

PERINTON TOWN BOARD MEETING
1350 Turk Hill Road, Fairport, NY 14450
Wednesday, September 12, 2012

PRESENT: James E. Smith Supervisor
Patricia S. Knapp Councilperson
Joseph H. LaFay Councilperson
Peg S. Havens Councilperson
Stephen C. Van Vreede Councilperson

ALSO PRESENT: Robert Place, Esq., Town Attorney; Thomas C. Beck, Commissioner of Public Works; Jennifer A. West, Town Clerk; Michael Doser, Director of Code Enforcement and Development; Jeffrey Myers, Commissioner of Recreation and Parks; Chris Fredette, Conservation Board; T.C. Lewis, Planning Board.

Supervisor Smith called the meeting to order at 8:00 pm and introduced the Board and staff present.

Councilperson Havens made a motion, seconded by Councilperson LaFay, that the minutes of the Town Board meeting of August 22, 2012 be approved as submitted by the Town Clerk.

Ayes: Smith, Knapp, LaFay, Havens, Van Vreede
Nays: None
Unanimously Approved

PUBLIC HEARING
REZONING REQUEST
MASON ROAD NORTH OF ROUTE 31
RESIDENTIAL B TO PLANNED DEVELOPMENT DISTRICT

Supervisor Smith stated this Public Hearing has been rescheduled to the September 26, 2012 Town Board meeting. He further explained that the Town has a requirement that a sign be posted for the rezoning on the property fourteen days prior to the Public Hearing. This did not happen (Town's fault) and therefore the meeting has been rescheduled, a new legal notice published, neighbors notified and the sign will remain on the property.

DECLARATION OF LEAD AGENCY STATUS
REZONING REQUEST
MASON ROAD NORTH OF ROUTE 31
RESIDENTIAL B TO PLANNED DEVELOPMENT DISTRICT

Supervisor Smith stated that under the State Environmental Quality Review Act (SEQRA) a determination needs to be made as to who the lead agency will be for a proposed rezoning. The lead agent is the public body who is going to be responsible for the intake of all the information regarding the environmental impacts and make an ultimate decision as to whether there is a negative impact from the development or non-negative impact. The Town Board is the ultimate rezoning body for the Town, having the greatest amount of responsibility in the matter. The Town Board would tonight declare its intent to be the lead agency and once the intent is declared, all other interested and involved parties may object or agree to the declaration. There is a thirty-day waiting period to hear back from the interested/involved parties in this determination.

A motion was made by Councilperson LaFay, seconded by Councilperson Van Vreede, that the Perinton Town Board declare its intent to serve as Lead Agency for the SEQR process for the Pridemark rezoning as a Planned Development District.

Ayes: Smith, Knapp, LaFay, Havens, Van Vreede
Nays: None
Unanimously approved

A gentleman in the audience asked about the Town Conservation Board's involvement in this application and asked for confirmation that the Town Board has the ultimate approval for a proposal such as this. Supervisor Smith confirmed and stated that there are many stages in the rezoning process, such as, after the Public Hearing, the Town Board would determine whether the application has merit to move forward. The gentleman also mentioned the confusion around the Comprehensive plan maps versus the zoning maps for this property proposed for rezoning (this was cleared up after the meeting).

Judith McNulty, 647 Thayer Road, asked whether Planned Development District meant that there would be stores in the rezoned area and Supervisor Smith stated that there is no commercial development in the plan as currently proposed.

DECISION
AMENDMENTS TO SECTIONS 122, 205, 208 AND 201 OF THE CODE OF THE
TOWN OF PERINTON

Director of Code Enforcement and Development Doser stated that he is bringing forth six code modifications for the Town Board's adoption. A Public Hearing took place on July 25, 2012 to hear these changes and they have been approved by the Planning (September 5, 2012) and Conversation Boards (September 4, 2012) at their most recent meetings.

The first code modification is related to off-street parking and loading sections. Mr. Doser stated that the Town has contracted with BME Associates on a parking study that updated that parking code, adding some new uses, and adjusting parking calculation formulas that should more accurately define the parking demands related to all uses. He further stated that the proposed code is largely based on a Monroe County Parking study and the recommendations by the Urban Land Institute and that the code has been adjusted so that the parking formula for uses of general assembly will be based on NYS Building Code. Mr. Doser also stated that there are newly identified uses such as parking for senior living and care facilities and nursing homes as part of this Code.

§ 208-8. Definitions.

GROSS LEASABLE FLOOR AREA (GLFA) -- The total area designed for tenant occupancy and exclusive use, including any habitable/occupied basements, mezzanines or upper floors as expressed in square feet and measured from the center line of joint partitions and/or outside wall faces.

SENIOR HOUSING

- A. **SENIOR LIVING & CARE FACILITIES** -- Senior Living and Care facilities may offer supportive services, personalized assistance, and supervision for senior citizens who may need help with activities of daily living, but who do not require intensive health care as provided by a nursing home. These facilities have a central or private kitchen, dining, recreational, and other facilities with separate bedrooms or living quarters where the emphasis of the facility remains residential. This may include many housing forms including detached and attached dwelling units, apartments, and residences, and a variety of level of services to residents. They offer social activities, support assistance, and personal care on one campus.
- B. **NURSING HOMES** -- A nursing home is any facility whose primary function is to care for persons who are unable to care for themselves. For example, rest homes (which are primarily for the aged), chronic care and convalescent homes. Traffic is primarily generated by employees, visitors and deliveries.

208-16. Off-street parking and loading.

A. General conditions.

- (1) Each off-street parking space for any use shall measure a minimum of 9 feet by 18 feet and shall be designed with twenty-four-foot travel aisles for two-way travel.
- (2) All paved parking areas, with the exception of those related to one-family and two-family dwellings, shall be hairpin striped in the following manner:
 - (a) Striping shall be yellow or white, three inches to four inches in width, outside dimension of the double stripe 12 inches. The area between each set of double stripes shall be eight feet minimum.
 - (b) Handicapped parking spaces shall be provided in a location and number, in accordance with the New York State Uniform Fire Prevention and Building Code.
- (3) Location. Off-street parking shall be located as hereinafter specified. Where a distance is specified, such distance shall be the walking distance measured from the nearest point of the parking space to the nearest public entrance of the building that such parking space is required to serve, along vehicular travel aisles or designated pedestrian walkways.
 - (a) For one- and two-family dwellings and for all types of residential structures in any district, spaces shall be on the same lot with the building they are required to serve.
 - (b) For townhouses, two spaces related to the unit (one wholly enclosed) and one additional guest space per unit shall be within 300 feet of the building they are required to serve.
 - (c) For multiple-family dwellings, spaces shall be not more than 300 feet from the building they are required to serve.
 - (d) For hospitals, nursing homes, proprietary homes and other health-related facilities, spaces shall be not more than 500 feet from the building they are required to serve.
 - (e) For uses other than those specified above, spaces shall be not over 600 feet from the building they are required to serve.
- (4) Units of measurement.
 - (a)** The New York State Building Code shall be the source for defining assembly areas and determining occupancy in assembly areas.
 - (b)** When units of measurement determining the number of required parking spaces result in the requirement of a fractional space, any fraction shall require one parking space.
- (5) Change in use, additions, alterations and enlargements. Whenever there is a change in use or an addition in floor area, a change in site usage or other units of measurement specified hereinafter to indicate the number of required off-street parking spaces and such change or addition creates the need for additional parking spaces, those additional parking spaces shall be provided. The Planning Board may waive the requirement for additional parking, provided that the additional parking spaces are

designated as future parking spaces and meet the requirements as specified herein in § 208-16C(7).

- (6) Collective provisions. Nothing in this section shall be construed to prevent collective provisions for off-street parking facilities for two or more buildings or uses, provided that the total collective sum shall not be less than the sum of the various uses as computed separately.
- (7) Plans. Plans for the parking area shall be submitted to the Planning Board for site plan approval or to the Director of Code Enforcement and Development at the time of the application for the building permit for renovations or changes in use within a building that alter the Gross Leasable Floor Area (GLFA) or occupancy level.
- (8) No dismantled, unlicensed, junked, nonoperating or for-sale vehicles shall occupy a designated parking space.
- (9) All business-related vehicles, service vehicles and sales fleet vehicles shall be parked in the rear of the property, unless otherwise approved by the Planning Board.
- (10) No vehicle, while parked, shall project into or over a designated pedestrian walkway or landscaped area. Wheel blocks may be required to limit this vehicular encroachment.
- (11) For drive-through or drive-up windows or establishments such as drive-up tellers, drive-up restaurant windows, etc., a minimum of 10 reservoir spaces for stacking of vehicles shall be provided. [For car wash requirements, see § 208-41A(5)(g).

B. Required parking spaces.

- (1) Specific uses:

<u>TOWN OF PERINTON PARKING CALCULATION CHART</u>		
RESIDENTIAL	<u>SINGLE/MULTI-FAMILY DWELLINGS</u>	
	USE	NO. OF PARKING SPOTS
	One-family	3
	Two-family dwellings	6
	Townhouse units (2 that are related to the unit, 1 of which is wholly enclosed and 1 additional space per unit within close proximity)	3
	Multiple-family dwellings (apartments) (per dwelling unit)	3
	Customary home occupations (in addition to the above requirements)	2

<u>SENIOR HOUSING/HEALTH-CARE FACILITIES</u>	
USE	NO. OF PARKING SPOTS
Senior housing, senior living & care facilities (per 2 residents)	1
Senior housing, nursing homes (per 1.5 residents)	1
Health-care facility (typical uses: hospitals, sanitariums)	1 per 4 clients, plus 1 per employee

<u>TEMPORARY HOUSING OCCUPANCY</u>	
USE	NO. OF PARKING SPOTS
Bed-and-breakfast residences	3, plus 1 per guest room
Hotels, motels and lodging houses, for each sleeping room and for each employee per shift (Accessory uses shall be separately calculated at 50% of their standard required spaces.)	1
<u>OFFICES</u>	
USE	NO. OF PARKING SPOTS
Business or professional services, per 1,000 square feet of GLFA	5
Banks, per 100 square feet of public banking area (bank office area calculated as business/professional services)	1
Medical and dental clinic, per doctor (in addition to office requirement)	2

NON-RESIDENTIAL

NON-RESIDENTIAL continued	<u>RETAIL OR CONVENIENCE STORES LESS THAN 25,000 SQUARE FEET</u>	
	USE	NO. OF PARKING SPOTS
	Minimum	10
	per 1,000 square feet of GLFA	5
	<u>SHOPPING CENTERS AND MALLS</u>	
	USE	NO. OF PARKING SPOTS
	Shopping centers (>25,000 square feet GLFA)	1 space per 200 square feet GLFA (includes restaurant, entertainment and/or cinema space)
	Supermarket (<60,000 square feet GLFA)	1 space per 200 square feet GLFA)
Supermarket (>60,000 square feet)	250 spaces, plus 1 space per 400 square feet GLFA)	

NON-RESIDENTIAL continued	<u>OTHER</u>	
	USE	NO. OF PARKING SPOTS
	Pharmacies with a drive thru	1 space per 300 square feet of GLFA
	Motor vehicle maintenance and repair, per repair bay	6
	Industrial manufacturing areas	1 per 1.10 peak shift employee or 1 space per 600 square feet of GLFA, whichever is greater
	Warehousing uses, per 3,000 square feet of gross floor area	1

ASSEMBLY, RESTAURANTS, RECREATION	<u>BOWLING ALLEYS</u>	
	USE	NO. OF PARKING SPOTS
	Per lane	5, plus 1 per employee
	Additional, per each 5 persons of calculated occupancy of accessory uses as determined by the New York State Building Code.	1
	<u>TENNIS, HANDBALL COURTS, ETC.</u>	
	USE	NO. OF PARKING SPOTS
	Per court	3
	Additional, per each 3 persons of calculated occupancy of accessory uses as determined by the New York State Building Code.	1

ASSEMBLY, RESTAURANTS, RECREATION continued	<u>OTHER</u>	
	USE	NO. OF PARKING SPOTS
	General assembly uses and all other uses, per each 3 persons of calculated occupancy as determined by the New York State Building Code (typical uses: art galleries, assembly halls, auditoriums, clubrooms, dance halls, exhibit halls, gymnasiums, libraries, funeral homes, motion-picture theaters, museums, nightclubs, places of worship, recreation centers, restaurants, skating rinks, theaters)	1

	Personal service establishments (typical uses: Adult fitness center, hair salon, nail salons, massage parlors, karate studios, dance studios)	1 per 140 square feet
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	USE	NO. OF PARKING SPOTS
ASSEMBLY, RESTAURANTS, RECREATION continued	Educational Uses	As determined by the applicant and the Planning Board
	USE	NO. OF PARKING SPOTS
DAY CARE USES, OTHER THAN HOME DAY CARE	Per each 5 clients	1
	Per employee	1
	Reservoir parking areas adjacent to client drop-off area	10

If the proposed use is not named herein, the applicant may request a specific ruling from the Planning Board as to the number of parking spaces to be required for such proposed use.

C. Parking areas: development and maintenance. Every parcel of land hereafter used as a public or private parking area shall be developed and maintained in accordance with the following requirements:

- (1) Screening and landscaping.
 - (a) Off-street parking for more than five but less than 75 vehicles shall be effectively screened on each side by a fence of acceptable design, undirected masonry wall, earthen berm, acceptable landscaping or compact evergreen hedge. Such screening shall be maintained in good functional condition.
 - (b) In parking areas with a capacity of 75 vehicles or more, landscaping plans must be submitted showing the area broken up into smaller sections by aisles and landscaping, with adequate provisions for pedestrian walkways; such aisles shall be a minimum width of 10 feet.
 - (c) The front setback area shall be screened using a landscaped berm; such berm shall be no less than five feet high and 40 feet wide at the base. The design shall be in accordance with the Town of Perinton Design Criteria and Construction Specifications.

- (d) All setback and buffer areas shall be planted, landscaped and maintained in accordance with the approved site plan.
- (2) Setbacks. Parking areas shall be set back from the right-of-way as if it were a building, unless otherwise specified herein. Where parking areas are adjacent to a private drive or road, they shall be set back 50 feet. Side and rear setbacks shall be at least 15 feet from the lot line. The Planning Board may modify these setbacks at the time of site plan approval.
- (3) Surface of the parking area. Any off-street parking area for more than five vehicles shall be surfaced with an asphaltic pavement so as to provide a durable and dustless surface and shall be so graded and drained as to dispose of all surface water accumulation within the area. The Planning Board may alter this requirement at the time of site plan approval when special conditions exist.
- (4) Lighting. No lights shall be erected, operated or maintained in connection with off-street parking in such a manner as to create an annoyance to surrounding properties or that create a public safety hazard due to glare. No lighting with a greater intensity than 1/2 footcandle, measured at five feet above the ground at the property line, shall be installed and shall not exceed 16 feet in height from grade to bottom of light source. All such lighting shall be approved by the Planning Board.
- (5) Loading and unloading areas. Paved areas for maneuvering, loading and unloading of vehicles supplying buildings or uses shall be shown on the site plan and excluded from all computations of paved areas required for parking under this section.
- (6) Locations for snow storage shall be provided and shown on the site plan.
- (7) Planned future parking areas. All areas to be used for future parking and access shall be identified on the site plan approved by the Planning Board with the condition that consistent parking of vehicles on the public right-of-way or outside of the designated parking areas or on adjacent parcels of land shall be the primary indicator of the need for conversion of planned future parking to functional parking areas. The need for conversion of future parking to functional parking shall be at the discretion of the Planning Board, based upon a review of the site and issuance of 120 days' notice.
- (8) Exceeding the required parking. Where a developing or developed parcel or use consistently exceeds the allotted parking spaces by parking of vehicles on the public right-of-way or outside of designated parking areas or within the fire lanes or on adjacent parcels of land, the Director of Code Enforcement and Development shall review the approved site plan for intensity of use. The Director of Code Enforcement and Development shall present these facts to the Town Board for action under § 208-57J of this Code.

The second amendment presented by Director of Code Enforcement and Development Michael Doser are changes to Section 208-41A (1) of the Code of the Town of Perinton. Mr. Doser stated that the proposed modification would prohibit industrial uses, such as a manufacturing facility from being located in a Commercial District, such as the areas where Wegmans, Perinton Hills Plaza and Perinton Square Mall are located.

§ 208-41. Commercial District.

A. Uses permitted. The following uses shall be permitted in the Commercial District:

- (1) Any use first permitted in a Restricted Business District.

- (2) The following uses when conducted within a completely enclosed building:
- (a) Stores and shops for the conducting of any retail business, subject to the regulations found in § 208-41A(5)(p) and (q).
 - (b) Personal service establishments, i.e., barbershops, beauty parlors, shoe repair, laundromat, dry cleaning or laundry pickup stations.
 - (c) Restaurants, coffee shops or other places serving food or beverages inside.
 - (d) As an accessory use, shops for the manufacture or processing of articles incidental to the conduct of a retail business lawfully conducted on the premises, provided that:
 - [1] All such articles manufactured or processed are sold at retail on the premises.
 - [2] Not more than four persons are engaged in such manufacturing or processing at any one time in any one establishment.
 - [3] Such activity shall not produce offensive odors, noise, vibration, heat, glare or dust.
 - (e) Vending machines, only when located wholly within the main building, except as listed below:
 - [1] Public telephones and newspaper vending machines may be located outside of a building.
 - [2] Ice dispensing machines may be located outside or next to, but not in front of, the building.
 - (f) Veterinary office and/or kennels, provided that there is no outside keeping of animals and adequate soundproofing is provided so that the ambient sound level at the property boundaries is not elevated more than 10 decibels on the A-weighted scale as measured at a fast response with an instrument satisfying the requirements of ANSI S1.2-1983, and a special permit is granted by the Board of Appeals. The Board shall apply the provisions of § 208-54 hereof as well as any other standards deemed necessary or proper to protect the neighboring properties.
- (3) The following uses, when conducted outside of an enclosed building:
- (a) Outdoor display and storage of plants and accessories on the same parcel of land as a garden store, hardware store or landscape gardener which is situated in a permanent structure.
- (4) The following uses, when conducted in connection to a completely enclosed building:
- (a) Drive-through facilities. In addition to site plan approval and any other applicable provisions for special permits, the Board of Appeals may grant a permit for a drive-through window, provided the applicant prepares a plan that shows the location of at least 10 stacking spaces and demonstrates the use will not be detrimental to on-site traffic patterns, off-site traffic and adjacent properties. When a drive-through facility is located in a Town-designated historic district, see § 208-41A(5)(r).
 - (b) Outside dining. The Board of Appeals may grant a special permit to allow outside dining subject to the provisions of § 208-54. The Board of Appeals may require a site plan approval from the Planning Board as part of its approval of the special permit. Preparation of food for catering purposes for consumption off the premises is permitted as an incidental use.

- (5) The following uses, upon obtaining a special permit from the Town Board as provided in § 208-54 of this chapter. Applicants shall obtain approval of a special permit before seeking site plan approval from the Planning Board.
- (a) Hotels or motels (see § 208-45.).
 - (b) Motion-picture theaters, theaters and auditoriums for the performing arts.
Drive-in theaters are not permitted.
 - (c) New or used motor vehicle sales.
 - (d) Gasoline service stations or public garages, provided that entrances and exits are aligned with the center lines of existing intersecting public rights-of-way or are located more than 100 feet from the closest edge of a street intersection and that no service appliance is installed within 50 feet of any street or lot line. For additional requirements, see § 208-44.
 - (e) Limited-use gasoline stations which have just gasoline pumps and a building for shelter of personnel constructed as an integral part of a shopping center. The station shall not have direct access to or from public highways, nor shall there be a garage, lubrication facilities or sale or lease of parts, accessories, vehicles or trailers associated with them.
 - (f) Minimarts associated with gas stations (see § 208-44.).
 - (g) Car washes, provided that no entrance or exit drive shall be located within 100 feet of any street intersection and provided that there are at least 30 reservoir spaces as defined herein for the first wash rack or wash lane and 20 reservoir spaces for each additional wash rack or wash lane.
 - (h) Monument sales, provided that all cutting and engraving processes are conducted within an enclosed building.
 - (i) Boat or marine sales or service.
 - (j) Laundry or dry-cleaning plants.
 - (k) Custom shops, including but not limited to electrical, heating, printing, plumbing or woodworking shops.
 - (l) Miniwarehouses.
 - (m) The following uses, provided that they are conducted within a completely enclosed building or within an area enclosed by a suitable solid fence or wall:
 - [1] Building materials supply, including incidental millwork.
 - [2] Machine or tool sales, rental or service.
 - (n) Farm implement dealer.
 - (o) Funeral homes.
 - (p) A retail use that exceeds 8,000 square feet in gross leasable floor area (GLFA) within a stand-alone building.
 - (q) A retail use that exceeds 15,000 square feet in GLFA within or attached to an existing plaza.
 - (r) Drive-through facilities, when located in a Town-designated historic district, as identified on the official Town Zoning Map. Drive-through windows are subject to the additional standards for drive-through facilities in historic districts in § 208-54E.

- B. Regulation of permitted uses. Regulation of permitted uses shall be as provided in § 208-42 of this chapter.

The third amendment presented by Director of Code Enforcement and Development Michael Doser are changes to Sections 201-2 and 201-5 of the Code of the Town of Perinton. The proposed modification further specifies that recreational vehicle trailers are considered recreational vehicles. It also adds a definition for "Cargo Truck" and prohibits cargo trucks that exceed 20 feet in length from being permanently parked on public or private property in any residential district.

§ 201-2. Definitions.

RECREATIONAL VEHICLE -- Any vehicle used for recreational purposes, including, but not limited to, trailers used to transport such vehicles, all-terrain vehicles, boats, boat trailers, camper trailers, jet skis, motorcycles, motorhomes and snowmobiles.

CARGO TRUCK -- Any vehicle with a separate cab and freight area designed to transport goods or passengers.

§ 201-5. Outside storage or parking of commercial, construction vehicles or cargo trucks.

- A. No commercial or construction vehicle of any length shall be stored outside on any public property within the Town for a period in excess of eight hours, unless used in conjunction with construction on said property.
- B. No commercial vehicle or cargo truck having an overall length in excess of 20 feet, nor any semitractor, semi-tractor-trailer, semitrailer or construction vehicle of any length, shall be parked on any public or private property in a residential district unless temporarily in connection with a bona fide commercial service, sales or delivery to such property.
- C. A commercial vehicle, which is not a semitractor, semi-tractor-trailer, semitrailer or construction vehicle having an overall length of 20 feet or less, may be parked or stored outside on private property in a residential district subject to the following regulations:
- (1) Only one such vehicle per family may be parked or stored on any lot containing the dwelling of such family.
 - (2) Such vehicle shall only be parked or stored on the driveway or in the garage.
 - (3) The parking or storage of such vehicle shall be in full compliance with the requirements with Chapter 208, Zoning, § 208-16, of this Code and shall not preempt the use of space needed for the off-street parking of other vehicles.
 - (4) Such vehicle shall belong to an owner or occupant of the premises upon which it is being parked or stored.

The fourth amendment presented by Director of Code Enforcement and Development Michael Doser are changes to Section 208-14 C (2) of the Code of the Town of Perinton. The proposed modification eliminates hedges from consideration in item 2 of paragraph C, prohibiting fences and walls greater than 3 feet in height in front of the front setback line.

§208-14

C. Fences, walls and hedges.

- (1) The face side of any fence erected in any district shall face the nearest abutting property, and all posts or supports shall be on the inside of said fence unless said posts or supports constitute an integral part of said face side.
- (2) No fence, or wall more than three feet in height shall be erected in front of the front setback line as defined herein.
- (3) No fence or wall more than six feet in height shall be erected in the side or rear yard.
- (4) A building permit must be issued for the installation of any fence and/or wall.
- (5) Any fence erected in a Commercial, Restricted Business, Industrial or Limited Commercial District shall be subject to Planning Board approval.
- (6) The provisions of the fence code do not apply to any fence for any in-ground or aboveground pool (see § 208-24) or evergreen or solid-screen fence for a recreational vehicle (see Chapter 201).
- (7) Where land is used and occupied as a farm, such open-style fences as shall be necessary to restrain livestock shall be permitted as needed.
- (8) On corner lots in any district, no fence, wall or other structure or hedges or other planting or vehicles, machinery or equipment more than three feet above the level of the adjoining street shall be erected, placed, maintained or parked within the triangular area formed by the intersecting street right-of-way lines and a straight line joining said street right-of-way lines in accordance with the following schedule:

Intersecting Streets*	Equilateral legs of triangular area (feet)
Arterial / arterial	75
Arterial / collector	50
Arterial / any other type	50
Collector / collector	50
Collector / minor	25
Collector / rural road	25
Collector / dead end	25
Rural road / rural road	25
Rural road/ minor	25
Rural road / dead end	25

Intersecting Streets*	Equilateral legs of triangular area (feet)
Minor / minor	15
Minor / dead end	15

- (9) On corner lots, the setback from the lot line abutting on each street shall be the front setback required on that street or highway.
- (10) Preexisting conditions that complied with the code in existence at the time of their installation may continue to exist, provided that they:
- (a) Do not represent a public safety concern as determined by the Commissioner of Public Works; or
 - (b) Are not allowed to grow to impede the line of sight, and a clear line of vision is maintained below seven feet within the area defined in § [208-14C\(8\)](#) above. Determination of such impediment shall be made by the Commissioner of Public Works.

Councilperson Knapp made a motion, seconded by Councilperson Havens, that the amendments to Sections 208 (off-street parking and loading), removal of industrial uses from permitted uses in a commercial district, Section 201 (storage of vehicles) and Section 208 (fences, walls and hedges) of the Code of the Town of Perinton be given a Negative Declaration under the New York State Environmental Quality Review Act (SEQR) based upon the fact that these code changes will in no way negatively impact the environment.

Ayes: Smith, Knapp, LaFay, Havens, Van Vreede
Nays: None
Unanimously approved.

Councilperson Knapp made a motion, seconded by Councilperson Havens to approve the four amendments to Sections 208 and 201 of the Code of the Town of Perinton as recommended by the Director of Code Enforcement and Development, Michael Doser.

Ayes: Smith, Knapp, LaFay, Havens, Van Vreede
Nays: None
Unanimously approved.

The fifth amendment presented by Director of Code Enforcement and Development Michael Doser are changes to Section 208-53 H (1) of the Code of the Town of Perinton. The proposed modification permits applicants who have received site plan approval for their projects to maintain approval beyond the 12-month time limit if they have a current instrument of financial security in place that is acceptable to the Town for the prospective project such as a Letter of Credit. After this code was presented to the Conservation Board, they recommended a clarification to the vacant property provision. The change is de minimus in nature and therefore it is not necessary to hold another Public Hearing to consider the clarification.

§ 208-53. Site plan review.

H. Expiration of site plan approval.

- (1) Such site plan approval granted for a proposed project will automatically terminate one year after its approval unless a building permit has been issued and significant work has been commenced on the project or the applicant has a current

instrument of financial security in place for the prospective project that is acceptable to the Town, such as an active/valid letter of credit.

- (2) Such site plan approval may be terminated for cause at any time after 10 days' written notice to the applicant.
- (3) Such site plan approval will terminate if the approved use ceases to exist and remains nonexistent for more than one year.

Councilperson LaFay made a motion, seconded by Councilperson Van Vreede, that the amendment to Sections 208 (site plan review) of the Code of the Town of Perinton be given a Negative Declaration under the New York State Environmental Quality Review Act (SEQR) based upon the fact that this code change will in no way negatively impact the environment.

Ayes: Smith, Knapp, LaFay, Havens, Van Vreede
Nays: None
Unanimously approved.

Councilperson Van Vreede made a motion, seconded by Councilperson LaFay to approve the amendment to Sections 208 of the Code of the Town of Perinton as recommended by the Director of Code Enforcement and Development, Michael Doser.

Ayes: Smith, Knapp, LaFay, Havens, Van Vreede
Nays: None
Unanimously approved.

Director of Code Enforcement and Development Doser stated there are proposed changes to Sections 122, 205 and 208 of the Code of the Town of Perinton (regarding hydrofracking). He further stated that the Town Board held a Public Hearing on this Code on August 22, 2012 and the Code was referred to the Conservation Board and Planning Board for review and comment. The Conservation Board discussed the Code at their September 4, 2012 meeting and the Planning Board discussed it at their September 5, 2012 meeting. The Code effectively prohibits natural gas and petroleum exploration, extraction (hydrofracking) and storage or its production waste in the Town of Perinton.

The proposed changes to Sections 122, 205 and 208 of the Code of the Town of Perinton follow:

Chapter 122, EXCAVATIONS

GENERAL REFERENCES

Environmental Conservation Board -- See Ch. 16.

Conservation easements -- See Ch. 103.

Enforcement procedures -- See Ch. 115.

Subdivision of land -- See Ch. 182.

Zoning -- See Ch. 208.

§ 122-1. Title.

This chapter shall hereafter be known and cited as the "Excavation Law of the Town of Perinton."

§ 122-2. Purpose and objectives.

It is the purpose of this chapter to provide for the proper use of the land and to require an orderly continuing restoration of all land permitted to be excavated for its resources. The objectives shall be:

- A. To protect the land proposed for excavation from being destroyed for future use through improper excavation.
- B. To protect the surrounding land uses, natural environment and people from damage or danger from excavation and appurtenant activities.
- C. To provide for a plan to restore the excavated land for its ultimate reuse at the expiration of the permit.

D. To allow only those excavation uses which are in accordance with the Town Comprehensive Plan and development objectives.

§ 122-3. Legislative authority; delegation of authority.

In accordance with Article 16 of the Town Law of the State of New York, the Town Board of the Town of Perinton has the responsibility and authority to review and approve, modify and approve, or disapprove plans for excavation within the Town. Pursuant to the above authority, the Town Board has prepared and adopted this chapter setting forth standards to be followed in the preparation, review and approval or denial of excavation permit applications. By the same authority, the Town Board hereby delegates to the Board of Appeals the authority to conduct all public hearings and grant all permits provided in this chapter. The Department of Public Works shall assemble all information necessary to review applications and shall submit this information to the various boards, councils and individuals set forth in § 122-7C herein.

§ 122-4. Applicability.

This chapter shall apply to the entire area of the Town of Perinton, excluding those areas within the corporate limits of the Villages of East Rochester and Fairport.

§ 122-5. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

APPURTENANT ACTIVITIES -- All on-site operations involved in the treatment, processing or further fabrication of soil, sand, or gravel, including washing, grading, and sorting.

BOARD OF APPEALS -- The Zoning Board of Appeals of the Town of Perinton.

BUFFER -- Trees, hills, fences, berms or other natural or artificial features which are located so as to conceal or separate the excavation site and related activities from other land uses and to reduce the negative effects on these land uses of noise, glare, dust, visual ugliness and other factors associated with the excavation site and related activities.

DISTURBED AREA -- Any area from which topsoil or overburden has been removed in preparation for removal of natural deposits or which has been filled but not restored to an environmentally acceptable natural state.

EXCAVATION -- The removal of sand, gravel, soil (including topsoil) by stripping, digging or other means for the principal purpose of marketing these deposits.

FENCING -- A vertical barrier of sufficient height, depth and construction to deter the passage of humans or animals from one area to another.

OVERBURDEN -- Soil and all other natural material other than vegetation overlying the material to be excavated.

RESTORATION -- The reparation to an environmentally acceptable natural state of an area which has undergone physical change due to excavation and related activities.

TOPSOIL -- The layer of surface material which is composed of particles not larger than two inches in diameter, of which not less than 90% will pass a No. 4 sieve and not less than 25% nor more than 75% will pass a No. 200 sieve, which contains not less than 3% nor more than 20% organic material, which has an acidity range of 5.5 pH to 7.6 pH and which is capable of nurturing ornamental plants.

§ 122-6. General requirements.

A. All excavations and appurtenant activities commenced henceforth shall be in conformity with the provisions of this chapter.

B. All temporary or permanent permits presently in effect at the date of adoption of this chapter shall be continued until their expiration date, but all operations under such permits shall immediately become subject to the standards and conditions of this chapter. The Board of Appeals has full power and authority to vary those standards and conditions during the period of said temporary or permanent permits if strict enforcement thereof would result in unnecessary hardship to such operators resulting solely from the enactment of this chapter. The Zoning Board of Appeals shall apply the criteria for a Special Permit set forth in Section 208-54 when it considers an application for an excavation permit.

C. No excavation or appurtenant activities shall be commenced until a permit therefor shall have been issued by the Board of Appeals.

§ 122-7. Permit application, review and renewal.

A. Applications and all supporting documents, photographs and maps shall be filed in quintuplicate with the Department of Public Works.

B. Upon filing an application for an excavation permit, the applicant shall pay to the Town a fee as set from time to time by the Town Board, which shall be deemed a

reasonable sum to cover the costs of administration, no part of which shall be returnable to the applicant. EN

C. At least 30 days prior to a public hearing held by the Board of Appeals, copies of the permit application shall be submitted by the applicant to the Town Planning Board, the Town Engineer, the Monroe County Department of Planning, the Town Conservation Board, the Monroe County Soil and Water Conservation District, the Monroe County Environmental Management Council and the State of New York Department of Environmental Conservation for review and recommendations.

D. The time for the hearing, publication of the notice and mailing of notices and procedure at the public hearing shall be governed by the provisions of § 267-a, Subdivision 5, of the Town Law of the State of New York, as the same may be amended from time to time, or any sections subsequently adopted pertaining to such matters.

E. Upon the conclusion of the public hearing, a transcript of the testimony given, together with copies of all maps and exhibits and/or the minutes of said hearing, shall be forwarded to the Planning Board and the Conservation Board; and within 30 days after receipt of such information, each Board shall report its recommendations thereon to the Board of Appeals, accompanied by a full statement of the reasons for such recommendations. If one or both Boards fail to report within such period of 30 days or such longer period as may be agreed upon by it and the Board of Appeals, the Board of Appeals may act without such report.

F. Approval or denial of the application by the Board of Appeals shall be rendered within 60 days after the conclusion of a public hearing on said application, unless both the Board of Appeals and the applicant mutually consent to a time extension. The applicant will be notified of the decision, in writing, mailed to the address shown on the application.

G. Excavation permits shall be issued for a period of no greater than five years and shall be subject to semiannual site inspection and review by the Department of Public Works and any other agent designated by the Board of Appeals. A report of the semiannual inspection shall be filed with the Board of Appeals and sent to the owner and applicant. Inspection may also be made by an official Town agent at any reasonable time as deemed necessary. Refusal to permit a duly authorized person or agent to enter upon the premises for purposes of making any inspection, authorized or required under the provisions of this chapter, shall constitute a violation of the terms of the permit issued to said owner. The cost of semiannual inspections and other inspections reasonably required by the Town shall be charged directly to the applicant.

H. If, upon any inspection and review, under the procedures of Chapter 115, Enforcement Procedures, of the Town of Perinton, it is determined that the excavation and appurtenant activities have not been conducted in full compliance with the terms of the excavation permit, the permit may be terminated by the Board of Appeals and the performance bond provided for in this chapter shall be forfeited to the Town.

I. Renewal of an excavation permit upon its termination shall follow the same procedures as those required in this chapter for the original permit, except that if an application for renewal was properly filed prior to the expiration of an existing permit the term of the existing permit shall be deemed to be extended to the time that the Board of Appeals files its decision in regard to the application for renewal.

§ 122-8. Performance bond.

After the approval of the application and before the issuance of any permit, the applicant and each owner of record of the premises other than the applicant shall jointly and severally execute and file with the Town Clerk a performance bond secured by a letter of credit or surety bond to the Town in the amount of at least \$3,500 per acre of disturbed area. The above party or parties guarantee that upon termination of either the permit or the operation, whichever may come first, the land shall be restored in conformity with both the permit requirements and the standards set forth in this chapter. In the event of default of compliance, such letter of credit or surety bond shall be forfeited to the Town. The Town shall return to the applicant any amount that is not needed to cover the costs of restoration, administration and any other expenses reasonably and necessarily incurred by the Town as a result of the applicant's default. Such bond shall continue in full force and effect until a certificate of compliance shall have been issued by the Town Engineer.

§ 122-9. Application requirements.

A. All five copies of the application for each permit shall be signed by the applicant and by each owner of the premises other than the applicant and shall include the following information:

- (1) The name and address of the applicant.
- (2) The name and address of each owner of the premises.
- (3) A certification by the County Finance Officer showing payment of all taxes to date for the premises.

B. Each copy of the application shall include prints from vertical aerial photographs taken at a scale on the original negative no smaller than one inch equals 1,000 feet, which are certified as flown not earlier than one year prior to the date of application. The area covered by the aerial photographs shall include all land within a distance of at least one mile from the limits of the tract proposed for permit. Prints from the aerial negatives shall be made at a scale of one inch equals 100 feet.

C. Each copy of the application shall include location maps in the form of overlays to the aerial prints, giving the boundaries of the area proposed for permit and any area which has previously been excavated, and identifying all existing public and private land uses within a distance of at least 1,000 feet of these areas.

D. Each copy of the application shall include a natural features map prepared by a licensed engineer or surveyor at a scale no smaller than one inch equals 100 feet. The map shall show the following, both within the tract proposed for permit and within 500 feet of the tract:

- (1) Existing topography at contour intervals of five feet.
- (2) Areas of trees and forests with a description of varieties and sizes.
- (3) Average thickness of overburden.
- (4) Surface drainage pattern.
- (5) Location of all underground utilities and facilities.

E. Each copy of the application shall include an operations map presented as an overlay to the natural features map. The following features, including the area devoted to each, shall be shown:

- (1) Existing and proposed excavation areas.
- (2) Existing and proposed appurtenant activities, identified by type.
- (3) Existing and proposed access roads, identified by width and type of surface material.
- (4) Existing and proposed parking facilities, identified by type of surface material.
- (5) Existing and proposed fencing and buffers, identified by height and type of material.
- (6) Area where topsoil will be temporarily stored for use in restoration.

F. Each copy of the application shall include a restoration plan presented as an overlay to the natural features map and consisting of whatever supplementary descriptive materials are deemed appropriate. The restoration plan shall include the following:

- (1) Boundaries of the area proposed for restoration.
- (2) Final topography of the area proposed for restoration at contour intervals of five feet.
- (3) Final surface drainage pattern and the location and characteristics of artificial drainage facilities in the area proposed for restoration and in contiguous areas.
- (4) Depth and composition of topsoil proposed to be used in restoration.
- (5) The type and density of trees, shrubs, grasses and other vegetation proposed to be used in restoration.

§ 122-10. General standards.

In approving or denying an excavation permit, the standards and considerations taken into account shall include but not be limited to the following:

- A. Whether the excavations and proposed restoration plan are in accord with the intent of the Town Comprehensive Plan.
- B. Whether they will result in the creation of pits or holes which may be hazardous or dangerous.
- C. Whether they will cause soil erosion or the depletion of vegetation.
- D. Whether they will render the land unproductive or unsuitable for agricultural or development purposes.
- E. Whether they will impair the aesthetic or natural environment of the excavation area or surrounding area.
- F. Whether they will affect the character of surrounding land use.

G. Whether they will create excessive traffic or impair the quality of the existing and proposed thoroughfare facilities, community facilities and drainage.

H. Whether they will affect the control of nuisances.

I. Whether the areas excavated can be effectively restored and revegetated.

§ 122-11. Standards for site design and operation.

A. The disturbed area shall not exceed a total of 10 acres at any one time.

B. Setback.

(1) No excavation shall be conducted closer than 100 feet from a public right-of-way or adjoining property line.

(2) This setback area shall not be used for any use in conjunction with excavation or appurtenant activities except one sign for identifying the use of the property, fencing, buffers, access roads and stockpiled topsoil.

(3) All structures and appurtenant activities shall not be located closer than 200 feet from a public right-of-way or adjoining property line, except that sedimentation ponds may be located within this setback area if the applicant demonstrates that the topography necessitates such a location and also demonstrates that, where appropriate, sufficient safeguards such as a buffer will be provided for the protection of neighboring environment and residents.

C. Access roads and parking.

(1) All access roads shall be designed to take advantage of buffers and to include curves or other features to screen, as much as feasible, excavation and appurtenant activities from public view. The junction of access roads and public roads shall be at an angle of not more than a deviation of 10° from a right angle (90°).

(2) All major access roads shall be sufficiently free of dust and mud to prevent such material from being spread or blown from the premises. All precautions, such as oiling or watering daily, or more frequently when necessary, shall be taken to prevent dust and sand from being blown from the premises. The first 200 feet of access from a public road shall be paved with an asphaltic concrete pavement.

(3) Sufficient off-street parking shall be provided inside the setback area for company, employee and visiting vehicles. The parking of any such vehicle on a public right-of-way or the impeding of traffic or creation of traffic hazards by the parking of any such vehicle shall be prima facie evidence of failure to provide for adequate parking.

D. Preservation of natural features.

(1) Topsoil. All topsoil shall be stripped from the active excavation area and shall be stockpiled for use in accordance with the restoration plan, but no closer than 10 feet to any property line. Such stockpiles shall be seeded, covered or otherwise treated to minimize the effects of erosion by wind or water upon public roads, streams or other water bodies or adjacent property. This provision applies to all excavations except those for topsoil removal, in which case the provision applies for only that topsoil which has been stripped for use in the restoration plan.

(2) Landscape. Existing hills, trees and ground cover fronting along public roads or adjacent property shall be preserved, maintained or supplemented by selective cutting, transplanting and addition of new trees, shrubs and other ground cover for the purpose of providing a buffer. If the existing topography and vegetation do not lend themselves to such treatment, the operation shall take into consideration the potential of grading back overburden around the perimeter of the excavation site to create a berm for the purpose of providing a buffer, provided that the berm is properly landscaped with trees, shrubs and other ground cover. No berm shall be constructed within 40 feet of a public right-of-way or adjoining property line.

(3) Drainage. An adequate drainage system shall be provided to convey stormwater runoff originating on or crossing the premises such that the runoff follows, as much as feasible, the natural pattern of runoff prior to excavation and such that it does not adversely affect neighboring property owners. Excavated or disturbed areas adjacent to natural bodies of water shall be undertaken in a manner approved by the Department of Environmental Conservation of the State of New York. Soil erosion, sedimentation and groundwater seepage shall be controlled so as to prevent any negative effects on bodies of water, public roads and neighboring properties.

E. Other safeguards.

(1) Fencing. Fencing shall be required on all sides of disturbed areas that are within 500 feet of residences, unless the depth of excavation is less than five feet. Fencing shall be erected no closer than 40 feet to a public right-of-way or adjoining property line. The fencing shall be at least five feet in height. The Board of Appeals may require a fence,

berm or other buffer along part or all of the boundary for safety, visual or other screening purposes.

(2) Lateral support. Lateral support shall be sufficient to prevent the hazard of damage to persons, adjacent properties and public roads by reason of slides, sinking or collapse.

(3) Hours of operation. Excavation and appurtenant activities shall be conducted only between 7:00 a.m. and 5:00 p.m. on Monday through Friday and between 7:00 a.m. and 1:00 p.m. on Saturday, and shall not be allowed on Sundays. Material-hauling loaded trucks shall enter or leave the premises only within the hours permitted for the operation of excavation and appurtenant activities.

(4) Noise. Noise from excavations, appurtenant activities and related operations shall not be such as to interfere with the quiet enjoyment of neighboring properties.

(5) Spillage. Trucks shall be loaded to prevent spillage or windblown matter during transport on public roads.

§ 122-12. Standards for restoration.

A. No slope shall be left with a grade steeper than one foot of vertical rise to three feet of horizontal distance, and the normal angle of repose should not be exceeded in any case.

B. All stumps, boulders and other debris resulting from the excavations, appurtenant activities or related operations shall be disposed of by approved methods. If disposed of on the site, such debris shall be covered with a minimum of two feet of soil.

C. Topsoil shall be spread over the excavated area to a minimum depth of six inches.

D. The restoration area shall be planted with trees, shrubs, grass or other vegetation so as to provide for screening, natural beauty and soil stability. The planting shall follow acceptable conservation practices.

E. Restoration shall be undertaken in such a way that natural and storm drainage, where it enters and leaves the premises, shall be altered only to the minimal degree necessary to carry out excavations and appurtenant activities. Any alterations of natural and storm drainage shall not adversely affect public roads or neighboring property owners.

F. Restoration shall be a continuous operation, subject to review and approval at each inspection and at the termination of the permit period. Topsoil grading and planting of the area designated for restoration during the permit period shall have been completed before a permit renewal is granted.

G. Within six months after termination of the excavation operation, all equipment, buildings, structures and other unsightly evidence of the operation shall have been removed from the premises or disposed of by approved methods and all restoration shall have been completed.

§ 122-13. Amendment of provisions.

The Board may from time to time on its own motion, on petition or on recommendation of the Board of Appeals, Planning Board or the Conservation Board, and in accordance with the laws of the State of New York, amend, supplement or repeal the regulations or provisions of this chapter.

§ 122-14. Penalties for offenses.

Any person found guilty of a violation of the provisions of this chapter shall be punishable pursuant to Chapter 115, Enforcement Procedures.

§ 205 Natural Gas & Petroleum Exploration, Extraction and Storage.

§ 205-1 Purpose.

The Town of Perinton believes that the protection of residents, neighborhoods, and the natural environment is an appropriate use of its police powers. Allowing one or more of the Explicitly Prohibited Uses described in §205-2 to be conducted in the Town of Perinton would likely be hazardous to the public health, safety and welfare of the inhabitants of the Town, causing air pollution, dust, odors, and excessive truck traffic to and from the sites of such uses. Furthermore, the high costs associates with the disposal of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes (as defined in §205-5) have in other localities resulted, and could in our Town, result in such material being deposited along roadways, in vacant lots, or business sites or in other unauthorized places. The purpose of this law is to avoid the

adverse impacts from these prohibited uses and to protect the health, safety and welfare of the Town residents.

§ 205-2 Explicitly Prohibited Uses. The following uses and activities (being respectively defined in Clause D. below of this § 205) 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) Non-regulated Pipelines;
- (i) Underground Injection; and
- (j) Underground Natural Gas Storage.

Any condition caused or permitted to exist in violation of §205-2 is a threat to public health, safety and welfare, and is hereby declared and deemed to be a nuisance.

§ 205-3 Prohibition against Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes. The Town of Perinton 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, except for methane gas which is produced at a permitted landfill within the Town of Perinton.

§205-4 No Application to Customary Local Distribution Lines, Etc. The prohibitions set forth above in this §205 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.

§205-5 Defined terms applicable to this §205. For purposes of this Law, the following terms shall have the meanings respectively set forth below:

AGRICULTURAL USE. The use of the land for agricultural purposes, including, but not limited to, dairying, pasturage, truck farms or nurseries, greenhouses, horticulture, viticulture and apiaries, animal and poultry husbandry and the necessary accessory uses for storage; provided, however, that the operation of any such accessory use shall be incidental to that of the principal agricultural activities.

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.

GATHERING LINE, or PRODUCTION LINE. Any system of pipelines (and other equipment such as drip stations, vent stations, pigging facilities, valve boxes, transfer pump station, measuring and regulating equipment, yard and station piping, and cathodic protection equipment), used to move oil, gas, or liquids from a point of production, treatment facility or storage area to a transmission line, which is exempt from the Federal Energy Regulatory Commission’s jurisdiction under section 1(b) of the Natural Gas Act, and which does not meet the definition of a “Major utility transmission facility” under the Public Service Law of New York, Article 7, §120(2)(b).

INJECTION WELL. A bored, drilled or driven shaft or a dug hole through which fluids (which may or may not include semi-solids) are injected into the subsurface.

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.

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, excluding any gas produced by a permitted landfill.

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, excluding any gas produced by a permitted landfill.

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," "hazardous," or "toxic," 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.

NATURAL GAS COMPRESSION FACILITY. Those facilities or combination of facilities that move natural gas or oil from production fields or natural gas processing facilities in pipelines or into storage; the term shall include equipment for liquids separation, natural gas dehydration, and tanks for the storage of waste liquids and hydrocarbon liquids.

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

NON-REGULATED PIPELINES. Those pipelines that are exempt or otherwise excluded from regulation under federal and state laws regarding pipeline construction standards or reporting requirements. Specifically includes production lines and gathering lines.

PIPELINE. All parts of those physical facilities through which petroleum, gas, hazardous liquids, or chemicals move in transportation (including pipes, valves and other equipment and appurtenances attached to pipes and other equipment, such as drip stations, vent stations, pigging facilities, valve boxes, transfer pump stations, measuring and regulating equipment, yard and station piping, and cathodic protection equipment) whether or not laid in public or private easement or private right of way within the Town. This term includes, without limitation, gathering lines, production lines, and transmission lines.

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.

TRANSMISSION LINE. A pipeline that transports petroleum, natural gas, or water to end users as a public utility and which is subject to regulation either by: (a) the Federal Energy Regulatory Commission's jurisdiction under section 1(b) of the Natural Gas Act, or (b) as a "Major utility transmission facility" under the Public Service Law of New York, Article 7, §120(2)(b).

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, and pipelines.

§ 208-3. Zoning plan established; intent.

A. There is hereby established a comprehensive zoning plan for the Town of Perinton, Monroe County, New York, which plan is set forth in the text and maps that constitute this chapter. This Zoning Chapter is adopted in accordance with the procedures set forth in § 10 of the Municipal Home Rule Law of the State of New York and Chapter 30, Adoption of Local Laws, of the Town of Perinton under the authority of the provisions of Article 16 of the Town Law (Chapter 61 of the Consolidated Laws of the State of New York). No building or structure; no use of any building, structure or land; and no lot now or hereafter existing shall hereafter be established, altered, moved, divided or maintained in any manner except as authorized by the provisions of this chapter.

B. For the purpose of promoting the health, safety or the general welfare of the people of the Town of Perinton, this Zoning Chapter is adopted to regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of

lot that may be occupied, the size of yards, courts and other open spaces, the density of population and the location and use of buildings, structures and land for trade, industry, residence or other purposes. Such Zoning Chapter, Zoning Map, subdivision regulations and other local laws are designed to lessen congestion in the streets; to secure safety from fire and other dangers; to provide adequate light and air; to prevent the overcrowding of land and to avoid undue concentration of population; to facilitate the efficient and adequate provision of public facilities and services; and to provide the maximum protection to residential areas from the encroachment of adverse environmental influences, and were made after reasonable consideration, among other things, as to the character of the Town and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the Town.

§ 208-4. Other laws, ordinances, codes and regulations.

A. In addition to the provisions of this chapter, other local laws, ordinances, codes and regulations dealing with specific subjects have been adopted by the Town Board pursuant to the authority of Article 16 of the Town Law of the State of New York, including the following local laws, ordinances, codes and regulations:

- (1) Conservation Easement Law (Chapter 103).
- (2) Electrical Code (Chapter 108).
- (3) Enforcement Procedures Law (Chapter 115).
- (4) Excavation Law (Chapter 122).
- (5) Fee Law (Chapter 130).
- (6) New York State Uniform Fire Prevention and Building Code (Chapter 88).
- (7) Sewer Use Ordinance (Chapter 171, Part 2).
- (8) Sign Law (Chapter 174).
- (9) Subdivision Regulations (Chapter 182).
- (10) Unsafe Buildings and Collapsed Structures Ordinance (Chapter 95).
- (11) Wind Energy Conversion (Chapter 204)
- (12) Natural Gas and Petroleum Exploration, Extraction and Storage (Chapter 205)

B. Such local laws, ordinances, codes and regulations, as the same may be amended, revised, deleted or added from time to time, are incorporated in this chapter by reference, as if they were each specifically set forth herein. If there is conflict between two or more of such local laws, ordinances, codes or regulations as to the same subject matter, the more restrictive one shall apply.

Supervisor Smith read the following motion: The Town Board and staff have reviewed a plethora of material as consideration was given to these proposed changes to our Town ordinance, including articles and videos from a number of web sites. That material is identified as Exhibit A in the Town records. The Town Board also received favorable comments from the Town Conservation Board endorsing these proposed changes to our ordinance, stating that the proposed changes would provide further protections for natural resources within the Town. Based on our review of the available information and the comments from our Conservation Board, I will accept a motion that we give these code changes a negative SEQR declaration as these code changes will not cause any significant adverse environmental impacts and instead will likely protect the Town from adverse environmental impacts attendant to hydrofracking.

Councilperson LaFay made the above motion, seconded by Councilperson Havens.

Ayes: Smith, Knapp, LaFay, Havens, Van Vreede

Nays: None

Unanimously approved.

Supervisor Smith then read the following Motion of Adoption: At the heart of the hydro-fracking debate, is the issue of home rule. We believe that, as the hydrofracking industry and its methodologies stand today, this practice is not compatible with our town, its existing development pattern and its tradition of the preservation of open space. We, therefore, are passing this law based on our town and our perception of this practice and how it would fit (or not) in our town at this time, based on an extensive review of the material listed in Exhibit A. We are not taking any position that should be

interpreted or extended to any area other than our town. We believe that all municipalities should have a measure of control (home rule) over what activities should or should not occur in their respective communities.

With this preamble, and upon receipt of referrals from Monroe County Planning (no comment), the Perinton Conservation Board (endorsement) and the Perinton Planning Board (5-2 opposed to the changes), I will accept a motion of adoption of the various amendments to our code, Sections 122, 205 and 208, that cover this matter.

Councilperson LaFay made a motion, seconded by Councilperson Havens to adopt the various amendments to the Code of the Town of Perinton as outlined above.

A gentleman in the audience questioned, as a perspective land owner with potential revenue opportunities from hydrofracking, why Supervisor Smith feels that it is the Town's responsibility to eliminate that revenue source. Supervisor Smith stated that the Board feels that Perinton is a well-developed community and there is not a lot of space where hydrofracking could occur and that it is not appropriate for Perinton.

Judith McNulty, 647 Thayer Road, asked whether the new codes would prevent any hydrofracking waste from going to High Acres Landfill and from being trucked through the Town. Supervisor Smith stated that the Town cannot control what is trucked through the Town on State and County roads, however, hydrofracking waste cannot go to High Acres.

The Board then voted as follows:

Ayes: Smith, Knapp, LaFay, Havens, Van Vreede
Nays: None
Unanimously approved.

DECISION
SPECIAL USE PERMIT
PERINTON JOINT FIRE TRAINING FACILITY

Supervisor Smith stated that the Board held a Public Hearing on June 13, 2012 relative to a Special Use Permit for a Perinton Joint Fire Training Facility. He then read a proposed motion for SEQRA and the following motion was made:

Councilperson Knapp moved and Councilperson Havens seconded that the Town Board grant a negative declaration for this Special Use Permit action. No adverse environmental impacts will be created in the area. This determination is consistent with the recommendation from the Conservation Board, dated June 29, 2012.

Ayes: Smith, Knapp, LaFay, Havens, Van Vreede
Nays: None
Unanimously approved

Councilperson Van Vreede then made a motion seconded by Councilperson LaFay that the Board approve the Special Use Permit for the Perinton Joint Training Facility proposed to be located on the Waste Management parcel, High Acres landfill. Reasons supporting this approval are:

- The Fire Departments involved held a "neighborhood" meeting to which they invited homeowners in adjacent subdivisions to the south of the proposed site. The Town Board held a Public Hearing on June 13, 2012 relative to the Special Use Permit. No objections were raised by the public concerning the proposed use at the hearing.
- Referral from Monroe County Planning Dept. on June 13, 2012 which had no comment.
- Referral from the Perinton Conservation Board dated June 29, 2012 endorsing the

Permit.

- Referral from the Perinton Planning Board dated July 20, 2012 which recommended the granting of the permit.
- The permit will be beneficial to the public safety of the Town through improved training of our first responders and by allowing our fire departments to maintain fire coverage by training near their fire districts.
- The permit will be beneficial to the budgets of the respective departments by providing a local training site that is easily accessible.
- Off-site impacts of these activities should be minimal and be mitigated by distance and natural buffering.

To ensure these impacts are minimal, the following conditions shall be in place for the Special Use Permit:

- This permit shall be effective on the date of the issuance of a Certificate of Occupancy by the Town of Perinton and run for one year.
- Prior to the one-year anniversary of operation, applicant shall reappear before this board to request a reapproval of the Special Use Permit beyond the one year time frame. At this time, operations shall be reviewed and impacts, if any, discussed and mitigated, if necessary.
- Training activities shall be limited to 7 AM to 10 PM Monday to Friday, 8 AM to 4 PM, Saturdays and 9 AM to 2 PM Sundays. Set-up and clean-up for and from training may take place one half hour before and after these times.
- Activities at this site shall be limited to four days per week, Monday through Sunday. Use of the facility by non-sponsoring organizations (those other than Egypt, Bushnell's Basin and Fairport Fire Departments) is limited to four times per month.

Ayes: Smith, Knapp, LaFay, Havens, Van Vreede

Nays: None

Unanimously approved

ACCEPT 2011 CDBG CANAL CROSSING & ROADWAY RE-ALIGNMENT GRANT AND AUTHORIZE SUPERVISOR TO SIGN AGREEMENT

Supervisor Smith stated that the Town applied to Monroe County for additional aid and through them from the Federal government for the Canal Pedestrian Bridge. This aid is to be used for the handicapped aspects of the project and the Town has been tentatively awarded \$33,400 in Community Block Grant money. At this time, Monroe County requires that the Town Board pass a resolution accepting the Block Grant and authorizing the Supervisor to sign the agreement.

Councilperson Havens made a motion, seconded by Councilperson LaFay to accept the Community Development Block Grant and authorizing Supervisor Smith to sign the necessary paperwork.

Ayes: Smith, Knapp, LaFay, Havens, Van Vreede

Nays: None

Unanimously approved

AUTHORIZE PAYMENT OF 2012/2013 SCHOOL TAX BILLS FOR TOWN- OWNED PROPERTY

Supervisor Smith said that, in a memo dated September 6, 2012, Tax Receiver Karen Heim asked the Board to approve payment of the 2012/13 School tax bills for the property that the Town of Perinton has recently acquired from the Hoysic Family. These properties will be tax exempt in future years.

Councilperson LaFay made a motion, seconded by Councilperson Knapp to authorize payment of the School taxes as noted above, to Karen L. Heim, Town of Perinton Receiver of Taxes in the amount of \$889.94.

Ayes: Smith, Knapp, LaFay, Havens, Van Vreede
Nays: None
Unanimously approved

APPROVE BAIRD ROAD/WEST WHITNEY ROAD PLANNING STUDY

Director of Code Enforcement and Development Doser stated that the Town is considering rezoning a number of Industrial-zoned properties along Baird Road, north of Whitney Road West. He stated that the rationale is that traditional manufacturing typical of industrial zoning is no longer viable for those properties, which are in close proximity to a residential neighborhood just to the north.

Mr. Doser further stated that the Town requested proposals for a small planning study of the area by a professional planning firm. He is recommending that the Town enter into an agreement with Ingalls Planning and Design, a firm owned and operated by Perinton resident Matt Ingalls. Mr. Doser stated that the study should be completed by the end of 2012 and it is not to exceed \$12,500.

Councilperson Knapp made a motion, seconded by Councilperson Van Vreede, to approve the agreement for the Baird Road/West Whitney Road Planning Study with Ingalls Planning and Design in an amount not to exceed \$12,500.

Ayes: Smith, Knapp, LaFay, Havens, Van Vreede
Nays: None
Unanimously approved

REQUEST TO FILL RECREATION LEADER POSITION

Commissioner of Recreation and Parks Myers stated that there will be a vacancy in the Recreation Leader position at the end of September and he and Recreation Director Riesenberger are recommending that the position be filled by Joshua Dillon.

Commissioner Myers stated that Mr. Dillon is a Perinton native, participated in Perinton Recreation and Parks programs and graduated Magna Cum Laude from SUNY Brockport in 2010 with a degree in Recreation Management. During his studies, he conducted a 200 hour internship with the Recreation Department, and was subsequently hired part time to work the summer playground program and Gazebo Concert Series , to name a few.

Commissioner Myers stated that Mr. Dillon currently holds a Recreation Leader position in the Town of Pittsford, will resign that position and be reinstated in Perinton under Civil Service. Commissioner Myers recommended that Mr. Dillon be permanently appointed (under Civil Service) on September 24, 2012 at a salary rate of [].

Councilperson Van Vreede made a motion, seconded by Councilperson Havens to approve the hiring of Joshua Dillon as Deputy Recreation Leader as outlined above.

Ayes: Smith, Knapp, LaFay, Havens, Van Vreede
Nays: None
Unanimously Approved

APPROVE CHANGE TO THE MEMBERSHIP
OF THE BUSHNELL'S BASIN FIRE ASSOCIATION, INC

A motion was made by Councilperson Knapp, seconded by Councilperson Van Vreede, that the following change in the membership of the Bushnell's Basin Fire Association, Inc. be approved:

Resident Active Firefighter

Mr. Jason Park
2 Cavan Way
Pittsford, NY 14534

Ayes: Smith, Knapp, LaFay, Havens, Van Vreede
Nays: None
Unanimously Approved

A motion was made by Councilperson LaFay, seconded by Councilperson VanVreede, that the reports from the Finance Director, Town Clerk and the Code Enforcement and Development Department for the month of August 2012 be approved.

Ayes: Smith, Knapp, LaFay, Havens, Van Vreede
Nays: None
Unanimously approved

There being no further business before the Board and no further questions from the audience, the Board adjourned at 8:30 pm.

Respectfully submitted,

Jennifer A. West
Town Clerk