Law, and immediately preceding the present first paragraph of text (beginning “The purpose of the ...”) of said § 3-6:

“Notwithstanding any provision of this Law to the contrary, under no circumstances shall an EPOD development permit be issued for any Explicitly Prohibited Use.”

E. § 3-36 of the Existing Zoning Law is hereby amended so as to delete the text of clause K. thereof (beginning “Other uses not specifically listed ...”) in the entirety, and to substitute therefor the following text:

“K. Other legal uses, determined (following a public hearing) by the applicable board having jurisdiction to issue conditional use permits to be similar in nature to those uses described in items A. through J. of this § 3-36, to be compatible with the purposes of the district for which such use is proposed, and to be consistent with the Town’s Comprehensive Plan; provided, however, that in any event no conditional use permit shall or may be issued with respect to any Explicitly Prohibited Use.”
F. § 3-47 of the Existing Zoning Law is hereby amended, so as to add the following text thereto (to be a stand alone paragraph), said additional text to be inserted immediately after the text of present subsection B. of § 3-46 of the Existing Zoning Law, and immediately prior to the number and title caption of present § 3-47 of the Existing Zoning Law:

Notwithstanding any provision of this Law to the contrary, in no event shall any Explicitly Prohibited Use be permitted within any Planned Development District.”

G. § 3-67 of the Existing Zoning Law is hereby amended so as to delete the text of clause G. thereof (beginning “Other uses not specifically listed ...”) in the entirety, and to substitute therefor the following text:

“G. Other legal uses, determined (following a public hearing) by the applicable board having jurisdiction to issue conditional use permits to be similar in nature to those uses described in items A. through F. of this § 3-67, to be compatible with the purposes of the BN-R district, and to be consistent with the Town’s Comprehensive Plan; provided, however, that in any event no conditional use permit shall or may be issued with respect to any Explicitly Prohibited Use.”

H. § 3-72 of the Existing Zoning Law is hereby amended so as to delete the text of clause E. thereof (beginning “Other uses not specifically listed ...”) in the entirety, and to substitute therefor the following text:

“E. Other legal uses, determined (following a public hearing) by the applicable board having jurisdiction to issue conditional use permits to be similar in nature to those uses described in items A. through D. of this § 3-72, to be compatible with the purposes of the LB district, and to be consistent with the Town’s Comprehensive Plan; provided, however, that in any event no conditional use permit shall or may be issued with respect to any Explicitly Prohibited Use.”

I. § 3-77 of the Existing Zoning Law is hereby amended so as to delete the text of clause K. thereof (beginning “Other uses not specifically listed ...”) in the entirety, and to substitute therefor the following text:

“K. Other legal uses, determined (following a public hearing) by the applicable board having jurisdiction to issue conditional use permits to be similar in nature to those uses described in items A. through J. of this § 3-77, to be compatible with the purposes of the GB district, and to be consistent with the Town’s Comprehensive Plan; with respect to any Explicitly Prohibited Use.”

J. § 3-79 of the Existing Zoning Law is hereby amended, so as to delete the words “master plan” from the fourth sentence thereof (beginning “In reaching its decision ...”), and to substitute the words “comprehensive plan” therefor.

K. § 3-99 of the Existing Zoning Law is hereby amended so as to delete the text of clause 17. thereof (beginning “Uses similar in nature ...”) in the entirety, and to substitute therefor the following text:
“17. Other legal uses, determined (following a public hearing) by the applicable board having jurisdiction to issue conditional use permits to be similar in nature to those uses described in items 1. through 16. of this § 3-99, to be compatible with the purposes of the FC district, and to be consistent with the Town’s Comprehensive Plan; provided, however, that in any event no conditional use permit shall or may be issued with respect to any Explicitly Prohibited Use.”

2.4. Amendment to add new Article IIIA to the Existing Zoning Law

The Existing Zoning Law is hereby amended so as to add a new Article thereto (to be designated ‘Article IIIA’), said new Article to be inserted immediately after the text of present § 3-121 of the Existing Zoning Law, and immediately prior to the text and heading of Article IV of the Existing Zoning Law:

“ARTICLE IIIA. Explicitly Prohibited Uses; Prohibition Against Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes.

§ 3A-1. Explicitly Prohibited Uses.

The following uses and activities are hereby expressly and explicitly prohibited in each and every zoning district within the Town, and no building or structure shall be created, altered or erected, and no body of water, land or building thereon shall be used, for any of such uses or activities:

(a) Land Application Facility;

(b) Natural Gas And/Or Petroleum Exploration Activities;

(c) Natural Gas And/Or Petroleum Extraction Activities;

(d) Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Disposal/Storage Facility;

(e) Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump;

(f) Natural Gas Compression Facility;

(g) Natural Gas Processing Facility;

(h) Underground Injection; and

(i) Underground Natural Gas Storage.
Any condition caused or permitted to exist in violation of this § 3A-1. is a threat to public health, safety and welfare, and is hereby declared and deemed to be a nuisance. Collectively the above expressly prohibited uses may be referred to in this law as “Explicitly Prohibited Uses,” any one of the above expressly prohibited uses may be referred to in this law as an “Explicitly Prohibited Use,” and any combination of more than one such use may also be referred to as “Explicitly Prohibited Uses.”

§ 3A-2. Prohibition against Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes.

The Town of Penfield hereby exercises its authority and right under NY ECL § 27-0711 to adopt a local law that is consistent with the Environmental Conservation Law Article 27, such consistency demonstrated by the fact that this Local Law complies “with at least the minimum applicable requirements” set forth in such statute, and the rules and regulations promulgated pursuant to said Article 27.

It shall be unlawful for any person to produce, store, inject, discard, discharge, dispose release, or maintain, or to suffer, cause or permit to be produced, stored, injected, discarded, discharged, disposed, released, or maintained, anywhere within the Town, any Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes.

C. No Application to Customary Local Distribution Lines, Etc. The prohibitions set forth above in this Article IIIA are not intended, and shall not be construed, to (x) prevent or prohibit the right to use roadways in commerce or otherwise for travel; (y) prevent or prohibit the transmission of natural gas through utility pipes, lines, or similar appurtenances for the limited purpose of supplying natural gas to residents of or buildings located in the Town; or (z) prevent or prohibit the incidental or normal sale, storage, or use of lubricating oil, heating oil, gasoline, diesel fuel, kerosene, or propane in connection with legal Agriculture, residential, business, commercial, and other uses within the Town.”

2.5. Amendments to Article IV of the Existing Zoning Law

A. Clause K. of § 4-11 of the Existing Zoning Law is hereby amended so as to delete the words “Other uses not” and to substitute the words “Other permitted uses not otherwise” therefor.

B. Article IV of the Existing Zoning Law is hereby amended so as to insert the following new Section § 4-16A, said new § 4-16A to be inserted immediately following the text of present § 4-16A of Article IV, and immediately prior to § 4-17 of the Existing Zoning Law:
"§ 4-16A. Pre-existing, legal non-conforming Natural Gas And/Or Petroleum Extraction Activities.

Notwithstanding any provision of this chapter to the contrary, any Natural Gas And/Or Petroleum Extraction Activities that are being conducted in the Town as of the effective date of Local Law [ ] of 2013 shall be subject to the following:

1.a. If, as of the effective date of Local Law 1 of 2014 substantive Natural Gas And/Or Petroleum Extraction Activities are occurring in the Town, and those activities are in all respects being conducted in accordance with all applicable laws and regulations, including without limitation the possession of valid, non-revoked permits for all matters for which permits are required, and including compliance with each, any, and all permit conditions, as are or may be required by the New York State Department of Environmental Conservation ("DEC") and/or all other regulating local, state, and federal governments, bureaus, or agencies, then and only then such Activity by or on behalf of the holder of the permit(s) shall be considered a pre-existing, non-conforming use and shall be allowed to continue, subject, however, to the provisions of Clauses 2. and 3. of this § 4-16A.

b. Natural Gas And/Or Petroleum Extraction Activities that are being conducted in the Town as of the effective date of this Local Law and which do not qualify for treatment under the preceding clause 1.a. of this § 4-16A. shall not be grandfathered (or be permitted to continue or deemed lawful pre-existing uses).

2. Upon the depletion, closing, or reclamation of any well which is allowed to remain in operation after the effective date of this Local Law by virtue of Clause 1.a. of this § 4-16A or upon any other substantive cessation of Natural Gas And/Or Petroleum Extraction Activities for a period of more than twelve (12) months, then and in either of such events the pre-existing and/or non-conforming use status (and any related 'grandfathering rights') of or relating to such Activity shall terminate.

3. Notwithstanding any provision hereof to the contrary, the pre-existing, non-conforming status conferred and recognized by Clause 1. a. of this § 4-16A. is not intended, and shall not be construed, to authorize or grandfather any Natural Gas And/Or Petroleum Extraction Activities extending beyond whatever well bore is authorized in any DEC permit in existence as of the effective date of this Local Law. Any expansion or attempted or purported expansion of such well, whether as to its production, depth, horizon(s) or otherwise, shall not be grandfathered under Clause 1.a. of this § 4-16A."

C. § 4-18 of the Existing Zoning Law is hereby amended so as to delete the words “is commenced within” and to substitute the words “is commenced and diligently prosecuted to completion within” therefor.

D. § 4-20 of the Existing Zoning Law is hereby amended so as to delete the words “a farm or dairy use” and to substitute the words “customary agricultural operations” therefor.
E. Subsection A. of § 4-23 of the Existing Zoning Law is hereby amended so as to add the following sentence thereto, said additional sentence to be inserted immediately after the sentence that begins (“The dumping of...”):

“The preceding sentence is not intended and shall not be construed to authorize (whether in sanitary landfills approved by any State, County, or other authorities, or otherwise) any Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facilities, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Dumps, or any other Explicitly Prohibited Uses anywhere within the Town.”

2.6. Amendments to Article 5 (sic, should be ‘V’) of the Existing Zoning Law

A. The heading of Article 5 (sic) of the Existing Zoning Law is hereby amended so as to delete the words “ARTICLE 5” and to substitute the words “ARTICLE V” therefor.

B. § 5-1 of the Existing Zoning Law is hereby amended so as to insert, immediately following the sentence beginning “This article shall be …”, the following text: “Nothing in this Article V is intended or shall be construed to authorize within the Town any Explicitly Prohibited Use.”

C. Clause f) of § 5-8 of the Existing Zoning Law is hereby amended so as to insert the following text immediately following the words “… and found to be acceptable”): “; provided, however, that in no event shall the foregoing be construed to authorize any Explicitly Prohibited Activities to be conducted within the Town.”

D. Clause i) of § 5-8 of the Existing Zoning Law is hereby amended so as to delete the words “Agricultural operations” therefrom, and to substitute the following words therefor: “Customary agricultural operations”.

2.7. Amendments to Article 6 (sic, should be ‘VI’) of the Existing Zoning Law

A. The heading of Article 6 (sic) of the Existing Zoning Law is hereby amended so as to delete the words “ARTICLE 6” and to substitute the words “ARTICLE VI” therefor.

B. § 6-1 of the Existing Zoning Law is hereby amended so as to insert, immediately following the sentence beginning “This article shall be …”, the following text: “Nothing in this Article VI is intended or shall be construed to authorize within the Town any Explicitly Prohibited Use.”

C. Clause e) of § 6-7 of the Existing Zoning Law is hereby amended so as to delete the words “Agricultural activities” therefrom, and to substitute the following words therefor: “Customary agricultural operations”.
2.8. Amendments to Article X of the Existing Zoning Law

A. § 10-2 of the Existing Zoning Law is hereby amended so as to delete the present first sentence thereof (beginning “The conditional uses listed ...”) in the entirety.

B. § 10-4 of the Existing Zoning Law is hereby amended so as to insert the following text immediately following the first sentence thereof (which begins “A conditional use shall comply ...”):

“Notwithstanding any provision of this Law to the contrary, in no event shall a conditional use permit be issued to authorize any Explicitly Prohibited Use.”

2.9. Amendment to Article XI of the Existing Zoning Law

The text of § 11-4 of the Existing Zoning Law is hereby deleted in the entirety, and the following text is substituted therefor:

“Variances. The Board of Appeals shall have the authority, on appeal from the decision or determination of the Zoning Officer, or otherwise as contemplated by this Law, to grant use variances and area variances, subject to and upon the terms and conditions set forth herein.

a. Use Variances

1. No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Board of Appeals finds that otherwise applicable zoning regulations and restrictions have caused unnecessary hardship.

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

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

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

4. Essential Character of the Neighborhood. No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Board of Appeals finds that the proposed project will not alter the essential character of the neighborhood. In making its determination of whether the proposed project will alter the essential character of the neighborhood, the Board of Appeals shall take into account factors that are of vital importance to the citizens of the Town including without limitation: (a) the rural residential, agricultural and historic character of the Town, (b) its irreplaceable recreation and tourism sites, (c) the extent of hazard to life, limb or property that may result from the proposed project, (d) health impacts, (e) the social and economic impacts of traffic congestion, noise, dust, odors, emissions, solid waste generation and other nuisances, (f) the impact on property values, and (g) whether the applicant will use a style of development that will result in degradation to the air quality, water quality or scenic and natural resources of the Town. In order to find that the proposed project does not alter the essential character of the neighborhood, the Board of Appeals shall interpret the public interest in said essential character of the neighborhood to require, at a minimum, that the project will not do any of the following: (x) pose a threat to the public safety, including public health, water quality or air quality, (y) cause an extraordinary public expense, or (z) create a nuisance.

5. Self-Created Hardship. No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Board of Appeals finds that the alleged hardship was not self-created. The Board of Appeals may find that the applicant suffers from a self-created hardship in the event that the Board finds that (x) the applicant’s inability to obtain a reasonable return on the property as a whole results from having paid too much or from a poor investment decision; (y) the applicant previously divided the property and is left with only a portion which suffers from some unique condition for which relief is sought and
which did not apply to the parcel as a whole; or (z) when the applicant purchased the property, he or she knew or should have known the property was subject to the zoning restrictions.

2. The Board of Appeals, in the granting of use variances, shall grant only the minimum variance that it shall deem necessary and adequate to allow an economically beneficial use of the property, and at the same time preserve and protect the essential character of the neighborhood and the health, safety and welfare of the community.

3. The Board of Appeals, in the granting of use variances, shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed project. Such conditions shall be consistent with the spirit and intent of this Law, and shall be imposed for the purpose of minimizing any adverse impact such use variance may have on the neighborhood or community. Such conditions may include, but are not limited to, landscaping, lighting, access and egress, signs, screening, architectural features, location and layout of buildings, limitations upon the use or characteristics of the use which are reasonably related to the public health, safety and general welfare and as may be necessary to carry out the intent of this Law. If the applicant refuses to accept such requirements and conditions, the use variance shall be denied.

b. Area Variances.

1. In making a determination whether to grant, grant conditionally, or deny an application for an area variance, the Board of Appeals shall take into consideration the benefit to the applicant if the area variance is granted, and balance this benefit against the detriment to the health, safety and welfare of the neighborhood or community by making such grant. In making such determination the Board shall consider each of the following factors: (a) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (b) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (c) whether the requested area variance is substantial; (d) whether the proposed area variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (e) whether the alleged difficulty was self-created. (In contrast to the context of a use variance, in the context of an area variance application whether or not the alleged difficulty was self-created shall be relevant to the decision of the Board of Zoning Appeals but a finding that the difficulty was self-created shall not in and of itself preclude the granting of the area variance.)
2. The Board of Appeals, in the granting of area variances, shall grant the minimum area variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

3. In addition to the application requirements from time to time established pursuant to law and this Law, applications for an area variance shall contain a typewritten narrative explaining what the application is for, and how the project meets or exceeds all of the criteria for an area variance.

4. The Board of Appeals shall, in the granting of area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this Law, and shall be imposed for the purpose of minimizing any adverse impact such area variance may have on the neighborhood or community. If the applicant refuses to accept such requirements and conditions, the area variance shall be denied.”

2.10. Severability

If any word, phrase, sentence, part, section, subsection, or other portion of this Local Law, or the application thereof to any person or to any circumstance, is adjudged or declared invalid or unenforceable by a court or other tribunal of competent jurisdiction, then, and in such event, such judgment or declaration shall be confined in its interpretation and operation only to the provision of this Local Law that is directly involved in the controversy in which such judgment or declaration is rendered, and such judgment or declaration of invalidity or unenforceability shall not affect or impair the validity or enforceability of the remainder of this Local Law or the application hereof to any other persons or circumstances. If necessary as to such person or circumstances, such invalid or unenforceable provision shall be and be deemed severed herefrom, and the Town Board of the Town hereby declares that it would have enacted this Local Law, or the remainder thereof, even if, as to particular provisions and persons or circumstances, a portion hereof is severed or declared invalid or unenforceable.
APPENDIX A
ATTACHED TO AND FORMING A PART OF
TOWN OF PENFIELD (NY) LOCAL LAW NO. 1 of the YEAR 2014,
known as:

A local law to amend and supplement
the Town of Penfield Zoning Ordinance
by:
Establishing a Severability Clause;
Confirming and Clarifying that any Uses not Expressly Permitted are Prohibited;
Articulating Certain Explicitly Prohibited Uses;
Adding Certain New Definitions, and Changing Certain Existing Definitions; and
Modifying, Clarifying, and Adding to the Provisions Regarding Variances.

The Town Of Penfield (NY) Local Law No. 1 Of The Year 2014 to which this Appendix A is
attached is herein sometimes referred to as “this Local Law” or “this Law.”

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

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

This Law is a police power and land use regulation. This Law is intended and is hereby
declared to address matters of local concern. It is further declared that it is not the
intention of the Town to address matters of statewide concern. This Local Law is intended
to act as, and is hereby declared to exercise, the permissive “incidental control” of a land
use law that is concerned with the broad area of land use planning and the physical use of
land and property within the Town, including the physical externalities associated with
certain herein-identified land uses, such as negative impacts on roadways, traffic
congestion, and other deleterious impacts upon a community. This Law is not intended to
regulate the operational processes of any business. This Local Law is a law of general
applicability and is intended to promote the interests of the community as a whole.
As is consistent with law (including, without limitation NY ECL § 27-0711) this Local Law intends to, and hereby does, regulate certain land uses so as to promote the health and welfare of the citizens of the Town by, among other things, prohibiting the dumping, discharging, injection and disposal of materials herein defined as “Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes” on lands and in bodies of water within the Town. Further, this Local Law is intended and declared to protect drinking water supplies, and is intended and declared to supplement and enhance, but not limit or impinge upon, the Safe Drinking Water Act or the Underground Injection Control programs administered by the Environmental Protection Agency. This Local Law is also intended and declared to impose conditions and restrictions that are directly related and incidental to certain uses of property, with such conditions and restrictions being aimed at minimizing or precluding adverse impacts in and upon the Town that could result from certain uses of property that could pose a unique risk of adverse impacts to, and effects upon, the comfort, peace, enjoyment, health and safety of residents and their property.

Section 2. Findings of Fact.

1. Penfield is a community in Monroe County that takes great pride in and assigns great value to its rural residential character, small-town atmosphere, high-quality agricultural and forestry land, and historical and scenic and other natural resources.

2. Maintaining the quality of water resources within the Town is critical to protecting the natural environment of the Town, the general health and welfare of Town residents, and the local economy. Certain of the Explicitly Prohibited Uses defined and described in this Local Law have the potential to damage surface and ground water resources, in the event of (by way of example) human error, power outages, flooding or other natural disasters, or engineered materials and structures experiencing stresses beyond those for which they were designed. Water pollution is hazardous to the public health. If a domestic water source is contaminated, remediation is time and cost intensive, and may not restore the water resource to a quality acceptable for domestic use.

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

4. The Town’s rich natural environment is a valuable asset that creates a sense of identity and well-being for residents of the area. Preserving and protecting the agricultural, scenic, recreational, and other natural resources of the Town is important for both a healthy environment and vibrant economy. Aesthetic issues are real and evoke strong reactions from people. They also deeply affect the way people feel about a place, and affect whether businesses will want to locate within, or people will want to live in and visit, a place.
5. Allowing certain of the Explicitly Prohibited Uses defined and described in the Local Law could impair the existing character of the Town, because by their very nature such activities have the potential to produce a combination of negative impacts upon the environment and people living in or in proximity to the areas or communities in which such activities are located. Such negative impacts may include, without limitation, traffic, noise, vibrations, fumes, damage to roadways, degradation of water quality, degradation of air quality, decreased availability of affordable housing, damage to and loss of agricultural lands and soils, damage to and loss of open space, natural areas and scenic views, the fragmentation of natural communities and valuable wildlife and flora corridors, decreased recreational opportunities, and damage to tourism industries.

6. If one or more of the Explicitly Prohibited Uses defined and described in the Local Law are conducted within the Town, traffic generated thereby could be hazardous or inconvenient to the inhabitants of the Town and could be dangerous to pedestrians (especially children), cyclists, and motorists, and could result in traffic congestion that could delay emergency response times for medical emergencies, fires and accidents. Certain of the Explicitly Prohibited Uses defined and described in this Local Law typically involve a large volume of heavy vehicles and accidents involving heavy vehicles have greater potential for death or serious injuries and property damages than those involving smaller vehicles. An increased volume of heavy vehicular traffic may cause, contribute to, or create unsafe conditions for the traveling public and thus place a strain on emergency responders. Increased heavy vehicular traffic also tends to increase air pollution and noise levels, and decrease the quality of life and property values for those living nearby. Roads are a critical public resource and constitute a major investment of the public’s money. The Town is not in a position to bear the high costs associated with the road use impacts that typically accompany many of the Explicitly Prohibited Uses defined and described in this Local Law.

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

8. If one or more of the Explicitly Prohibited Uses defined and described in the Local Law are conducted within the Town, noise, vibrations, seismic, subterranean, lateral and subjacent support impacts, and light pollution typically caused by such activities, could be hazardous or inconvenient to the inhabitants of the Town. Noise, traffic congestion, nighttime lighting, vibrations, and seismic and other impacts to subterranean surface support, can have negative effects on human health and wildlife.

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

11. Evaluation and determination of whether the Explicitly Prohibited Uses defined and described in this Local Law are appropriate for the Town is a legitimate goal of land use policy and laws; indeed, the exclusion of specified industrial uses is a legitimate and judicially recognized and supported goal of such laws. As the United States Supreme Court stated in *Town of Belle Terre v. Borass*, 416 U.S. 1 (1974):

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

416 U.S. at 6.

See also, *Matter of Gernatt Asphalt Products, Inc. v. Town of Sardinia*, 87 N.Y. 2d 668 (1996), where the Court of Appeals, New York State’s highest court, held as follows:

> A municipality is not obliged to permit the exploitation of any and all natural resources within the town as a permitted use if limiting that use is a reasonable exercise of its police power to prevent damage to the rights of others and to promote the interests of the community as a whole.

87 N.Y. 2d at 683, 684.

**Section 3. Purposes.** This Local Law is enacted so as to take proactive steps to protect and preserve the quality of the Town’s air, water, historic resources, and other assets, and to protect and promote the health, safety, and welfare of the Town and its present and future residents. Without limiting the generality of the foregoing, this Local Law is intended and declared by the Town Board to:

a. promote the purposes of planning and land use regulation by, among other things, preserving the roads and protecting limited and related fire, police, and other emergency response services in the Town;

b. promote the health, safety and welfare of the Town, its present and future inhabitants, by preventing adverse public nuisances and/or land use impacts and effects that could result
if the Explicitly Prohibited Uses defined and described in this Local Law were allowed to be conducted within the Town;

c. protect the Town’s priceless and unique character, the preservation of which is of significant value to the inhabitants of the Town and the tourists who visit here, by protecting it from adverse public nuisances and/or land use impacts and effects that could result if the Explicitly Prohibited Uses defined and described in this Local Law were allowed to be conducted within the Town; and

d. protect the Town’s irreplaceable historic, scenic, and natural resources, and the Town’s water and air quality, by protecting each and all of the same from adverse public nuisances and/or land use impacts and effects that could result if the Explicitly Prohibited Uses defined and described in this Local Law were allowed to be conducted within the Town.

--- END ---
LEGAL NOTICE OF ADOPTION OF LOCAL LAW

PLEASE TAKE NOTICE, that at a meeting of the Penfield Town Board held at the Penfield Town Hall, 3100 Atlantic Avenue, Penfield, New York on Wednesday, November 7, 2012 at 7:30 p.m. the Town Board adopted a Resolution adopting Local Law #1 of 2012 as summarized below:

Executive Summary For Local Law No. 1 of 2012
"Moratorium on Prohibition of Gas and Petroleum Exploration and Extraction Activities, Underground Storage of Natural Gas, and Disposal of Natural Gas or Petroleum Extraction, Exploration, and Production Wastes"

The purpose of Local Law No. 1 of 2012 is to put in place a one (1) year moratorium and prohibition on the exploration of gas and petroleum exploration and extraction activities, as well as the underground storage of natural gas, and the disposal of natural gas or petroleum extraction, exploration and production wastes within the corporate limits of the Town of Penfield.

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

This Local Law is comprised of the following components:

Section 1. Title. Identifies the title of the Local Law.
Section 2. Authority and Intent; Findings and Purpose. Identifies those sections addressed in Appendix A to the Local Law as addressed below.
Section 3. Definitions. Sets forth meanings of certain terms used throughout the Local Law.
Section 4. Moratorium and Prohibition. Sets forth the time frame of the moratorium and prohibition of project review and permit issuance activities on the part of the Town of Penfield relating to gas and petroleum exploration and extraction activities, underground storage of natural gas, and disposal of natural gas or petroleum extraction, exploration, and production wastes within the Town except as contemplated in Section 8. Hardship Use Variance.
Section 5. Penalties. Outlines the penalties and fines to be imposed for failure to comply with the requirements of the Local Law.
Section 6. "Grandfathering" of Legal Pre-Existing Non-Conforming Use. Sets forth criteria applying to only those activities that have received valid permits from the New York State Department of Environmental Conservation and are in compliance with the requirements of said permits at the time of the effective date of this Local Law.
Section 7. Invalidity of and Conflicting Approvals or Permits. Addresses and invalidates any permit which violates the prohibitions set for the in Section 4 of the Local Law.
Section 8. Hardship Use Variance. Allows the Zoning Board of Appeals to accept applications from those seeking relief from the requirements of the Local Law subject to a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship subject to the criteria addressed therein.
Section 9. Severability. Severs from the remaining sections of this Local Law any portion deemed to be unenforceable as determined by a judgment or declaration of invalidity.
Section 10. Superseding Intent and Effect. Authorizes this Local Law to supersede any inconsistent provisions set forth in all applicable New York State Town Laws and all local laws and ordinances.
Section 11. General provisions. Identifies the Building/Code Compliance Inspector as the authorized enforcement officer for purposes of interpreting and enforcing this Local Law. It also allows the Town Board to reserve the right, by Resolution to change or designate additional enforcement officers. It also states that each section of this Local Law, whether in the nature of a preamble or otherwise, is a material part of this Local Law.

Section 12. Effective Date. Directs that the Local Law shall take effect immediately upon filing with the New York State Department of State.

Appendix A to the Local Law addresses the following:

Section 1. Authority and Intent. This Local Law is intended to be consistent with and is adopted pursuant to the authority granted to the Town Board of the Town of Penfield under New York State Constitution and the Laws of the State of New York.

Section 2. Findings of Fact. Identifies Penfield as a residential community and discusses its quality of life, and its cultural, recreational, agricultural, scenic and natural resources as contributing to its great quality of life.

Section 3. Purposes. Addresses the Purpose of the Local Law which is to enable the Town of Penfield to stay the construction, operation and establishment of, and the submission and processing of applications for permits, zoning permits, zoning variances, building permits, operating permits, site plan approvals, subdivision approval, certificates of occupancy, certificates of compliance, temporary certificates, and other Town level approvals, respecting, the activities prohibited by Section 4 of this Local Law, for a reasonable time frame, so as to allow the Town time to study the impacts, effects, and possible controls over such activities and to consider amendments to the Town’s zoning laws to address the same. The Town finds that a moratorium of one (1) year duration, coupled with a mechanism for an “unnecessary hardship” variance procedure, will achieve an appropriate balancing of interests between (on the one hand) the public need to safeguard the character and other resources of the Town of Penfield and the health, safety and general welfare of its residents, and the rights of individual property owners or businesses desiring to conduct such activities (on the other hand) during such period.

A copy of Local Law No. 1 of 2012 is on file in the office of the Penfield Town Clerk, at the Penfield Town Hall, 3100 Atlantic Avenue, Penfield, New York during normal business hours for inspection by the public.

* A complete copy of this local law is available at the Town Clerk’s Office.

Dated: November 8, 2012

Amy M. Steklof
Town Clerk
Town of Penfield
NAME Adoption of Local Law No. 1 of 2012, to effect a Moratorium and Prohibition Within the 
Town of Penfield of Natural Gas and Petroleum Exploration and Extraction Activities, 
Underground Storage of Natural Gas, and Disposal of Natural Gas or Petroleum Extraction, 
Exploration and Production Wastes

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

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

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

WHEREAS, the Town Board of the said Town of Penfield held a public hearing at the Penfield Town Hall, 3100 Atlantic Avenue, in the Town of Penfield, New York on September 5, 2012, at 7:30 PM on said date, to consider the said proposal and to hear all persons interested on the question of the adoption of Local Law No. 1 of 2012, and the public hearing was closed and decision was reserved;

NOW, THEREFORE, BE IT

RESOLVED, AND HEREBY IS ENACTED BY THE TOWN BOARD OF THE TOWN OF PENFIELD AS FOLLOWS: Local Law No. 1 of 2012, hereinafter set forth:

Section 1. TITLE

This Local Law shall be known as the Moratorium On And Prohibition of Gas And Petroleum Exploration And Extraction Activities, Underground Storage Of Natural Gas, And Disposal of Natural Gas Or Petroleum Extraction, Exploration, And Production Wastes Law
Section 2.  AUTHORITY AND INTENT; FINDINGS; PURPOSE

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

B. The Town Board has found, determined, and made the declarations of findings set forth at Section 2. of Appendix A attached hereto.

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

Section 3.  DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

Natural Gas And/Or Petroleum Support Activities - Shall mean and be any one or more of the following: (a) Natural Gas Compression Facility; (b) Natural Gas Processing Facility; (c) Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Disposal/Storage Facility; (d)
Natural Gas Compression Facility - Those facilities or combination of facilities that move natural gas or petroleum from production fields or natural gas processing facilities in pipelines or into storage; the term shall include equipment for liquids separation, natural gas dehydration, and tanks for the storage of waste liquids and hydrocarbon liquids.

Natural Gas Processing Facility - Those facilities that separate and recover natural gas liquids (NGLs) and/or other non-methane gases and liquids from a stream of produced natural gas, using equipment for any of the following: cleaning or stripping gas, cooking and dehydration, residual refinement, treating or removing oil or condensate, removing water, separating NGLs, removing sulfur or carbon dioxide, fractionation of NGLs, or the capture of CO$_2$ separated from natural gas streams.

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

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

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

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

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

Town Board - The Town Board of the Town.

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

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

Section 4. MORATORIUM AND PROHIBITION.

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

B. From and after the date of this Local Law, no Person shall use, cause, or permit to be used, any land, body of water, building, or other structure located within the Town for any of the following: (i) any Natural Gas And/Or Petroleum Exploration Activities; (ii) any Natural Gas And/Or Petroleum Extraction Activities; or (iii) any Natural Gas And/Or Petroleum Support Activities.

C. The moratorium and prohibition set forth above in Sections A. and B. of this Section 4. are not intended, and shall not be construed, to: (x) prevent or prohibit the right to use roadways in commerce or otherwise for travel; (y) prevent or prohibit the transmission of natural gas through utility pipes, lines, or similar appurtenances for the limited purpose of supplying natural gas to residents of or buildings located in the Town; or (z) prevent or prohibit the incidental or normal sale, storage, or use of lubricating oil, heating oil, gasoline, diesel fuel, kerosene, or propane in connection with legal Agriculture, residential, business, commercial, and other uses within the Town.

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

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

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

Section 5. PENALTIES.

A. Failure to comply with any of the provisions of this Local Law shall be an unclassified misdemeanor as contemplated by Article 10 and Section 80.05 of the New York State Penal Law, and, upon conviction thereof, shall be punishable by a fine of not more than One Thousand Five Hundred Dollars ($1,500) or imprisonment for not more than 10 days, or both, for the first offense. Any subsequent offense within a three month period shall be punishable by a fine of not more than Two Thousand Five Hundred Dollars ($2,500) or imprisonment for a period of not more than 30 days, or both. For purposes of this Clause A., each day that a violation of this Local Law exists shall constitute a separate and distinct offense.

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

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

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

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

A.1. If, as of the effective date of this Local Law, substantive Natural Gas And/Or Petroleum Extraction Activities are occurring in the Town, and those activities are in all respects being conducted in accordance with all applicable laws and regulations, including without limitation pursuant to and in compliance with all valid permits required to be issued by the New York State Department of Environmental Conservation (“DEC”) and all other regulating agencies, then and only then such Activity shall be considered a pre-existing, non-conforming use and shall be allowed to continue, subject, however, to the provisions of Clauses B. and C. of this Section 6.

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

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

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

Section 7. INVALIDITY OF ANY CONFLICTING APPROVALS OR PERMITS.

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

Section 8. HARDSHIP USE VARIANCE.

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

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

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

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

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

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

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

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

Section 9. SEVERABILITY.

If any word, phrase, sentence, part, section, subsection, or other portion of this Local Law, or the application thereof to any person or to any circumstance, is adjudged or declared invalid or unenforceable by a court or other tribunal of competent jurisdiction, then, and in such event, such judgment or declaration shall be confined in its interpretation and operation only to the provision of this Local Law that is directly involved in the controversy in which such judgment or declaration is rendered, and such judgment or declaration of invalidity or unenforceability shall not affect or impair the validity or enforceability of the remainder of this Local Law or the application hereof to any other persons or circumstances. If necessary as to such person or circumstances, such invalid or unenforceable provision shall be and be deemed severed herefrom, and the Town Board of the Town hereby declares that it would have enacted this Local Law, or the remainder thereof, even if, as to particular provisions and persons or circumstances, a portion hereof is severed or declared invalid or unenforceable.
Section 10. SUPERSEDING INTENT AND EFFECT.

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

Section 11. GENERAL PROVISIONS.

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

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

Section 12. EFFECTIVE DATE.

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

APPENDIX A
ATTACHED TO AND FORMING A PART OF
TOWN OF PENFIELD LOCAL LAW NO. 1 of the YEAR 2012,
known as:

Moratorium On And Prohibition Of
Gas And Petroleum Exploration And Extraction Activities,
Underground Storage Of Natural Gas, And Disposal Of
Natural Gas Or Petroleum Extraction, Exploration, And Production Wastes Law

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

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

Section 1. Authority and Intent. This Local Law is intended to be consistent with and is adopted pursuant to the authority granted to the Town Board of the Town of Penfield under the New York State Constitution, and the Laws of the State of New York, including but not limited to the following
This Law is a police power and land use regulation. This Law is intended and is hereby declared to address matters of local concern, and it is declared that it is not the intention of the Town to address matters of statewide concern. This Local Law is intended to act as and is hereby declared to exercise the permissive “incidental control” of a land use law that is concerned with the broad area of land use planning and the physical use of land and property within the Town, including the physical externalities associated with certain land uses, such as negative impacts on roadways and traffic congestion and other deleterious impacts on a community.

Section 2. Findings of Fact.

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

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

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

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

*In September 2002, the Town of Penfield received an award from the Upstate New York Chapter of the American Planning Association for its Open Space Plan. The Town was awarded the 2002 Outstanding Planning Project – Implementation, for its efforts toward resource preservation
B. There are ten watershed districts in the town of Penfield. All watersheds directly affect the health of Irondequoit Bay, and three have a significant impact on the health of the waters of Lake Ontario. The Town of Penfield is a regional leader in Stormwater Management and committed to public education and protection of waterways.

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

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

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

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

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

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

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

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

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

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

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

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

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

416 U.S. at 6.

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

We have never held, however, that the … [‘exclusionary zoning’] test, which is intended to prevent a municipality from improperly using the zoning power to keep people out, also applies to prevent the exclusion of industrial uses. A municipality is not obliged to permit the exploitation of any and all
natural resources within the town as a permitted use if limiting that use is a reasonable exercise of its police power to prevent damage to the rights of others and to promote the interests of the community as a whole. 87 N.Y. 2d at 683, 684. (emphasis added.)

Section 3. Purposes. The purpose of the Local Law is to enable the Town of Penfield to stay the construction, operation, and establishment of, and the submission and processing of applications for permits, zoning permits, special permits, zoning variances, building permits, operating permits, site plan approvals, subdivision approvals, certificates of occupancy, certificates of compliance, temporary certificates, and other Town-level approvals respecting, the activities prohibited by Section 4. of the Local Law, for a reasonable time, so as to allow the Town time to study the impacts, effects, and possible controls over such activities and to consider amendments to the Town’s zoning laws to address the same. The Town Board finds that a moratorium of one year duration, coupled with a mechanism for an ‘unnecessary hardship’ variance procedure, will achieve an appropriate balancing of interests between (on the one hand) the public need to safeguard the character and other resources of the Town of Penfield and the health, safety and general welfare of its residents, and the rights of individual property owners or businesses desiring to conduct such activities (on the other) during such period.

Moved: _______
Seconded: _______
Vote: Kohl _______
       LaFountain _______
       Metzler _______
       Moore _______
       Quinn _______