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EXHIBIT I

***** NORTHWEST PENFIELD HOMEOWNERS ASSOCIATION NEWSLETTER # 7 *****

WHERE WE GO AGAIN.....

"Good old Beacon Hills" (that area bounded by Scribner Road, Five Mile Line Road and Robert Road)

*** Next Monday nite, May 10, 1971 at 8:00 p. m. in the Penfield Town Hall auditorium located on Atlantic Avenue application is being made to the Penfield Planning Board for sketch plan approval of a proposed PUD.....

YOUR PRESENCE IS NECESSARY AT THIS HEARING.....IN ORDER THAT YOU VOICE YOUR OPINION AND.....PROTECT YOUR PERSONAL PROPERTY VALUES.....

*** This area is again faced with the possibility of the construction and placement of APARTMENTS and TOWNE HOUSES in the center of an area directly bounded by class "AA" housing on all sides.....

Will the development of this property lead to the devaluation of your own already existent PERSONAL PROPERTY???

**** Just where do we stand ??????????

Plan on participating before it's TOO LATE.....

 HAVE YOU CONSIDERED: the type of environment, the types of housing, DENSITY, adequate schooling, lot sizes, community facilities, shopping conveniences, traffic congestion, etc. etc. ??
 ???

We, the VOTERS of this community do have a right to voice our opinion.....

The following article appeared in the Times Union, Monday April 26, 1971....

Top Court Upholds Voting on Housing

<p>WASHINGTON (AP)—The Supreme Court ruled today that the people of California have the right to require referendum approval of low-cost public housing projects.</p> <p>The decision, given by Justice Hugo L. Black, approved a 1970 amendment to the California constitution that requires approval by a majority of voters before low-cost housing projects are constructed.</p> <p>Black said the provision did not amount to racial discrimination.</p>	<p>demonstrate devotion to democracy, not in bias, discrimination, or prejudice," Black wrote.</p> <p>The people of California have ... decided by their own vote to require referendum approval of low-cost public housing projects.</p> <p>The amendment ensures that the state will not be forced to fund a housing project until the voters have approved it.</p>	<p>Chief Justice Warren E. Burger and Justices John M. Harlan, Potter Stewart and Byron R. White were in the majority with Black Justices Thurgood Marshall, William J. Brennan Jr. and Harry A. Blackmun dissented.</p> <p>Marshall, speaking for the dissenters, said the amendment at issue is a form of "invidious discrimination" because it singles out low-income people to bear the burden of winning the support of the voters.</p> <p>Publicly assisted housing developments designed for the aged, veterans, state employees, middle-income and other groups need not be approved by a referendum, he said.</p>
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MORE TO READ...
 OVER →

Legal Notice

NOTICE OF PUBLIC HEARING, PENFIELD PLANNING BOARD

PLEASE TAKE NOTICE, that applications have been made to the Penfield Planning Board of the Town of Penfield, Monroe County, New York for approval of the following matters:
ADVERTISED HEARINGS

#1 The application of Jenkins-Wurzer-Stark, Architects and planners 1545 East Ave. Rochester, N. Y. for sketch plan approval of a proposed Planned Unit Development extending from Scribner Road, east to Five Mile Line Road and from a line approximately 600 feet north of Roberts Road in a northerly direction for a distance of about 2600 feet, such Planned Unit Development to be known as Beacon Hills.

#2 The application of Thomas F. Frazer, 2316 Lyell Ave., Rochester, N. Y. for approval of a one lot

subdivision plot for Dr. Alex Braiman. Said property being located at 1722 Salt Rd. (Acct. #460-000) and in a double A Residential zone, said parcel fronts 428 feet along Gloria Drive and is 1020 feet deep.

A Public Hearing will be held at the Penfield Town Hall on Monday May 10th, 1971 at 8:00 P.M., Eastern Daylight Time upon the above applications at which time all persons in favor or opposed will be heard.

Earl Rapp,
Town Clerk
4.29.71 (11cR233)

LEGAL NOTICE:

**ADVERTISED HEARING:
 PENFIELD REPUBLICAN
 THURSDAY
 APRIL 29, 1971**

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Upon the question all members of the Board having voted "Aye" the recommendation was declared adopted.

DETAILED RESOLUTION AT PAGES 121-122
MINUTE BOOK

Following the report of the Public Works Committee, the Town Clerk was requested by the Supervisor to read the Notice of the Hearing as published in the Penfield Republican, the official newspaper, and the Penfield Press on August 5, 1971 in connection with a proposed amendment to the amended Zoning Ordinance of the Town of Penfield section 29-11.21 (Planned Unit Development Ordinance) be amended by adding thereto Paragraph (5) and (6) to Section "D".

Mr. Frank asked Mr. Callaghan if the matter was properly before the Board and Mr. Callaghan said that it was.

Mr. Frank said that the Town of Penfield was the first Town in Monroe County to adopt a "PUD" Ordinance and since the adoption the Boards had found a few weaknesses and therefore the Planning Board had recommended that the density be cut to four dwelling units per acre.

Mr. Frank said that the hearing was now open for discussion and anyone wishing to be heard please come forward and give their name to the Clerk and use the microphone.

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The following persons addressed the Board:

Mrs. John Bundschuh, Representing the Pen-
field League of Women
Voters.

Mr. Jonathan Post Attorney for Mr. Audino

Mrs. George Gulick
75 Huntington Meadow

Mrs. Raymond Kuschel 155 St. James Dr.

Mr. Donald Sirianni 9 Christine Circle

Mr. Paul Mandina 1475 Five Mile Line Rd.

Myron Starks,
Architect from Jenkins, Wurzer-Starks

Mr. Michael Ireland 111 BelVista Dr.

George Shaw Chairman Penfield Plan-
ning Board

Mrs. Shirley Mulig 164 St. James Dr.

Mr. Jim Brooks 795 Embury Rd.

Mr. Robert Herman 887 Hillary Lane

Richard Handler, Architects from Handler and
Grosso (Representing
Dolomite Co.)

Wallace Ashnault Attorney

Mrs. Ann McNabb 1996 Penfield Rd.

Mr. Tony Caldron Secretary Stanndco
Developers

Mr. John Hostutler 34 Jackson Rd. Ext.

Mr. John Effinger 131 St. James Dr.

Mr. John Bickmore 18849 Blossom Rd

Mr. Robert Clifford 140 Stokton Lane

Janet Gray 35 Robert Rd.

Michelle Mandina 1470 Five Mile Line Rd.

Mrs. Irene Gossin 17 Parkview Dr.

There being no one else who wished to be
heard, Mr. Frank declared the hearing
closed

VERBATUM ON FILE IN TOWN CLERKS OFFICE

EXHIBIT I

The Town Clerk was requested by the Supervisor to read the Notice of the Hearing as published in the Penfield Republican, the official newspaper, and the Penfield Press on August 5, 1971 in connection with the rezoning of 38 acres of land located on the southeast corner of Plank Road and Five Mile Line Rd. from Residential "AA" to Commercial to permit the construction of a shopping Plaza and Motor Vehicle Supply Station.

Mr. Frank asked Mr. Callaghan if the matter was properly before the Board and Mr. Callaghan said that it was.

Vote of the Board

Howard Frank	"Aye"
Walter W. Peter	"Aye"
McFall Kerbey Jr.	"Aye"
T. Frank Lonergan	"Aye"
Gordon Scott	"Aye"

Upon the question all members of the Board having voted "Aye", the recommendation was declared adopted.

#4 This committee recommends the appointment of the following Dog Enumerators for the enumeration of the dogs in the Town of Penfield for the year 1972."

Edward Welch	Section # 1
1382 Creek St.	
Webster, U.Y.	

Mrs. Mildred Huehn	Section # 2
1350 Salt Rd	
Webster, N.Y.	

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not exceed four (4) dwelling units per acre.

(6) As a further standard and limitation on the permitted uses within a PUD District, the ratio of Multiple Dwelling units and Duplex (twoFamily) units to single family detached dwelling units shall not exceed one (1) for one (1). This amendment shall take effect immediately upon posting and publishing as required by law.

It was moved by Councilman T. Frank Lonergan and seconded by Councilman Walter Peter that recommendation #5 be adopted as submitted by the committee.

Vote of the Board

Howard Frank	"Aye"
Walter W. Peter	"Aye"
McFall Kerbey Jr.	"Nay"
T. Frank Lonergan	"Aye"
Gordon Scott	"Aye"

Upon the question a majority of the members of the Board having voted "Aye" the resolution was declared adopted.

Recreation and Social Services
Committee

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NOTICE OF ADOPTION
OF AMENDMENT TO THE
PENFIELD ZONING ORDINANCE

PLEASE TAKE NOTICE that at a regular meeting of the Penfield Town Board, held on September 7, 1971, an amendment to the Zoning Ordinance and to the official Zoning Map of the Town of Penfield was duly adopted. Such amendment as adopted, is as follows:

WHEREAS JENKINS - WURZER - STARKS, Architects and Planners, 1545 East Avenue, Rochester, New York, on behalf of the owners have made application for the rezoning of a parcel of land hereinafter described from "Residential AA" District to "Planned Unit Development" District, and,

WHEREAS the Planning Board has reviewed the proposal for the Planned Unit Development and has rendered a

favorable report to the Town Board with the proviso that the applicant reduce the density from that proposed, and,

WHEREAS the Monroe County Planning Council has considered the proposal for a Planned Unit Development on the premises hereinafter described and has recommended approval, and

WHEREAS a public hearing was duly called and held on August 17, 1971, at 8:00 O'clock P.M. at the Town Hall, Penfield, New York, to consider the application for rezoning, and,

WHEREAS it appears that the proposed Planned Unit Development for the premises hereinafter described falls within the intent and objectives of the Planned Unit Development District Ordinance of the Town, as amended, and would be in the best interest of the Town,

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NOW THEREFORE, BE IT ORDAINED,
by the Town Board of the Town of Penfield
that the Zoning Ordinances and the
official Zoning Map of the said Town be
and the same hereby is amended as follows:

SECTION 1. The official Zoning
Map of the Town of Penfield is amended to
transfer from "Residential AA" District
to "Planned Unit Development" District the
following described premises:

ALL THAT TRACT OR PARCEL OF LAND,
situate in the Town of Penfield, County of
Monroe and State of New York, and being
in Town Lot #55, more particularly bounded
and described as follows: Commencing at a
point in the center line of Scribner Road,
which point is the southwest corner of
premises conveyed to the grantee by deed
dated June 22, 1966 and recorded in the
Monroe County Clerk's Office in Liber 3743
of Deeds at page 15, which point is also
the southwest corner of premises conveyed
to Stephen Leake by warranty deed dated
May 5, 1836, and recorded in Monroe County
Clerk's office in Liber 36 of Deeds at
page 263; thence easterly in the south
line of the premises conveyed to the
grantee as aforesaid, 32 chains 39 links;
running thence south along the west line
of premises conveyed to said Stephen Leake,

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7 chains to a point in the north line of premises formerly owned by Calvin Rundel; thence west in the said Rundel's north line, a distance of 15 chains 55 links to the northwest corner owned by said Calvin Rundel; thence south in said Rundel's west line 11 chains 89 links; thence west parallel with the line of town lots 16 chains 84 links to a point in the center line of Scribner Road; thence north in the center line of Scribner Road 18 chains and 79 links more or less to the place of beginning.

Excepting therefrom, however, so much of the described premises as were conveyed by Luther C. Sampson and Rebecca C. Sampson to John W. Sampson by warranty deed dated March 10, 1864 and recorded in the Monroe County Clerk's office in Liber 207 of Deeds at page 206.

Being part of the same premises conveyed to Luther C. Sampson and Helen M. Sampson by warranty deed dated April 22, 1935 and recorded in the Monroe County Clerk's office in Liber 1761 of Deeds at page 7.

All that tract or parcel of land situate, lying and being in the Town of Penfield, County of Monroe and State of New York, and being part of town lot #56, more particularly bounded and described as follows: Commencing at a point in the center line of Scribner Road measured 1773.58 feet north of the intersection of the center lines of Scribner Road and Embury Road, which point is also in the south line of premises conveyed to Luther

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Sampson by warranty deed dated March 5, 1853 and recorded in Monroe County Clerk's office in Liber 163 of Deeds at page 100; thence westerly at an included angle of $89^{\circ} 35' 30''$ a distance of 723.57 feet to a point; thence northerly at an included angle of $90^{\circ} 24' 30''$, a distance of 455.40 feet to a point; thence westerly at an excluded angle of $90^{\circ} 25' 00''$, a distance of 1859.79 feet to an iron pin set in the west line of town lot #56; thence northerly at an included angle of $90^{\circ} 44' 30''$ along the west line of said town lot #56, a distance of 467.58 feet to an iron pin; thence easterly at an included angle of $89^{\circ} 52' 20''$, a distance of 2585.96 feet to a point in the center line of Scribner Road; thence south along the center line of Scribner Road, a distance of 950.76 feet to the point and place of beginning.

All as shown on a map made by Lewis E. Kohl, Inc. dated March 25, 1968.

THAT TRACT OR PARCEL OF LAND, situate in the Town of Penfield, County of Monroe, State of New York, known as Town Lot 55, Township 13, Range 4, more particularly described as follows:

COMMENCING at a point in the center line of Five Mile Line Road at the southeast corner of premises conveyed to the party of the first part by deed recorded in Monroe County Clerk's Office in Liber 3294 of Deeds, at page 507, which point of beginning is also the northeast corner of premises owned by the party of the second part; thence (1) westerly at

an included angle of $90^{\circ} 14' 46''$ along the north line of premises owned by the party of the second part a distance of 2628.12 feet to a point in the center line of Scribner Road, which point is also the northwest corner of premises owned by the party of the second part; thence (2) northerly along the center line of Scribner Road a distance of 362.50 feet; thence (3) easterly at an included angle of $89^{\circ} 46' 16''$ a distance of 1246.07 feet to an iron pin; thence (4) northerly at an included angle of $270^{\circ} 13' 44''$ a distance of 350.00 feet to an iron pin; thence (5) easterly at an included angle of $89^{\circ} 46' 16''$ a distance of 442.81 feet to a point; thence (6) southerly at an included angle of $89^{\circ} 45' 14''$ a distance of 672.50 feet to a point; thence (7) easterly at an included angle of $270^{\circ} 14' 46''$ a distance of 933.00 feet to the center line of Five Mile Line Road; thence (8) southerly along the center line of Five Mile Line Road a distance of 40 feet to the point and place of beginning.

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Penfield, County of Monroe and State of New York, being the south one-half of the south part of the north division of Town Lot 55 bounded as follows: Beginning in the east line of said north division in the center of the highway known as the Five Mile Line Road at a point ten (10) chains and eighty-one (81) links distant south of the southeast corner of one hundred (100) acres of land taken from the north division formerly owned by

Stephen Leake; from thence running west thirty-nine (39) chains and eighty-two (82) links to the west line of said division being also the center of the Scribner Road so called; thence running south in said west line and the center of the Scribner Road ten (10) chains and eighty-one (81) links to the south line of said south part of the north division of said Lot No.55; thence east along said south line thirty-nine (39) chains and eighty-two (82) links to the center of the said Five Mile Line Road; thence north along said center of road ten (10) chains and eighty-one (81) links to the place of beginning and containing forty-three (43) acres and thirty-seven (37) rods of land, more or less.

SECTION 2. This amendment is conditioned upon the following:

a) The modification of the plan for the Planned Unit Development to conform to the density limitation contained in the Planned Unit Development Ordinance, as amended.

b) The execution of an agreement between the developer and the TOWN OF PENFIELD which defines (1) the responsibilities of the developer, the owners

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and occupants of the developed lands, and the TOWN OF PENFIELD in the improvement, operation and maintenance of common properties and facilities including private streets, drives, service and parking areas and recreation and open-space areas, and (2) the guarantee by which performance will be insured.

c) Payment of a sanitary sewer entrance fee for each unit in an amount to be determined by the Town Board and which will reflect the development at a greater density of PUD than the average density of a residential development and which will also reflect the need for additional sewerage capacity before the approval of the site plan for development of the planned fourth stage.

d) The filing of a satisfactory

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letter of credit in an amount sufficient to cover the estimated costs as determined by the Town Engineer of roads, gutters, side-walks, sewers and sewer systems, drains and drainage systems, lighting systems, water systems, landscaping and sewer entrance fees.

e) The securing of a site plan approval in accordance with all provisions of the Zoning Ordinance with respect to a Planned Unit Development District and the execution of any agreements between the developer and the TOWN OF PENFIELD required by the Planning Board to insure the construction of the development according to the site plan and in the chronological order of planned construction.

SECTION 3. This amendment shall take effect immediately upon posting and

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publishing as required by law.

Dated at Penfield, New York

September 14, 1971

Earl Rapp,
Town Clerk Penfield
New York

EXHIBIT K

RESOLUTION

PENFIELD TOWN BOARD

JANUARY 3, 1972

WHEREAS the Town Board of the Town of Penfield heretofore and on the 7th day of September, 1971 adopted an Ordinance amending the Zoning Ordinance and the official Zoning Map of the Town of Penfield by which Ordinance the premises hereinafter described were transferred from "Residential AA" District to "Planned Unit Development" District, and

WHEREAS such Ordinance was adopted over the objections and protests of a large number of town residents, and

WHEREAS a public controversy arose immediately following the adoption of such Ordinance as to the wisdom and propriety of the rezoning accomplished by such Ordinance, and

EXHIBIT K

WHEREAS by reason of all the foregoing the present Town Board of the Town of Penfield feels that there is a serious question as to whether the public health, safety and welfare of the residents of the Town of Penfield has in fact been served by the enactment of said Ordinance, and

WHEREAS by reason of all the foregoing the present Town Board of the Town of Penfield feels that there is a serious question as to whether the considerations for long range planning in the Town of Penfield have in fact been served by the enactment of said Ordinance, and

WHEREAS therefore the Town Board of the Town of Penfield wishes to review, and if so advised, repeal the said Ordinance, now

EXHIBIT K

therefore be it

RESOLVED that the following proposed Ordinance hereby be referred to the Planning Board for report to the Town Board: "NOW THEREFORE, BE IT ORDAINED, by the Town Board of the Town of Penfield that the Zoning Ordinance and the official Zoning Map of the said Town by and the same hereby is amended as follows:

Section 1. The Ordinance adopted by the Town Board of the Town of Penfield on September 7, 1971 amending the Zoning Ordinance and the official Zoning Map of the Town of Penfield by transferring the premises hereinafter described from "Residential AA" District to "Planned Unit Development" District be and it hereby is repealed.

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Section 2. The official Zoning Map of the Town of Penfield is amended to transfer from "Planned Unit Development" District to "Residential AA" District following described premises:

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Penfield, County of Monroe and State of New York, and being in Town Lot #55, more particularly bounded and described as follows: Commencing at a point in the center line of Scribner Road, which point is the southwest corner of premises conveyed to the grantee by deed dated June 22, 1966 and recorded in the Monroe County Clerk's Office in Liber 3743 of Deeds at page 15, which point is also the southwest corner of premises conveyed to Stephen Leake by warranty deed dated May 5, 1836, and recorded in Monroe County Clerk's Office in Liber 36 of Deeds at page 263; thence easterly in the south line of the premises conveyed to the grantee as aforesaid, 32 chains 39 links; running thence south along the west line of premises conveyed to said Stephen Leake,

EXHIBIT K

7 chains to a point in the north line of premises formerly owned by Calvin Rundel; thence west in the said Rundel's north line, a distance of 15 chains 55 links to the northwest corner owned by said Calvin Rundel; thence south in said Rundel's west line 11 chains 89 links; thence west parallel with the line of town lots 16 chains 84 links to a point in the center line of Scribner Road; thence north in the center line of Scribner Road 18 chains and 79 links more or less to the place of beginning.

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center line of Scribner Road,
a distance of 950.76 feet to
the point and place of beginning.

All as shown on a map made by
Lewis E. Kohl, Inc., dated
March 25, 1968.

THAT TRACT OR PARCEL OF LAND,
situate in the Town of Penfield,
County of Monroe, State of New
York, known as Town Lot 55,
Township 13, Range 4, more
particularly described as
follows:

COMMENCING at a point in the
center line of Five Mile Line
Road at the southeast corner of
premises conveyed to the party
of the first part by deed
recorded in Monroe County Clerk's
Office in Liber 3294 of Deeds,
at page 507, which point of
beginning is also the northeast
corner of premises owned by
the party of the second part;
thence (1) westerly at an
included angle of $90^{\circ}14'46''$ along
the north line of premises owned
by the party **of the second part**
a distance of 2628.12 feet to a
point in the center line of
Scribner Road, which point is
also the northwest corner of
the premises owned by the party
of the second part; thence (2)
northerly along the center line

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of Scribner Road a distance of 362.50 feet; thence (3) easterly at an included angle of $89^{\circ}46'16''$ a distance of 1246.07 feet to an iron pin; thence (4) northerly at an included angle of $270^{\circ}13'44''$ a distance of 350.00 feet to an iron pin; thence (5) easterly at an included angle of $89^{\circ}46'16''$ a distance of 442.81 feet to a point; thence (6) southerly at an included angle of $89^{\circ}45'14''$ a distance of 672.50 feet to a point; thence (7) easterly at an included angle of $270^{\circ}14'46''$ a distance of 933.00 feet to the center line of Five Mile Line Road; thence (8) southerly along the center line of Five Mile Line Road a distance of 40 feet to the point and place of beginning.

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corner of one hundred (100) acres of land taken from the north division formerly owned by Stephen Leake; from thence running west thirty-nine (39) chains and eighty-two (82) links to the west line of said division being also the center of the Scribner Road so called; thence running south in said west line and the center of the Scribner Road ten (10) chains and eighty-one (81) links to the south line of the said south part of the north division of said Lot No. 55; thence east along said south line thirty-nine (39) chains and eighty-two (82) links to the center of the said Five Mile Line Road; thence north along said center of road ten (10) chains and eighty-one (81) links to the place of beginning and containing forty-three (43) acres and thirty-seven (37) rods of land, more or less.

Section 3. This Ordinance shall take effect immediately upon publication and posting as required by law, and it is hereby

EXHIBIT K

FURTHER RESOLVED that said proposed amended Ordinance hereby be referred to the Monroe County Planning Council for its recommendations, and that it be

FURTHER RESOLVED that the Town Clerk be and he hereby is directed to forward a copy of this resolution, certified by said Town Clerk under the corporate seal of the Town of Penfield and showing the date of its passage and entry in the minutes, to Jenkins-Wurzer-Starks, Architects and Planners, 1545 East Avenue, Rochester, New York 14610, who had made application on behalf of the owners of the aforesaid described premises and a copy to Joseph C. Audino, 108 Keyel Drive, Rochester, New York 14625.

EXHIBIT L

Zoning Referral #PN-67
Town Board
Town of Penfield
February 2, 1972

RE: Application of Town
Board for rezoning
of a P.U.D. (Scribner
to Five Mile Line
Road) to "AA"

The Monroe County Executive Committee recommends disapproval of PN-67. This is a referral requesting a zoning change from Planned Unit Development to AA Residential in the area of Scribner Road and Five Mile Line Road. The following arguments are submitted for consideration:

1. The resolution does not develop substantive argument to refute the recommendation of the Planning Council in the earlier referral PN-47 dated June 24, 1971. (See copy of the recommendation attached.)
2. The resolution does not allege that this P.U.D. is contrary to the Town P.U.D. Ordinance.
3. The Planning Council has sponsored the development of model ordinances to encourage the variety of housing types that are made available through this legislation. If the Council would approve the proposed rezoning it would be denying the broad range of housing types and price ranges it has intended to

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promote, which would have a **detrimental** effect on the state of housing in Monroe County.

MFR:met

*Penfield Press
5/25/72*

Sewer Moratorium Affects Applications

The Penfield Planning Board met Monday evening, May 22, in the Penfield Town Hall with all members present-- chairman George Shaw, Timothy Westbrook, James Hartman, John D. Williams, and Richard Ada. Also present were Director of Public Works Robert Fuller; Engineer John Karle; Attorney Samuel D'Attilio; and secretary Mrs. Tompkins.

The moratorium on building in Sewer District Three affected three of the applications before the Board. In the scheduled hearing of George Styliades of 181 Winbourne Road, Rochester, for preliminary site plan approval for a proposed 10-lot subdivision to be known as Green's Estates at the northwest corner of Embury and Quailrough Roads, the applicant was advised that new building is not permitted there because of the overloading of the treatment plant in the sewer district. Engineer Karle advised Styliades to get advice from his own engineer on alternative sewage disposal systems for the interim period before Penfield can connect to the planned interceptor sewer of the Pure Waters program.

Then, in the single miscellaneous matter on the agenda, Louis V. Jeff, for Dominic Parrone and associates, asked permission to build on one lot of a 15-lot subdivision which is being held up by the moratorium. He said he planned to build a septic system to serve the single home but chairman Shaw advised him that the Planning Board could not give him authority to do so.

The Beacon Hills Planned Unit Development proposal of J. C. Audino, long tabled, was brought before the board in a new form Monday night by an attorney for Audino. He said that differences had been settled with objectors to the PUD (who had actually brought a lawsuit against the town for zoning the land to allow it) and that he would obtain a letter from Frank Sidoti, the opponents' attorney, saying that their objections had been met. The density of the overall project has been reduced to 313 dwelling units -- 158 four-family buildings in the central area and 155 single-family homes around the periphery. A berm would be constructed along Scribner Road to reduce the view of the PUD for neighbors on Timberline Drive and Old Barn Circle. The attorney said that a public use was being considered for the green areas in the development, and that Penfield supervisor Irene Goslin had suggested a

conservation easement to keep the land in its natural state.

Two other changes were proposed. A sidewalk would be provided, the attorney said, to the Scribner Road School. Then, because of the moratorium on building in Sewer District Three, he said Audino proposed to build a lift station and a force main which would take sewage from the project 600 feet north to Scribner Road School facilities, which are in District One.

In other business before the board, a hearing on the application of Wallace Anasnik for an auto sales agency at the corner of Penfield and Webster-Fairport Roads consumed an hour of the meeting's time. Several residents spoke against the proposal and one said an auto agency was needed nearby.

Daniel Giraud of Todd and Giraud architects asked approval of plans for a fire substation on Quailrough Road behind the District Administration Building of the school district. The building would have doors in front and back, a well-designed driveway system, and pedestrian sidewalks around the building. Joseph Kuhn, chairman of the Board of Fire Commissioners, explained the need for the substation in that part of town and said that for the present it would house only one truck.

The only other item considered by the board was an application of Richard Kettenburg for Andket, Inc., for preliminary approval of a four-lot subdivision on Clark Road opposite the Emil Muller property. No plans were made for houses, yet, Kettenburg said, but they were expected to cost from \$50,000 to \$75,000 when built. Engineer Karle questioned a possible erosion problem on lot two of the property.

The board took no final action before adjourning the meeting about 10:30 p.m.

EXHIBIT N

P R E S S R E L E A S E

THE MONROE COUNTY HOUSING COUNCIL
121 North Fitzhugh Street
Rochester, New York 14614
716-546-3700

A.M. Tuesday, August 17,
1971
P.M. Tuesday, August 17,
1971
Weeklies before August
20, 1971

James R. Hughes, Consultant in Community
Relations
John C. Mitchell, Housing Director,
Citizens Planning Council

RE: STATEMENT OF THE MONROE COUNTY
HOUSING COUNCIL WITH RESPECT TO THE
PROPOSED AMENDMENTS TO THE PENFIELD
PLANNED UNIT DEVELOPMENT (P.U.D.)
ORDINANCE.

The opening sentence of the existing
P.U.D. Ordinance for the Town of Penfield
states that it is its intent "to provide
flexible land use and design regulations
through the use of performance criteria
so that small- to large-scale neighborhoods...
may be developed within the town that

EXHIBIT N

incorporate a variety of residential types and nonresidential uses."

It is therefore most disappointing to see under consideration here, amendments to that ordinance which are diametrically opposed to this statement of intent.

Neither a density limit nor a specific designation of 50% single family homes are performance criteria; they are specific, rigid, and inflexible requirements which may or may not bear any relation to the purpose of development. We must respectfully request therefore that the proposed amendments before you tonight be rejected.

There is no need for us to once again reiterate the dimensions of the housing shortage facing our community, or the increasing homogenization of our society.

EXHIBIT N

It was, in fact, a very dramatic effort on the part of Penfield to address these problems that resulted in the adoption of this ordinance in the first place. Thus, it is doubly inconsistent to see the question before you at this time. Surely, the proposals that have already been presented to the Town under the existing ordinance have shown excellent design, in fact, far superior to that in evidence in most of the subdivisions in this community. Under the circumstances, it seems foolhardy to impose even more stringent regulations upon the one mode of development that has brought the highest level of design and environmental consideration to our community. If design excellence can be equated with a 20% change in density

EXHIBIT N

as an absolute factor, then we have yet to see evidence of the fact.

As a final point, it is worth noting that there is more than enough control in the ordinance as it exists today to ensure quality development. The application and approval process coupled with the site plan approval process offer our Town greater control over the content of a P.U.D. than we have over any development in Penfield except for those facilities that the Town itself builds. Indeed, there is also on the agenda this evening a particular project which is undergoing the strictest of scrutiny. These amendments will add nothing to the control we have already and only serve to introduce but one more arbitrary constraint on a site designer.

EXHIBIT N

In conclusion, an amendment that does not improve the existing situation but, on the contrary, only adds to the list of unnecessary obstacles to sound planning, deserves no consideration from this body. The Monroe County Housing Council accordingly recommends that you reach a negative verdict on this proposal and instead, focus your attention on our community development objectives of maximum choice to persons at all economic levels along with a creative use of the land that respects our environment.

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EXHIBIT N

HOUSING COUNCIL OF MONROE COUNTY

October 8, 1971

Town Board
Mr. Howard Frank, Supervisor
Penfield Town Hall
Atlantic Avenue
Penfield, New York 14526

Dear Mr. Frank:

At a time when the Monroe County Legislature has urged the addition of 79,000 new housing units by 1980, which includes 47,400 units for low and moderate income households, it is most disappointing to note the action of your Board in making Planned Unit Development highly restrictive. It is difficult indeed to understand how this action can be helpful in meeting the above targets. Even if Penfield were to retain its current share of 3% of the housing units in Monroe County, the above goal would call for 2,370 new units in Penfield. However, Penfield's share of Monroe County's growth over the past ten years has been more on the order of 6 1/2% of the total which would call for 5,135 new units in Penfield, over half again as many new units as were authorized throughout the entire decade of the sixties.

Even more critical than numbers however, is the distribution of these

EXHIBIT N

by value and rent; and here is where your PUD action is most damaging. Only one-fourth of the owner-occupied housing in the Town of Penfield may be valued at less than \$25,000. Fully one-third costs in excess of \$35,000. The median value of housing in Penfield is the third highest in the county, and of the houses for sale, the median value of \$36,000, is second highest in the county, a price which only 12% of the residents of Monroe County can afford. 45% of the families residing in the County have low or moderate incomes. Penfield families who have outgrown their houses or who have had their children leave can not even afford to remain in the Town.

The rental picture is no better, with the median rent for two-bedroom apartments being \$195 monthly. Penfield is outdistanced by only three other towns in the county as far as rentals go. The density restrictions placed on PUD's by your recent amendment effectively foreclose any changes in these characteristics. At a time when water and sewer service is not dependent upon on-site facilities, when sensitive environmental design can create better living areas at higher densities, and when economic conditions dictate more efficient use of land to even meet middle income demands, it borders on the irresponsible to stake out an arbitrary density figure when, in fact, all three submissions to the Town

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EXHIBIT N

of Penfield under the original ordinance far surpassed any existing subdivision in the Town in terms of quality of design.

Our statement to you of August 17th clearly expounded these views and needs no repetition here. We were joined in them by many other concerned citizens of the Town of Penfield. We also note that members of your own Town Planning Board were taken aback by this precipitate action. We therefore call upon you once again to reconsider this serious step you have taken and move instead in the direction of sound and responsible planning and development for the Town of Penfield. The Housing Council as always, stands ready to assist you in this process in any way you see fit.

Sincerely,

/s/ Victor F. Vinkey
Victor F. Vinkey, Chairman
Political Actional Committee

VFV:tjm

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EXHIBIT O

COOPERATIVE HOMEOWNERSHIP
FOR
PENFIELD

EXHIBIT O

THE NEED

Many years ago, Penfield was a small, rural community, self-sufficient, independent, whole. It was the kind of place we recall, with the nostalgia reserved for by-gone times, as a home for "rich" people, plain people, old people, young people, business people and farming people. There was room for all.

Following World War II, Penfield was caught up in the building boom. It became more and more a bedroom community, its residents working elsewhere. As the years passed it became increasingly difficult for people of moderate income to find housing they could afford.

In the past year was added the additional burden of a sharp increase in property taxes and a substantial hike in the interest rate on home mortgages. The result: a "specialized" community, a community in which only a relatively small range of occupations and income levels are represented. Penfield has become a community in which many of the people who serve us every day, in our schools and local businesses, are unable to afford a home.

As it continues to grow, Penfield will be a more interesting place, a more stable place, if a way can be found to accommodate these people. We need them. We need the enthusiasm of young people

just beginning their productive lives. We need the wisdom and the sense of having roots in the past of older people. The teacher, the local tradesman, "the butcher, the baker, the candlestick-maker", people from all walks of life; we need them all.

A SOLUTION

The Penfield Better Homes Corporation (PBHC), a non-profit group of concerned citizens, a majority from Penfield, has studied the need for more diversified housing in Penfield. During the past two years, PBHC has consulted with Penfield town officials, with Monroe County Planning Council, and with most of the housing experts in Monroe County, exploring ways to meet the housing needs of persons earning approximately \$5,000 - \$8,000 yearly.

The solution arrived at by PBHC is non-profit cooperative housing in which families own, rather than rent, their homes. There are sound reasons why cooperative housing offers a superior alternative to rental projects for people of moderate income, both for the residents of the cooperative and for the community. Families living in cooperative housing units enjoy tax benefits of home ownership denied to renters. The element of ownership and the self governing management arrangement which involves members of the Coop tends

EXHIBIT 0

to create an atmosphere of mutual respect; thus a more stable neighborhood environment results. It is proposed by PBHC that a cooperative housing complex, "Highland Circle", incorporating the features outlined above, be built in Penfield. The location we have in mind is located north of Penfield Road, fronting on Highland Drive. (See map.)

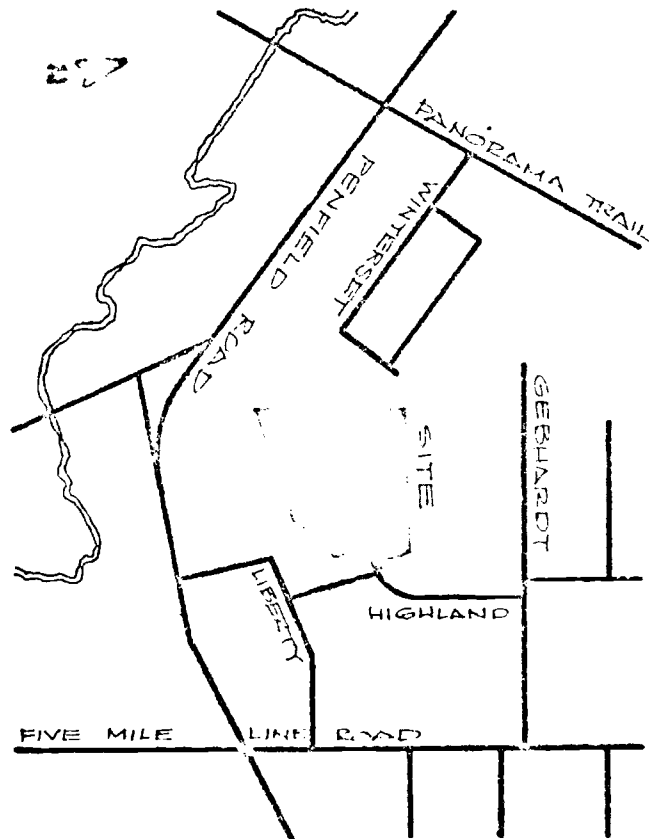


EXHIBIT O

On more than 15 acres only 130 units will be built. The remainder of the land will be used for recreational area and buffer.

The present hope is to begin construction of pre-sold units in about a year, pending approval for rezoning and approval of plans by the Town of Penfield, and pending FHA approval of our plans and the project in general. FCH Services, Inc., Stamford, Conn., a non-profit housing consultant organization, has been chosen by PBHC to provide advice and assistance. FCH has assisted in completion of more than 20,000 housing units throughout the country during the past two years.

The builder will be the MSH Development Corporation, Rochester, N.Y.; general contractor Jack Sandman. The architect will be Robert James Macon, A.I.A., Rochester, N.Y.

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EXHIBIT O

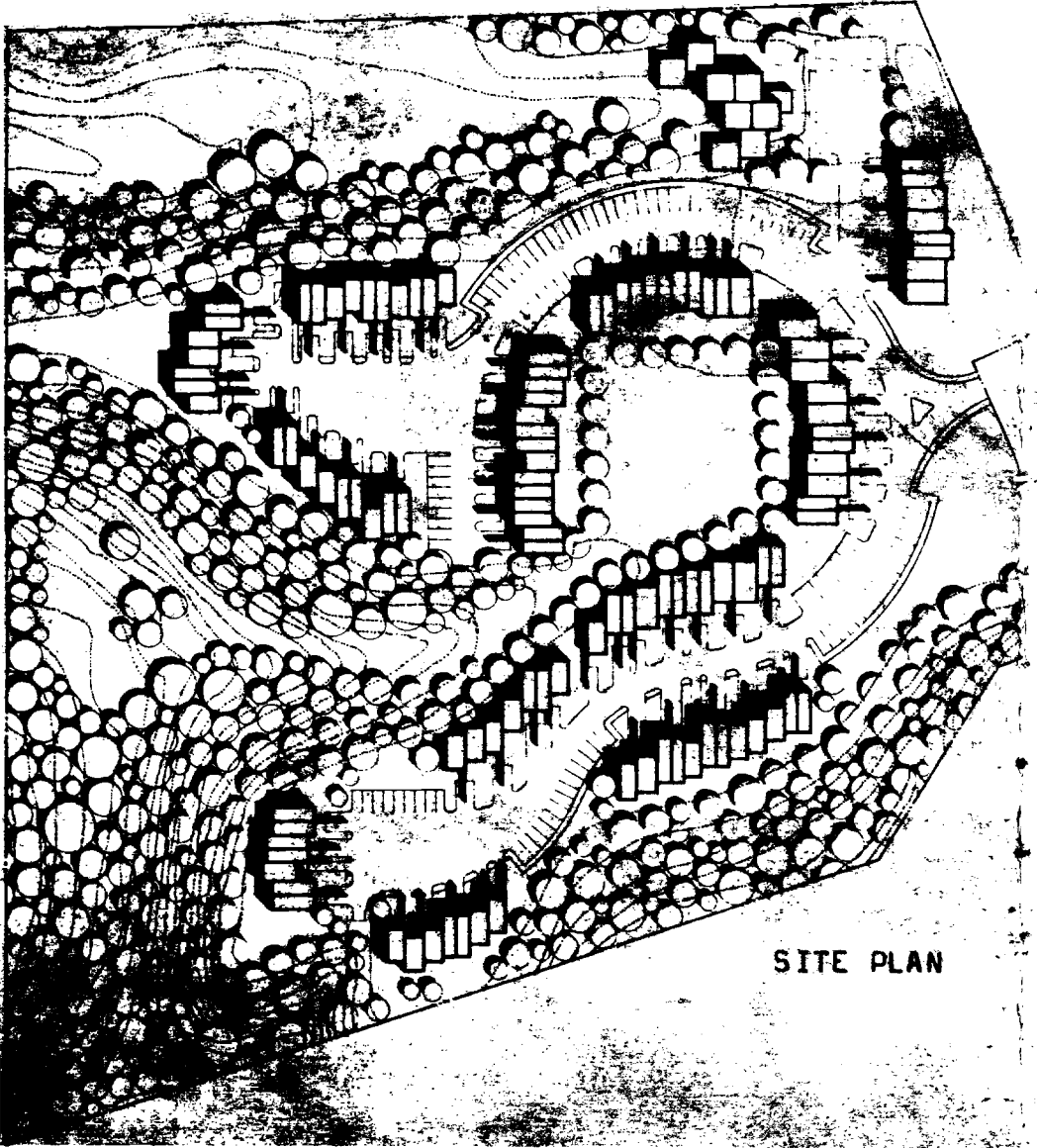


EXHIBIT O

QUESTIONS AND ANSWERS

Let's consider for a moment a few of the effects of the proposal on the community.

Q. What will be the effect on Penfield schools?

A. The question really is: how will the number of public school children per dwelling unit in Highland Circle compare with the number of children from other dwelling units in Penfield? Apartments (Browncroft, Knollbrook, Panorama Skyline, Brebeuf, Pennwood, Penn Lane) average .2 child per unit. The average number of public school children per single family home is 1.07. (These figures sound low until it is remembered that many children are pre-school age, college age, or attend private schools.) For purposes of estimation, let us equate the one and two bedroom units in Highland Circle with the apartments, and the three and four bedroom units with private homes. We presently plan a bedroom mix of 15, 70, 30 and 15 one, two, three, and four bedroom units, respectively. This allows us to estimate the number of public school children added to Penfield public schools: $85 \times 0.2 + 45 \times 1.07 = 65$.

EXHIBIT O

Q. How would traffic in the area be affected?

A. With the help of a traffic engineer from the County Planning Council, a traffic study was made of streets surrounding the site. The study showed that anticipated traffic would cause "no appreciable effect on the subjective quality of the neighborhood; and does not even begin to approach the physical capacities of the network". Also, the close proximity of the site to public transportation should eliminate some drivers.

Q. How about water, drainage, and sewage?

A. The capacity of existing systems for all three is more than adequate to meet the added demand. Drainage on the building site was found to **be excellent**. Storm water will be carried to the bottom of the gully by drain pipes to prevent erosion. The cost of sewers for the area will be shared by more people, thereby reducing charges for present residents.

**** picture omitted***

Q. How will the general appearance of the neighborhood be altered?

A. One thing that seems certain is that the area will be enhanced by the project. Mr. Sandman, long a Penfield builder, is sensitive to the feelings of local residents. Mr. Macon is an architect with a feeling for what is appropriate to the situation--in terms of human beings, materials, and physical surroundings. He

EXHIBIT O

will provide living quarters that are sensible, gracious, and enduring. Existing terrain will be used to its best advantage, preserving what is useful, improving on that which is not.

Q. What is the per acre density?

A. Highland Circle will have 8 units per acre (Less than the present town house ordinance allows).

Q. Who will live here?

A. Anyone demonstrating acceptable credit with income between about \$5,000 and \$8,000 yearly (as defined by FHA Law 236) is welcome.

Q. How will the property be maintained?

A. Property maintenance will be the job of a management firm hired by the new homeowners, all of whom will have membership and voting rights in the cooperative.

Q. What will be the total cost of the project?

A. The total cost of this project will be in excess of \$2,000,000 or about \$20,000. per housing unit.

**** pictures omitted****

EXHIBIT O

CONCLUSION

In the end, the proper question seems to be, not should we build moderate income housing, but can we afford not to. Can the industries that employ so many Penfield people survive and grow without the middle income technicians, clerical personnel, and other needed non-professional employees? Many of these jobs go begging now. What will happen in the future?

Penfield town officials have urged local citizens to come forward with just such a proposal. Now the opportunity is here to have Penfield benefit from the expertise of professionals in many fields who have bent their talents toward the planning and success of this project.

EXHIBIT O

WORKING MEMBERSHIP

Clarence Archie
Mr. and Mrs. John Bickmore
Michael Doran
Mr. and Mrs. Kenneth Gunther
J. Donald Hare
Clarence Heininger
Mrs. Martin Korn
Edward Lind
Dr. and Mrs. Neal McNabb
Rev. Richard Nygren
Mrs. Stanley Patten
Richard Regen
Dr. and Mrs. A.P. Scheiner
Mrs. Arthur Schmale
Mr. and Mrs. Robert Tischer
Stanley Tracy
Mr. and Mrs. James Wood
Stanton G. Levin of
 Johnson, Reif and Mullan, attys.

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EXHIBIT P

Soil Review of Proposed Apartment Site Town of Penfield

Below are listed the soils that exist in this area. I think you realize that this area is old glacial deltaic deposits and they are quite deep, very erosive to wind and water.

26 B-2 Colonic Loamy Fine Sands.

These soils are deep, well to excessively drained, loamy fine sands. Dominant slope in the area is from nearly level to sloping. Average about less than 4 feet per hundred. These soils are subject to severe erosion by water and wind if vegetation is removed. During periods of development these areas can cause severe local sand storms.

22 EF-13 Arkport - Colonic Soils on steep slopes.

The soils are a combination of the previously described soils and a finer textured soil called Arkport Very Fine Sand Loam. The Arkport soils contain more silt and finer sands. They are subject to severe water erosion. These areas are well drained, and deep. The dominant slope is greater than 25%, or 25 feet per 100 feet. In most places it will exceed 35 feet per 100 feet.

General Recommendations for Changes of
Land Use to More Intensive

1. No structures, building, roads, parking lots, etc., should be located closer than 30 feet to the crest of this steep sloping area. Shown on the attached map in blue. I would strongly recommend that if the area is developed, that the developer be required to construct a snow fence along the line shown in blue. This will keep construction equipment from denuding the steep area and adjacent area of vegetation and causing serious erosion problems. Plus, it will assure the present vegetation to be preserved on this steep area. This should be done before any equipment is allowed on the site.
2. Bearing test of soil material, in relation to weight of structure, should be required. There are some very unstable conditions at 3 to 6 feet in this area.
3. Grading on the relatively flat area should be held to a minimum. Just grading to construct street and parking lots would be ideal. All structure would be built on present topography. I would also suggest that pre-staking of roads, parking lots and structure location be required and have the Town review the site before construction equipment is allowed on site.

EXHIBIT P

4. After initial earth moving has taken place, required temporary seeding during construction. Erosion during development on these soils can be very severe during development. Specifications for temporary seeding can be obtained from the Soil Conservation Service office.
5. All storm water, surface, downspouts, and sump systems to be collected and piped to the bottom of this steep slope. The storm sewer conduit should have anti-seep collars in this steep area, to insure that no future gullying occurs, due to lateral piping of water.
6. Control clearing of area for construction of the storm system in this steep area disturbs a minimum of present vegetation. Require strict erosion control measures during and after construction.
7. Require sediment basin to be constructed before any disturbing of soils is started. This will insure protection of the areas below from sedimentation of storm sewers and roads. This would only be for during construction and a short period after. Design for this can be obtained from local Soil Conservation Service office. Make this sediment basin a prerequisite for approval of start of any project.
9. Either required complete sodding of

disturbed area so as to control erosion completely, (this would be best) or have written strict control on how the area is to be seeded and mulched.

10. Require that all topsoil be replaced on the site. This will make it easier to establish vegetation, reduce runoff and erosion.
11. Any plan proposed in this area should have a complete vegetative and landscaping plan to show how steep slopes are going to be protected from heavy foot traffic, and how the neighboring area is going to be screened.
12. All surface drainage on development site should drain toward streets and be collected in storm sewer system.

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EXHIBIT Q

COUNTY OF MONROE

NEW YORK

200 County Office Building
Rochester, N.Y. 14614
Telephone: 454-7200 Ext.272

Alexander Gray
Director of Public Works and
Superintendent of Highways

December 3, 1969

Mr. John L. Callaghan, Attorney
Planning and Zoning Board of Appeals
Town of Penfield
Penfield, New York, 14526

Re: Traffic Survey

Dear Mr. Callaghan:

This department has taken traffic counts on Gebhardt Road, Liberty Street, Five Mile Line Road and Penfield Road at the locations requested in your October 8th letter. The date has been edited and the traffic counts are as follows: (see map)

<u>Road Name</u>	<u>DHV</u>	<u>ADT</u>
Gebhardt Road	289	1715
Liberty Street @ Five Mile Line Road	78	560
Liberty Street @ Penfield Road	139	1289

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EXHIBIT Q

<u>Road Name</u>	<u>DHV</u>	<u>ADT</u>
Five Mile Line Road	581	8710
Penfield Road	858	13845

(Dates counts were taken: October 29,
1969 thru November 11, 1969).

The data from this traffic survey indicates that the traffic volumes on Liberty Street and Gebhardt Road which are town roads are operating at the lower end of their rated capacity. Five Mile Line Road, a county road is also operating below its rated capacity and Penfield Road, a state highway is operating above its rated capacity. Therefore the only facility which is operating above capacity is Penfield Road and this facility is programmed for reconstruction in the near future. The increase in traffic by the proposed apartment project will not have an adverse effect on any of the facilities included in this traffic survey.

Very truly yours,

/s/ Alexander Gray
Alexander Gray
Director of Public
Works

AG:SL::ars
CC: H. Frank
P. Bailey

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EXHIBIT R

Brief from Robert J. Anderson,
Syrac. U. Law School, Zoning
Authority (hired by us as
consultant)

October 27, 1969

John Bickmore, President
Penfield Better Homes Corp.
Rochester, New York 14625

Dear Mr. Bickmore:

You have invited me to comment on the question whether an amendment of the zoning ordinance of the Town of Penfield creating a Town House Dwelling District on a sixteen-acre parcel of land (hereinafter more specifically described) would be vulnerable to legal attack on the ground of spot zoning. It is my opinion that such an amendment would not constitute spot zoning and that it would be sustained in the event of such a challenge.

Reviewing the question posed above, I examined the zoning ordinance of the town, including the amendment of May 12, 1969 which created a Town House Dwelling District but did not assign a geographic location to any such district. In addition, I examined the zoning map of the town and map of the area in issue which shows existing uses and topographical features of the vicinity of the proposed change. Finally, I discussed with your representatives the history of your proposed development and its principal physical characteristics. My conclusions have been reached by applying the New York precedents to my understanding of the facts gleaned from these sources.

The site in question (hereinafter

called "the site") is a parcel of approximately 16 acres located in the southwestern corner of the Town of Penfield. It is an undeveloped and partially wooded area currently zoned Residential A to permit one-family dwellings, two-family dwellings, certain lodging or boarding houses, and other specified uses not here relevant. Land adjacent to the northern border of the site is occupied by Cobbles School. The western portion of the site drops sharply a distance of about 80 feet. Land adjacent to the site on its western boundary is zoned Residential A, and land further west and southwest is divided variously into apartment, commercial and industrial districts. The southern boundary of the site abuts

EXHIBIT R

undeveloped Residential A land and land zoned and recently developed for multiple dwellings. The eastern boundary of the site abuts land zoned and developed as Residential A. A commercial district and an additional apartment district are located southeast of the site.

An attack on a zoning amendment which asserts that such amendment constitutes spot zoning is essentially a contention that the amendment was not adopted in accordance with a comprehensive plan for development of the community. The Court of Appeals has defined spot zoning as "the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area, for the benefit of the owner of such property and to the detriment of other owners . . . ;
'spot zoning is the very antithesis of

planned zoning.'" [Rodgers v. Tarrytown, 302 NY 115, 96 NE2d 731 (1951).] While this memorandum will comment at some length concerning the specific features of the proposed amendment which militate against any conclusion that it is spot zoning, it seems worth pointing out that the amendment in question, when viewed in the context of the existing zoning pattern of the town, seems generally consistent with that pattern. It appears to forward the plan rather than to run counter to it.

It is clear that the New York courts examine the zoning ordinances and map to determine what the community's plan is. [Walus v. Millington, 49 Misc 2d 104, 266 NYS2d 833 (1966)]; additional cases are collected in Anderson, *Zoning Law and Practice in New York State*,

EXHIBIT R

§5.02.] This kind of examination of the Penfield ordinance and map discloses that the bulk of the land in the town is zoned Residential AA, the most restrictive residential classification. It shows further that a few scattered commercial zones have been created but that most commercial and industrial uses have been confined to blocked-out and contiguous areas in the northwest and southwest corners of the town. Where apartments have been permitted, their districts have been created from time to time in these sections, and they have been small districts. At least four of these small apartment districts are located in the Residential A district where the Town House Dwelling District is proposed. Thus, the creation of such a district would appear to be a logical projection of the

pattern of development which is implemented by the existing zoning ordinance.

This conclusion is given additional credibility by the recent adoption of Section 29-11.1 creating a town house district. Unless the enactment of that section was a vain exercise of the legislative process, it must be assumed that the creation of such districts in the town was contemplated. It is not unreasonable to conclude that the future sites for such districts were expected to be in those areas of the town where dwellings other than single-family ones have previously been placed. To provide space for town houses in an area less restricted (e.g., Residential A) and nearer to multiple-dwelling uses clearly is more in accordance with the zoning pattern than to place such town houses in an area more restrictive (e.g.,

EXHIBIT R

Residential AA) and more remote from existing multiple-dwelling uses. In short, the proposed amendment seems clearly in accordance with the comprehensive plan, as that plan is reflected in the zoning ordinances and map of the Town of Penfield.

Additional support for the conclusion that the proposed creation of a Town House Dwelling District is provided by the nature of Section 29-11.1 and the manner of its adoption. The section is carefully constructed to insure a desired kind and quality of town house development, and to protect adjacent landowners. It limits density, imposes area requirements, limits height, regulates the size and conformation of units, imposes parking requirements and restricts lot coverage. In addition, it mandates site plan review, requiring at least 19 specific inclusions in the

plan submitted for approval. Finally, when the section was adopted, no geographic location of districts was accomplished. This was left to subsequent legislative judgment. All of these factors lead to the conclusion that Section 29-11.1 created what has become known in New York as a "floating zone." The enactment of such legislation, and the subsequent geographical placement of zones similar to the Town House Dwelling District, have been consistently approved by the New York courts. The contention that such districts are created through spot zoning has been rejected in relation to districts as small as ten acres. [Rodgers v. Tarrytown, supra.] In the cited case, the Court of Appeals upheld the creation of a garden apartment district located

in what had previously been a single-family residential zone. The court discovered a relationship to the comprehensive plan in standards for development analogous to those found in Section 29-11.1. Both ordinances created a district without placing it; both contained restrictions designed to protect surrounding property; and both required intensive site plan review by a planning board.

Perhaps the only argument of a plausible nature which tends to support a charge of spot zoning is the size of the proposed district. Where the spot zoning argument has been successful, the area involved has been a single lot or a very small parcel of land. Rarely has a court discovered spot zoning in amendments affecting more than ten acres of

land. Even in these instances, the courts have been emphatic in their insistence that a zoning amendment may not be denominated spot zoning simply because it applies to a relatively small parcel of land. [The New York cases are collected in Anderson, Zoning Law and Practice in New York State, § 5.04.] The relevant inquiry is not the size of the area but "whether the zoning was accomplished for the benefit of the individual owner, rather than pursuant to a comprehensive plan for the general welfare of the community." [Greenberg v. New Rochelle, 206 Misc 28, 129 NYS2d 691 (1954) affd 308 NY 736, 124 NE2d 716.] Indeed, where a rational purpose was apparent to the court, amendments which reclassified single lots have been sustained. [Scannell v. Dunkirk, 9 AD2d 725, 192 NYS2d 192 (1959).]

Where spot zoning is urged, the courts commonly have inquired concerning the probable impact on surrounding land. Town houses located on the site here in issue would appear to have little impact upon adjacent land. The school to the north would be unaffected. Land to the west is buffered by the topographical features mentioned above. Property to the south is already developed by the construction of apartments. Single-family homes to the east are already near a multiple-family development, and their interest is protected by the standards and site plan review provided in the ordinance.

If some minimal impact upon surrounding land can be demonstrated, this must be balanced against the benefits to be derived from the town house development. It is my understanding that the Town of Penfield is in need of the kind of middle-

income housing which will be provided by the planned development and that the need is local rather than simply a problem of overflow from the urban center. Where such a public need motivates a zoning amendment, the courts are most reluctant to discover spot zoning. Particularly is this true where the amendment is not sought to enrich a developer but is requested by a nonprofit organization seeking to achieve a community benefit. [Relevant cases are collected in Anderson, American Law of Zoning, § 5.06.]

Finally, any remaining likelihood that the proposed amendment would be disapproved as spot zoning appears to be removed by the careful planning which has preceded the selection of the site. The Foundation for Cooperative Housing Services has examined the site and found

EXHIBIT R

it suitable in all respects. The architect has viewed it and reached the same conclusion. The executive head of the county planning department has concurred. If the planning board of the Town of Penfield and the legislative authority of the town should reach the same conclusion and approve the reclassification of this land, it is difficult to imagine that a court would conclude that the zoning amendment was not in accordance with a comprehensive plan. [See generally, Point Lookout Civic Association v. Hempstead, 22 Misc 2d 757, 200 NYS2d 925 (1960), affd 12 AD2d 505, 207 NYS2d 121, affd 9 NY2d 961, 217 NYS2d 227, 176 NE2d 203; Twenty-one White Plains Corp. v. Hastings-in-Hudson, 14 Misc 2d 800, 180 NYS 2d 13 (1958), affd 9 AD2d 934, 196 NYS 2d 562.]

Respectfully submitted,

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EXHIBIT R

Robert M. Anderson

RMA:nm

EXHIBIT S

PENFIELD PLANNING BOARD

Tuesday, September 9, 1969

RESOLVED, that the application of the Penfield Better Homes Corporation, 1849 Blossom Road, Rochester, New York for a recommendation from the Penfield Planning Board to the Penfield Town Board for the rezoning of approximately 15 acres of land from Residential A to the Town House Dwelling District, said land located at the south end of Highland Drive at the northwest intersection of Gebhardt and Highland Drive, be and the same hereby is DENIED for the following reasons:

1. Town House construction would constitute an inappropriate use of this land and would not be consonant with existing character of the neighborhood;

2. Subject use would create traffic problems within the area; and
3. the proposed plan violates setback recommendations as set forth in the report and map of the Department of the United States Agriculture Soil Conservation Service, dated December 15, 1969, and would cause serious erosion problems during and after construction.

AND AT IS FURTHER RESOLVED, that notwithstanding, the above denial of the subject application for the use of this site, the Board recognizes the need for a project of this nature in Penfield.

s/s J.B.Jones

EXHIBIT T

Penfield, New York January 12, 1970

RESOLUTION DENYING AN APPLICATION
FOR A PUBLIC HEARING TO CONSIDER
A REZONING

WHEREAS, Penfield Better Homes Corp. has heretofore made application to the Planning Board for a recommendation to rezone from Residential "A" to the Town House Dwelling District approximately fifteen (15) acres of land located at the south end of Highland Drive at the north-west intersection of Gebhardt and Highland Drive; and

WHEREAS, the Planning Board has denied said application; and

WHEREAS, Penfield Better Homes Corp. has now petitioned this Board to call a public hearing to consider the request for such rezoning;

NOW, THEREFORE, BE IT RESOLVED that this petition be denied for the following reasons:

1. The Planning Board, under its rules, has on two separate occasions, conducted public hearings on the application and have given to all those who wished to be heard an unlimited opportunity to present evidence and to express their views on the merits of the proposed rezoning. These public hearings were held on adequate notice and were attended by a large number of interested persons.

EXHIBIT T

2. The report of the Planning Board includes reasons for its recommendation which are sufficient and consistent with good planning; and

BE IT FURTHER RESOLVED that this Board also recognizes the need for moderate income housing in the Town of Penfield and will consider the necessary legislation to accomplish it in an appropriate location or locations.

885
EXHIBIT U

O'BRIEN HOMES INC. APPLICATION
TO THE PENFIELD PLANNING BOARD
AT AN ADVERTISED HEARING HELD
SEPTEMBER 27, 1971

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EXHIBIT U

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VII	SUMMARY

EXHIBIT U

I APPLICATION - Part One:

For approval by the Penfield Planning Board for the re-zoning of 17.1 acres in Penfield from AA to Apartment Zoning of approximately 12 Units per acre.

II REASONS:

- 1) Good planning relative to compatibility of use
- 2) Is in line with Penfield Master Plan
- 3) Highest and best use of land

RELATED INFORMATIONI Planned Utilization

A) At the January 14, 1969 meeting of the Penfield Planning Board, O'Brien Homes offered to set aside at least seven acres of land adjoining their proposed townhouse development, to be used for low to moderate income housing. This offer followed a recommendation of the Monroe County Planning Council and the offer was commended by the Penfield Planning Board and the Town Board.

At that meeting, O'Briens stated that they were not in a position to develop rental property, and that they could

EXHIBIT U

not promise whether they would be able to develop low to moderate income housing for sale on the offered site, or whether it would be done by someone else.

O'Briens are now in a position to develop this low to moderate income housing for sale at this location.

B) Basic Development Facts:

1. A condominium development of Apartment Homes, including a Homeowners Association to guarantee exterior maintenance.
2. Less than 1,500 feet of dedicated roads, the remainder are private drives.
3. 51 four-family buildings, with a garage for each family as an integral part of the building. (204 units)
4. Colonial style architecture, compatible with the area
5. Complete sodding and landscaping with a recreational area.
6. Unit Features - (4 Units per Building)
 - (a) Two 1-story units of approximately 800 square feet each

EXHIBIT U

- b) Two 2-story units of approximately 900 square feet each
- c) Private entrances
- d) Two bedrooms, one bath
- e) Range, oven and hood, garbage disposer, carpeting, formica cabinets, thermopane windows and screens, bath vanity and built-in television antenna.

II Financial Factors

As a private sector of the economy, we are unable to provide housing for people who have both low income and lack of capital necessary for downpayment. However, we can help those who have moderate income with limited funds for downpayment (usually young people) or those who have low income with accumulated funds (usually middle-aged to retired people)

- A) Projected Selling Price -
\$17,500. to \$18,000.

We have similar units available in East Rochester at \$17,440.

However, the Penfield units will have far more expensive exteriors and a density of 12 per acre versus 16 per acre in East Rochester.

- B) Minimum Down Payment - 10%
 - 1. Moderate income group with no funds for higher down payment - a 10% down payment requires

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EXHIBIT U

a yearly income of between \$8,500-\$9,000. to qualify for a mortgage.

2. Low income group with accumulated funds for higher down payment - an \$8,000. down payment would require an income of between \$7,000 to \$7,500 to qualify for a mortgage.

III Projected Buyer Profile

Our projections for occupancy per unit indicate the following:

Adults	1.73	
Children	<u>0.17</u>	*
Total	1.9	Per unit

*A total of 17 children for 100 units - (See Appendix A)

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EXHIBIT U

IV Comparison of Effective Density Factors *

<u>Item</u>	<u>Windsor Square Phase One Town Houses</u>	<u>Brookhill Garden Apartments</u>	<u>Windsor Square Apartment Homes</u>
People/Acres	26.1	22.8	22.8
<u>Land Coverage</u>			
Dedicated Road	3.1%	0.0%	1.8%
Private Drive/ Parking	18.7%	21.4%	15.8%
Buildings	23.8%	12.8%	17.2%
Green Area	54.3%	65.8%	65.4%

* For further analysis - see Appendix II

V. Comparison of Revenues to the Town of Penfield *

<u>Description</u>	<u>Apartment Homes</u>	<u>Single Detached</u>
Market Value of Taxable Property Per Acre	\$216,000. Per Acre (12 Units x \$18,000)	\$70,000. Per Acre (2 Units x \$35,000.)
Market Value of Taxable Property Per Child	\$108,000. Per Child (.17 Children/Unit or (2 children/acre)	\$23,333. Per Child (1 1/2 Children/Unit) or (3 children/acre)

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* See Appendix I

EXHIBIT U

VI. Comparison of Service Requirements
from the Town of Penfield

This project has less than 1,500 feet of dedicated roads versus a minimum of 8,000 feet for 200 single detached units on 80 foot lots.

VII. Summary

This project will offer single people and small families of low to moderate income the opportunity to enjoy the advantages of home ownership.

Although theoretically the Town will be granting these family owners the same density standards as apartment dwellers, in reality this development will have both less building coverage and less people density than Townhouses at 9 units per acre.

In addition, these units will pay far more for Town services received and far more towards the education of their children than single family units.

Approving the necessary zoning to make this project financially feasible will demonstrate that the Town of Penfield is sincere in its desire to develop low to moderate income housing when such projects are mutually beneficial to the new home owners and to the present citizens of the township.

EXHIBIT U

APPENDIX I

	<u>Projected on Average of 10,000 Homeowner Apartments in Western States</u>	<u>Actual on First 51 Active Prospects in Linden East East Rochester</u>
Adults Per Unit	1.73	1.6
Children Per Unit	<u>0.17</u>	<u>0.16</u>
TOTAL	1.9	1.7

PROJ. NO. 892.05

DATE September 10, 1971

SEAR • BROWN
Schoenberger • Costich • Maletta
Civil Engineers and land planners
85 Metro Park, Rochester, New York 14623

MEMORANDUM

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EXHIBIT U

COMPARATIVE ANALYSIS

	Windsor Square I (Townhouses)	Brookhill (Garden Apts.)	Linden East Apt. Homes)	Windsor Square V (Apt. Homes)
Project Area(Ac)*	15.9	18.2	14.3	17.1
Dwelling Units (DU)	136	192	200	204
Density: DU/Ac	8.6	10.5	16	12.0
People/Acre	24.9	22.8	30.4	22.8

	Windsor Square I (Townhouses)	Brookhill (Garden Apts.)	Linden East Apt. Homes)	Windsor Square V (Apt. Homes)
Land Coverage**				
Dedicated Road	3.1%	0.0%	9.8%	1.8%
Private Drive/ Parking	18.7%	21.4%	9.0%	15.8%
Buildings	<u>23.8%</u>	<u>12.8%</u>	<u>20.4%</u>	<u>17.2%</u>
TOTAL	45.7%	34.2%	39.2%	34.6%
Green Area ***	54.3%	65.8%	60.8%	65.4%
Guest Parking	136=8.6Ac	Unknown	7=0.5/Ac	78=4.5/Ac

* Measured to centerline of dedicated road.

** Includes buildings, public and private drives, parking areas.
Does not include sidewalks, pool and clubhouse.

*** Green Area equals 100% minus percentage of land coverage.

EXHIBIT V

PENFIELD PLANNING BOARD
October 12, 1971-Page 2.

Houses consisting of 32 Town Houses for sale to be located on the east side of Panorama Trail and south of the Mt. Read subdivision in accordance with a resolution of the Board dated 12-8-70 and reapproved 6-2 -71, be and the same hereby is reapproved, subject to the same conditions previously stated.

VOTE OF THE BOARD

George Shaw, "AYE"
James Hartman, "AYE"
John D. Williams, "AYE"

Upon the motion, all of the Board Members present having voted "AYE, the resolution was declared adopted.

TABLED MATTERS

Item # 1. The application of O'Brien Planned Communities, Inc. 6780 Pittsford-Palmyra Rd., Fairport, N.Y. 14450 for a recommendation from the Planning Board to the Town Board for the rezoning of 10.7 plus acres of land on the south side of Penfield Rd. from Residential "AA" to Commercial Zone and from Residential "AA" to Apartment or Multiple Dwelling District, 17.1 plus acres located directly south of the above parcel. Both parcels located between Wegman's Shopping Center and Stanndco's proposed Planned Unit Development and north of the existing O'Brien Town House project.

EXHIBIT V

Mr. Donald Summers, an attorney, appeared in behalf of this application. He briefly reviewed with the Board what had been presented at the previous meeting and stated that he was here this evening to ask if the Board had any questions and to ask for prompt action in behalf of his client.

A general discussion then took place between members of the Board and the applicant concerning the overall proposal.

No one else wished to be heard on this matter and a motion was made by James Hartman and seconded by John Williams that the following resolution be adopted:

RESOLVED, that the application of O'Brien Planned Communities, Inc. 6780 Pittsford-Palmyra Rd, Fairport, N.Y. 14450, for a recommendation from the Planning Board to the Town Board for the rezoning of 10.7 plus acres of land on the south side of Penfield Rd. from Residential "AA" to Commercial Zone and for the rezoning from Residential "AA" to Apartment House or Multiple Dwelling District 17.1 plus acres located directly south of the above parcel; both parcels located between Wegman's Shopping Center and Stanndco's proposed Planned Unit Development and north of the existing O'Brien Town House project, be and the same hereby is DENIED.

VOTE OF THE BOARD

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EXHIBIT V

George Shaw, "AYE" John D. Williams, "AYE"
James Hartman, "AYE"

EXHIBIT W

March 27, 1972 Page 2

to the approval of the Monroe County Health Department as to the proposed holding tank sanitary sewer system.

VOTE OF THE BOARD

George Shaw, "AYE" Timothy Westbrook, "AYE"
James Hartman, "AYE" John D. Williams, "AYE"

Upon the motion, all of the Board Members present having voted "AYE", the resolution was declared adopted.

ITEM #2. The application of Feno Pecora 33 Woodhaven Drive, Rochester, N.Y. 14625 for a recommendation for the Planning Board to the Town Board under section 24-3(e) of the Penfield Zoning Ordinance for a permit for top soil removal and excavation on 37 acres of land located on the south side of Empire Blvd. on Wilbur Tract Road, Account #435-000 and 870-500.

This application has been postponed to April 10th. at the request of the applicant.

MISCELLANEOUS MATTERS

ITEM # 1. The application of James R. Liberty, O'Brien Planned Communities Inc., 6780 Pittsford-Palmyra Rd., Fairport, New York, 14450 for the purpose of discussing

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EXHIBIT W

with the Board a possible recommendation to the Town Board to rezone 27 acres from Residential "AA" to apartments and multiple dwellings and limited commercial. The property is south of Penfield Rd. and west of the Wegman property; east of the proposed Willow Pond PUD and north of O'Brien Planned Communities, Account #62-000.

James Liberty and Robert Schoenberger appeared on behalf of the application. They informed the Board that they proposed a density of 12+ units per acre in a quadruplex configuration. A day care center was proposed in the approximately 1 acre and a commercial zoning was proposed for that one acre. The Day Care Center to be operated by Gerber Products. Liberty said that in his opinion the proposed structures were apartments and not Town Houses. The sales price would be below \$20,000, and would be suitable for individuals earning \$ 8500. per year and above. David O'Brien stated a similar in East Rochester produced 17 children per 100 units. Eleanor Turner of Perinton asked whether the East Rochester project had been pre-sold. She also inquired about the proposed Day Care Center.

After the discussion, Mr. Timothy Westbrook made a motion and Mr. James Hartman seconded that the matter be tabled.

EXHIBIT W

VOTE OF THE BOARD

George Shaw, "AYE"
James Hartman, "AYE"
Timothy Westbrook, "AYE"
John D. Williams, "AYE"

PENFIELD PLANNING BOARD
Monday, April 24, 1972

The regular meeting of the Penfield
Planning Board was held at the Penfield
Town Hall on Monday, April 24, 1972 at
8:00 P.M. E.S.T.

BOARD MEMBERS PRESENT

George Shaw, Chairman John D. Williams
Timothy Westbrook Richard C. Ade

BOARD MEMBERS ABSENT

James Hartman

ALSO PRESENT

Samuel Dattilo Attorney for the Board
Robert H. Fuller, Director of Public
Works and Clerk of the Board
James Hain, Building Inspector
David Dinse, Ass't. Building Inspector

The Clerk was directed by the Chairman to
read the agenda

ADVERTISED HEARINGS

ITEM # 1. The application of O'Brien Planned Communities, Inc. 6780 Pittsford-Palmyra Rd., Fairport, N.Y. 14450, to obtain recommendation from the Planning Board to the Town Board to rezone twenty-seven (27) acres of land from Residential "AA" to Apartments and Multiple Dwellings and Commercial. The property is south of Penfield Rd. and west of the Wegman property; east of the proposed Willow Pond PUD and north of the O'Brien Planned Communities, account #62-000.

Mr. David O'Brien appeared on behalf of the application. Mr. O'Brien stated that the present plan showed a decrease of commercial area and an increase of dwelling units from plans relating to the same project which the Board had seen in the past. Mr. O'Brien thought the present zoning was confiscatory; that his plan was compatible with the zoning of adjoining areas; and that the proposed development would serve the needs of the regional community.

Mr. Earl De Rienzo, architect, described the surrounding zoning, stating the area was surrounded by commercial or attached residential. He also stated that 1 to 2 acres of the site would be required for a day care center.

Robert Schoenberger, engineer, stated that few grading problems existed on site and that the required utilities would be

EXHIBIT W

available on site or were immediately adjacent.

Nelson Carpenter described the proposed Quadruplex units as being four family units per building; the form of ownership as being condominium; each unit would have two bedrooms, one bath, one garage; there would be no outside stairwells. The units would be either 800 or 900 square ft. Mr. Carpenter stated that experience with a similar project in East Rochester indicated that half of the buyers would be single persons. The number of children would be relatively low.

Mr. Carpenter offered some statistics relating the nearby Windsor Square Townhouse development and the East Rochester Quadruplex development which indicated that the Quadruplex development produced fewer people per acre and more green area; (see verbatim). The same body of statistics indicated a taxable valuation per child of \$43,000.00 from townhouses and \$88,000.00 for quadruplexes, (see verbatim).

Mr. Carpenter said a Homeowners Association would assure that the property would be well maintained.

As to price per unit, Mr. Carpenter said a recent increase of 36% in the price of lumber would require the units to be sold for between \$18 to \$20 thousand.

EXHIBIT W

On the question of the condominium form of ownership, the owner owns the inside of the unit and a common share of all other areas including garages, Mr. Carpenter said.

Mrs. Elizabeth Brennan said she could not accept the statement that the proposed zoning was the best use of the land; that she objected to rezoning this close to an elementary school. Mrs. Brennan inquired as to the transfer of ownership.

Mr. Carpenter replied that the buyer received a warranty deed; that 90% loans were available; also that the units could be rented or sold.

There then ensued a colloquy between Mrs. Brennan and Mr. Carpenter concerning value systems, government subsidies, busing and other topic, (see verbatim).

Mrs. Barbara Rubin stated she would not want a child to cross a four lane highway.

Mr. John Brickmore said he wished to compliment the applicant for meeting a crying need. He thought the proposal looked like a good plan and was the type of housing we need.

Mrs. Brennan said she thought a footbridge could be constructed over the four lane highway

EXHIBIT W

No one else wished to be heard on this matter and a motion was made by John D. Williams and seconded by Richard C. Ade that the matter be tabled.

VOTE OF THE BOARD

George Shaw, "AYE" John D. Williams, "AYE"
Timothy Westbrook, "AYE" Richard C. Ade,
"AYE"

Upon the motion, all of the Board Members present having voted "AYE, the matter was tabled.

ITEM # 2. The application of Albert Balistiere, 215 Inwood Drive, Rochester, N.Y. for a resubdivision of two lots, known as lots 3 and 4 or Panorama Ridge Subdivision located on the west side of Panorama Trail opposite Hickory Ridge Rd., account #250-630 and 250-640.

Mr. Albert Balestiere appeared on behalf of the application. Mr. Belestiere stated his application sought to relocate the east lot line of lot 4 (of an existing subdivision) 18.5'. He said he needed the additional width to accommodate a garage and drive he proposed to build. He said that the previous owner had misunderstood where the lot line was. Mr. Balestiere said the additional footage had been conveyed to him and that he would furnish a contract to establish ownership.

EXHIBIT W

No one else wished to be heard on this application and a motion was made by John D. Williams and seconded by Timothy Westbrook that the following resolution be adopted:

RESOLVED, that the application of Albert Balestiere, 215 Inwood Drive, Rochester, N.Y. for a resubdivision of two lots, known as lots 3 and 4 of Panorama Ridge Subdivision located on the west side of Panorama Trail opposite Hickory Ridge Rd., account #250-630 and 250-640 be, and the same hereby is APPROVED, subject to the submitting contract showing consent of present owner.

VOTE OF THE BOARD

George Shaw, "AYE"
Timothy Westbrook, "AYE"
John D. Williams,
Richard C. Ade, "AYE"

Upon the motion, all of the Board Members having voted "AYE, the resolution was declared adopted.

ITEM # 3. The application of Gladstone V. Gayle, 1355 Genesee St., Rochester N.Y., 14611, for the purpose of obtaining an extension to the approval granted by the Planning Board on January 10, 1972 of a one lot subdivision known as Gayle Subdivision located on the south side of Embury Rd. approximately 844' east of Creek St.

** ** * * * * * * * * * * * * * *

EXHIBIT X OMITTED HERE
CONTENTS HAVING APPEARED
AS PART OF EXHIBIT W

** ** * * * * * * * * * * * * * *

EXHIBIT Y

PENFIELD TOWN BOARD

PENFIELD, NEW YORK SEPTEMBER 7, 1971

RESOLUTION FOR REZONING

WHEREAS RICHARD HANDLER AND FRANK GROSSO, Architects, Engineers and Planners, 77 Ridgeland Road, Rochester, New York on behalf of the owners have made application for the rezoning of a parcel of land hereinafter described from "Residential AA" District to "Planned Unit Development" District, and,

WHEREAS the Planning Board has reviewed the proposal for the Planned Unit Development and has rendered a favorable report to the Town Board with the proviso that the applicant reduce the density from that proposed, and,

WHEREAS the Monroe County Planning

EXHIBIT Y

Council has considered the proposal for a Planned Unit Development on the premises hereinafter described and has recommended approval, and,

WHEREAS a public hearing was duly called and held on August 2, 1971, at 8:00 P.M. at the Town Hall, Penfield, New York, to consider the application for rezoning, and,

WHEREAS it appears that the proposed Planned Unit Development for the premises hereinafter described falls within the intent and objectives of the Planned Unit District Ordinance of the Town as amended, and would be in the best interest of the Town,

NOW THEREFORE, BE IT ORDAINED, by the Town Board of the Town of Penfield that the Zoning Ordinance and the official

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EXHIBIT Y

Zoning Map of the said Town be and the same hereby is amended as follows:

SECTION 1. The official Zoning Map of the Town of Penfield is amended to transfer from "Residential AA" District to "Planned Unit Development" District the following described premises:

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Penfield, County of Monroe and State of New York, being a portion of Lot No. 40 in Township No. 13 in the Fourth Range of Townships of the Phelps and Gorham Purchase comprised of the following conveyances:

Walter J. Holloran to Dolomite Products Company, Inc., dated July 31st, 1968 and recorded in Monroe County Clerks Office in Liber 3920 of Deeds, at Page 343.

Whalen Estates, Inc., to Dolomite Products Company, Inc., dated January 30th 1970 and recorded in Monroe County Clerks Office in Liber 4037 of Deeds, at Page 90.

Victor L. Schroven and Marian V. Schroven to Dolomite Products Company Inc., dated July 18th, 1970 and recorded in Monroe County Clerks Office in Liber 4065 of Deeds, at Page 599.

Rudolph R. Ostrowski and Pearl E. Ostrowski to Dolomite Products Company, Inc.,