



**PLANNING BOARD**  
**1145 Main Rd., Pembroke, NY 14036**  
Minutes for the regular meeting held August 29, 2012

**ATTENDANCE:**

- Chairman-Richard Kutter
  - Vice Chairman-Michael Herec
  - Michael Bakos
  - Linda Rindell
  - David Sabato
  - John Cima
  - David Knupfer
- Doneen Pfalzer-Acting Recording Secretary

**PUBLIC PRESENT:** Scott Humel, Bill Kappus, Todd Audsley, Jeffrey Humel, Daniel Clemmons, Thomas Schneider, Chuck Lowder, Debra Stalker, Michelle Czechowicz, Donna Elliott, John McCormick, Michael & Augusta Welsh, Attorney Mark Boylan ESQ., Don & Jan Seaver, Geraldine & Robert Alexander, Attorney Corey Auerbach, William Brick, Shellye Dale-Hall and Edwin Mileham.

MEETING called to order at 8:00 pm.  
Chairman Kutter led the “Pledge of Allegiance”.

**A MOTION to Approve** the Minutes for the July 18, 2012 Planning Board Meeting was made by Linda Rindell, second to motion was made by David Sabato.  
**ALL AYES--MOTION CARRIED.**

**PUBLIC PARTICIPATION**—No one spoke.

**PUBLIC HEARING**

**Core States Group**

8420 Alleghany Rd., Town of Pembroke

(Tax Map #15.-1-3)

Application #12.06.08

Request for a **SITE PLAN REVIEW**

**PUBLIC HEARING** opened at 8:07 pm. The Notice of Public Hearing was printed in the Batavia Daily News as well as posted on the Town’s bulletin board, and that Chairman Kutter read the Affidavit of Posting and discussed the Notice to Adjoining Property Owners.

- Core States Group is requesting a Site Plan review to modify an existing diesel fuel station.
- Zoning District is INT.

- Genesee County Planning approved the application at its July 12, 2012 meeting with the recommendation the site plan be reviewed by the Pembroke Fire Department and they are aware of the changes.
- Clark Patterson Lee reviewed the plans and stated the applicant has adequately responded to all concerns for the building and fire code review.
- Tom Carpenter informed the board that a short form environmental assessment would be adequate for the project.
- The contractor Daniel Clemmons was present at the meeting to answer any further concerns.

**PUBLIC PARTICIPATION**—No questions were asked.

On **MOTION** made by David Sabato and seconded by Michael Herec the Public Hearing was CLOSED at 8:18.

ALL AYES—MOTION CARRIED.

On **MOTION** made by John Cima, and seconded by Michael Bakos, the following RESOLUTION was ADOPTED by roll call vote: Michael Bakos; AYE, Linda Rindell ; AYE, David Sabato; AYE, Chairman Kutter; AYE, Michael Herec; AYE, John Cima; AYE, David Knupfer; AYE.

ALL AYES-MOTION CARRIED

**RESOLUTION #21 of 2012—CORE STATES GROUP/ SITE PLAN REVIEW**

**Core States Group** has submitted application #12.06.08 requesting a Site Plan Review for the alteration of a Diesel Refueling station located at 8420 Allegheny Rd., Town of Pembroke and identified as Tax Map #15.-1-3.

**WHEREAS** the Town of Pembroke Planning Board has made a detailed review of the Environmental Assessment Form and has been accepted at this meeting held on August 29, 2012. **NOW, THEREFORE, BE IT RESOVLED** the Town of Pembroke Planning Board hereby determines that there will not be a significant impact on the environment and makes a Negative Finding of Non-Significance for the project.

On **MOTION** of a negative finding by David Knupfer, and seconded by David Sabato, the following **RESOLUTION** was **ADOPTED** by roll call vote: Michael Bakos; AYE, Linda Rindell ; AYE, David Sabato; AYE, Chairman Kutter; AYE, Michael Herec; AYE, John Cima; AYE, David Knupfer; AYE.

ALL AYES-MOTION CARRIED

**RESOLUTION #22 of 2012—Core States Group/SITE PLAN REVIEW**

**RESOLVED** that said Site Plan is hereby APPROVED by the Town of Pembroke Planning Board with the following stipulations.

- None were imposed.

**PUBLIC HEARING**  
**Jeffrey Humel**  
1633 Indian Falls Rd., Town of Pembroke  
(Tax Map #12.-1-5.11)  
Application #12.06.02  
Request for a **SPECIAL USE PERMIT**

**PUBLIC HEARING** opened at 8:20 pm. The Notice of Public Hearing was printed in the Batavia Daily News as well as posted on the Town's bulletin board, and that Chairman Kutter read the Affidavit of Posting and discussed the Notice to Adjoining Property Owners.

- Mr. Humel is applying for a Special Use Permit for a multi-family dwelling.
- Mr. Humel was present at the meeting.
- Zoning District is AG/R.
- A site plan of the project was presented as well as construction drawings.
- Genesee County Planning recommended disapproval stating the request may pose significant impact and Pembroke Zoning law does not allow for two principal uses on one parcel.

Chairman Kutter informed participants that the meeting will be conducted in two phases. The first phase will consist of the Special Use Permit for the multi-family dwelling. The site plan review for the accessory building will begin after.

He also asked the public to stand and identify themselves if they wished to speak.

**PUBLIC PARTICIPATION—**

- Bob Alexander has lived in the neighborhood for 38 years. He remarked that he has no problem what so ever with the apartments and felt it is a vast improvement.
- Bill Kappus said that putting in three apartments with no permits was an inappropriate thing to do but it seems like some of that property could be used in alternative uses. He felt that the issues should not have been allowed to get to this point and is disappointed in the town.
- Chairman Kutter said that the town has received numerous written complaints and they will become part of the town records. They will not be read at the meeting tonight because of the volume.
- Bill Brick toured the property with Jeffrey Humel and found the apartments to be gorgeous. He stated that “when Jeff bought the place it was a wreck” the roof had fallen in and there was garbage flying around all the time, there were tires all over the place and that Jeff cleaned the whole place up and it is nice to look at now. He has “No Complaints.” Jeff was wrong not to get permits. Mr. Brick stated that he has meet the tenants and enjoys them. He would like to get this over with and doesn't want any more bad publicity. Jeff removed all the tires and thousands of plastic containers that were flying all over the neighborhood and cleaned them all up.
- Shellye Dale-Hall, building and codes administration stated Debra Conti the town assessor shared with her this afternoon that in 1974 the building that now houses the apartments had a 24x24 paneled room that was used as a show room and in 1986 there was a 500 square foot apartment built. All prior to Mr. Humel owning the property. Debbie had that in her records and Shellye would continue to search in the building and

codes department to see if building permits were obtained for those things. Ms. Dale-Hall just wanted to make sure everyone was aware of that.

- Todd Audsley of “Smart Design” has been working with Jeff on the plans for the apartments. Mr. Audsley stated that Jeff is neither an architect nor a builder, he just saw an opportunity to clean up the building. Jeff is a business man and wanted to create a revenue stream. Jeff started without permits, permission and knowledge, that’s not in dispute. At some point Shellye got involved and called Jeff and said “time out” you can’t continue this way. At that point he phoned Mr. Audsley and requested drawings so he could “Do whatever I need to do to make this right with the town”. Mr. Audsley told Jeff they were not going to cut any corners, they would go right back to the starting line and he would drag him through the process the way it should be done as if he had come to him day one. They went through the building stem to stern, figured out what was done and what needed to be done, took a million pictures. Code review investigated what the structure and occupancy was so the plans could be submitted to the Town of Pembroke. The plans would be code compliant and were submitted to Shelley’s office. Mr. Audsley would like the board to consider the building was a derelict property in the town, and is now one of the better multi-family units, its taxable property and has increased the value of the property. He is asking the town to help take Jeff through the process so the use of the property is acceptable and can continue.
- Donna Elliot has a problem with the business. She stated that Jeff knows what the laws are yet continues to do things and get permission after. She opposes the property being turned into a multi-family dwelling. She has lived on the road for forty years. If she’d thought that an apartment complex would go in next door that first Special Use Permit would have been fought from day one. She does not want to live next door to apartments. The site has caused heartache and stress on her family.
- A discussion arose about several homes in the neighborhood having apartments in them.
- Augusta Welsh asked whether the plans were designed before the building was started. The architect replied that the plans were not, he was called by Jeff after the town got involved. Chairman Kutter replied they were built neither without building permits nor with proper inspections and no Certificate of Occupancy has been issued. Shellye Dale-Hall remarked that the plans are “Wet Stamped” by the architect and his professional career is on the line and believes he would not jeopardize his career for one building. Shellye said she is not saying what was done was right because absolutely this is not the way to do it. There are fines involved in doing that, but unfortunately it does happen. The town would triple the fees for a building a permit when construction has commenced before the permit is issued.
- Jeffrey Humel stated he did “put the cart in front of the horse” and he would be the first to admit it but has made an effort to correct the issues. He stated Mr. Kutter asked to make sure the well was right, Jeff spent thirteen thousand on the first well which was to close to the septic and has corrected that with the placement of a second well. He repaired the roof, and has made sure the building is up to fire code. Yes he put the cart in front of the horse but since then has done everything building and codes have asked him to do. He has cleaned the property up and is willing to close the driveway near Elliot’s property and use the west drive. He said he has stopped transferring debris as the town has requested. Put a five mile an hour speed limit up also as requested. If the business

uses the west driveway that should take care of ninety percent of the dust and cure most of Donnas and Chucks problem.

- Tom Schneider Chairman of the Zoning Board for the town inquired about the frontage of the lot. He questioned whether or not the apartments could be separated on the lot from the business and that would solve the issue of having two principal uses on a single parcel. He added that this could create non-conforming lots. The requirement to separate would be that each lot needs to have 250 ft. of frontage. The architect had a survey which showed 240 ft. of total frontage.
- Chairman Kutter spoke stating if proper procedure would have been followed Jeff would have applied, the request would then go to the Planning Board and Planning would have disapproved as there cannot be more than one principal use on any lot in an AG/R district.
- Todd Audsley said zoning allows for a zoning variance, spot zoning, or subdivision of the property. So if there was a way if it was done properly from the beginning than there is still a way to do this.
- The town could change the ordinance so that more than one principal use could be allowed and is looking at the zoning ordinance to see what changes could be made. New proposals are being considered and the Planning board should look at them during the next meeting. The town has also been conferring with Attorney Mark Boylan.
- Attorney Boylan remarked “A multi-family dwelling is not one that is anticipated in that particular case, two uses that are clearly present there on that lot are not permissible under the current zoning. And that a multi-family dwelling is not what is contemplated in that section of the zoning code. It is talking about an assisted living facility or something of that nature which this is clearly not.
- Chairman Kutter said therefore at this time it is not something that the board could approve under the current zoning. The area is zoned agricultural residential, and has never been a commercial lot, it allows for agricultural related businesses such as nurseries.
- Mr. Brick spoke saying the parcel looked like a war zone full of holes where trees had been dug out, it was a pig pen and it is not any more. Jeff spent a lot of time and money, it no longer looks like a jungle and Mr. Brick is now proud to be a neighbor. He added shame on the board if they don’t approve this.
- Attorney Corey Auerbach of Damon & Morey commented it was obvious from listening to the meeting that proper procedures were not followed in this case. What was most troubling to him was listening to the applicant and his representative essentially bully the adjoining property owners when they were simply here expressing their concerns that laws were not being followed. He said there were several reasons enumerated this evening why a Special Use Permit for a multi-family dwelling cannot be issued to the property.
  1. Two principal uses cannot be permitted to the property. That essentially answers the question. He reviewed the documents submitted to county per the freedom of information request.
  2. Another thing he finds particularly difficult is the applicants architect stood up and made several assertions about the project indicating that all laws were complied with and the reason were here was that the applicant didn’t understand the process. The architect stated he did a through code review and assumed his

plans were code compliant. One glaring issue jumped out at Attorney Auerbach “Does he have enough frontage?” and there was mention of a flag lot. The code states 250 ft. of frontage is required for a multi-family dwelling. This would be the third reason the application should be defeated at tonight’s meeting.

3. Clearly this is an improvement to the property and no one is arguing that but the code is violated, they are not entitled to have a multi-family dwelling on this parcel, and there are two principal uses on the property. He would like to urge the board to review these issues and deny the special use permit this evening. The law is the law, we have procedures and laws for a purpose and this does not meet the codes.

- Chairman Kutter reminded the public that the only issue up for discussion and decision at tonight’s meeting is whether or not the Special Use Permit should be approved for the multi-family dwelling based on the towns zoning laws.
- Mark Boylan stated that potentially one dwelling can be used and possibly an office.

**PUBLIC PARTICIPATION**—No one spoke

All concerns in relation to the Special Use Permit for the multi-family dwelling being heard the second portion of the Public Hearing began.

**Jeffrey Humel/Public Hearing**

1633 Indian Falls Rd., Town of Pembroke

(Tax Map #12.-1-5.11)

Application #12.06.02

Requesting an amendment to a **SITE PLAN REVIEW**

- Mr. Humel is applying for an amendment to a Site Plan Review to include a “Tight Tank”.
- A site plan for the project was presented as well as construction details pertaining to the tank.
- Genesee County Planning recommended disapproval stating the pole barn does not meet specifications required by the Town of Pembroke and the submitted site plan inadequately addresses the standards in the towns Zoning Law.
- In 2009 the building permit issued did not exhibit a tight tank.
- Mr. Humel said the DEC would not allow any drainage from a building and recommended installation of a tight tank. He provided construction drawings from Kistner Concrete detailing the tight tank.
- Bill Brick commented that the installed tight tank keeps effluent from draining onto his property.
- Jeffrey Humel replied that the tight tank was installed so in the winter the trucks can be allowed to defrost in the pole barn and all fluids would be gathered in the tank. Which when full is pumped out and taken to a treatment plant.
- Questions arose about the structure of the tank pertaining to holes or pipes that could allow for drainage. Mr. Humel assured there were no holes or drainage pipes attached to the tank.
- Board members were not aware the DEC required no drainage from buildings.
- Mr. Humel stated he had information pertaining to the tight tank from the Buffalo DEC and will provide it to the board members.

- Attorney Auerbach questioned whether the use of storing containers, port o johns and related equipment was an actual permitted use in that area. He could not find where in the district regulations the use of storage of this type was listed as a permitted use.
- Chairman Kutter read Section 402 AG/R (B) 20 Uses allowed under subsection C may also be allowed where no other use is viable from subsections A. and B. of this section at locations that are or were previously strictly commercial establishments that have ceased operations.
- Attorney Auerbach read thru the uses listed in Section 402 AG/R (C) and asked to have the use defined that best fit Mr. Humels.
- Chairman Kutter replied The Planning Board must sometimes interpret the likeness of uses.
- Section 305 Uses which are not allowed by this Zoning Low are prohibited was read by Attorney Auerbach. He remarked that this Section does not leave much room for similarities. In his opinion he questions the similarities of the Humel business and those listed in C. Therefore he feels the applicant is in violation of Zoning Law and should be cited.
- Chairman Kutter on the advice of the Town Attorney Mark Boylan would like to arrange a meeting with Jeff's Attorney and Attorney Auerbach, whom represents some of the nearby residents, and discuss the residents' complaints. Chairman Kutter would like to do so because the Town and the residents are being violated, and are being affected by a business that's operating there, and they cannot enjoy their property as they see fit, which everybody would agree with. Therefore we need to discuss the issues and come to an accommodation before we go into filling lawsuits.
- Attorney Auerbach seemed to be in agreement with Chairman Kutter and said that is basically why he appeared tonight. He then thanked the board for allowing him the floor.
- Mike Welsh believes that at one of the hearings he attended that there would be no sewage stored at the site, ever.
- Chairman Kutter agreed that this was the understanding of the board also.

**PUBLIC PARTICIPATION—No One Spoke.**

On **MOTION** made by Linda Rindell and seconded by Michael Herec the Public Hearing was CLOSED at 9:18.

**ALL AYES—MOTION CARRIED.**

- Thomas Schneider asked if there was clarification that the tight tank was not used for sewage. He was assured that it was not.
- John Cima questioned the condition of the port o johns returning to the site after being used. Jeff replied that they are pumped out at the location they were rented. Jeff was asked where they were cleaned and he replied off site (not on Indian Falls). Mr. Humel at that point asked a neighboring property owner if they felt there was a smell. She answered "absolutely" there was an odor.
- Scott Humel repairs the port o johns and stated he will not perform any repair work unless they are clean.
- Board member Linda Rindell asked where they are cleaned. Mr. Humel replied off site. Ms. Rindell asked if they are cleaned on people's property. Mr. Humel answered yes. Ms. Rindell said that may not be true because when she had rented some and they were not cleaned on her property. Ms. Rindell then specified she would like to know where

they are cleaned, especially the ones that do not stay on site for extended periods of time. Mr. Humel repeatedly said they were cleaned at the site (not Indian Falls).

- A resident spoke and said he had rented one and that Creekside cleaned and pumped it out before removing it.
- Ms. Rindell replied she has rented them and has never seen them cleaned on her property. She has seen them pumped out but never cleaned.
- Mr. Humel replied maybe hers was clean when they picked it up.
- The same question again was directed to Mr. Humel “Do you clean out the facility on Indian Falls Road?”
- Mr. Humel replied “If they need to be wiped out or something like that we will” but ninety percent is done when we pick them up.
- Board Member John Cima asked if any sewage is removed or stored there. Mr. Humel assured everyone that there was not. He replied to ask Dave Sabato because he has walked the property or ask Mr. Brick he has also walked it.
- Mr. Humel and Ms. Elliot exchanged some words about the smell. Mr. Humel said it is expected to smell a percentage. John Cima told Jeff this is why he questioned where the port o johns were cleaned and pumped because the odor seemed to be one of the major issues among neighboring property owners and he wanted clarification.
- Mr. Humel again stated the port o johns are pumped out where they are picked up and only wiped them out if needed on Indian Falls road.

The next item of business is the Special Use Permit:

The town has received the advice of the town attorney Mark Boylan that a second special use permit is not permitted for the apartments.

On **MOTION** made by John Cima, and seconded by Linda Rindell to Deny, the Special Use Permit request by Jeffrey Humel, application number 12.06.02 for a multi-family dwelling by roll call vote: Michael Bakos; AYE, Linda Rindell ; AYE, David Sabato; AYE, Chairman Kutter; AYE, Michael Herec; AYE, John Cima; AYE, David Knupfer; AYE.

ALL AYES-MOTION CARRIED

Linda Rindell’s property is located across from the Humel operation. She reminded the board and the public that when “he came to the board for his Special Use Permit” she “was under the impression it was strictly for storage”. Storage of Roll off containers, storage of trailers, storage of port of johns, storage of equipment used in his business, strictly storage. “I never consented to a commercial use”. “I never consented to him conducting his business there” I never consented to him having a full time business on that property. Strictly storage. And I was for it because I live across the street from that and the nursery was a disaster, it was dilapidated, it was an eyesore. Ms. Rindell spoke highly of Jeff because she knew he would clean up the property, but she also relied on his credibility that he would stick within the limits of the Special Use Permit. That it would strictly be storage, not a business. She does not want that business across from her house. She does not mind storage, she does not care what he stores there, just store it but don’t conduct a business. Ms. Rindell feels he has violated the Special Use Permit. If he wishes to conduct a business he should move to a main road.

As far as the apartments, she owns apartments and it gives nice people a place to live who may not be able to own a house, or don’t want one. She is not an advocate of apartments on the property. Jeff has a Special Use Permit and can’t have two uses. If he wants apartments get rid

of the business. It is a residential area and she would not have a problem with the apartments if the business moved.

She would like to recommend getting rid of the Special Use Permit if the board can. She would like to see the business moved to a main road as it has caused nothing but heartache for the residents, herself included. She has witnessed trucks with garbage and has smelled the odor. She has spoken to Jeff and was told the trucks (garbage trucks) were just refueling. She knew that was not the truth as Jeff was hauling trash there. If we disregard the zoning laws and start changing them to comply with someone who went against it.

Mr. Humel replied great point, behind you one hundred percent. He asked the board if they would like to make a deal. He will move his business; you don't need his employees in this town anyway. Will the board grant him the apartments? Then it will be a single use.

At this point Chairman Kutter reminded everyone that there is a motion to deny and the town would like to have a conference with the attorneys and discuss the situation.

Jeff may come back to the Planning Board and reapply; he may also need a variance.

Ms. Rindell told Jeff that it's great that you employ people; it's great that you provide housing, but you created your own hardship in this case.

Chairman Kutter stated the Motion on the floor right now is the Motion to Deny the Special Use Permit for a multi-family dwelling.

This meeting is not about the violation of the existing Special Use Permit it is about another Special Use Permit for a Multi-family dwelling. Jeff again asked if he moves the business is there a possibility a new Special Use Permit being issued. The business would have to move, the existing Special Use Permit would be relinquished. Then the Zoning Board would need to grant an area variance of ten feet, the Planning Board may then issue a new Special Use Permit for the multi-family dwelling.

On **MOTION** of **DENIAL** by David Sabato, and seconded by John Cima, the Special Use Permit was **DENIED** by roll call vote: Michael Bakos; AYE, Linda Rindell ; AYE, David Sabato; AYE, Chairman Kutter; AYE, Michael Herec; AYE, John Cima; AYE, David Knupfer; AYE.

**ALL AYES-MOTION CARRIED**

The next motion up is the amendment for the Site Plan Review.

The review was strictly for the tight tank. Had Mr. Humel returned to the board in 2009 and told the board he wished to change the plans it might have been approved then.

The tight tank seemed to be a minor issue as it holds effluent from draining onto neighboring property.

On **MOTION** made by John Cima, and seconded by David Sabato, to **APPROVE** the amendment to the site plan to include a tight tank; **ALL AYES-MOTION CARRIED**.

Board Members were asked for comments.

David Sabato and Chairman Kutter both agreed that the tight tank was an improvement and does keep effluent from draining on neighboring properties. This is why the absence of holes and drainage pipes were important to the board. Mr. Humel assured the board the tank had none.

John Cima asked if the board could put a stipulation on approval of the amendment that the DEC out of Buffalo recommended installation.

Mr. Humel indicated the letter from the DEC basically stated any run off from a truck should go into a tight tank.

John Cima then asked if it was a requirement. Mr. Humel said yes it is a requirement, you can ask Delmar Farms. You cannot have a drain with a pipe running out, so this is an ideal situation for the winter time when you pull a truck in and it thaws out.

Attorney Auerbach stated he would like the records to reflect that the applicant has indicated that this is a requirement of the DEC and the DEC required that this be done. Jeff had stated that the DEC has required him to do so. Attorney Auerbach said he would appreciate it if the minutes would reflect that.

Chairman Kutter said it will be a stipulation to the approval of the Site Plan Review:

- That a copy of the letter from the DEC is provided to the Town of Pembroke Planning Board.

David Sabato replied he did not comprehend why Mr. Humel needed to prove the DEC said he had to have it. Even if the DEC said he didn't have to have it, it is still a good thing.

Board members replied that it would be best for the records to require a letter.

Mr. Sabato replied, we are all in agreement that this is an improvement even if the DEC had not required it, this is a benefit to have a tight tank.

#### **Board Participation—No one spoke.**

**ADOPTED** by roll call vote: Michael Bakos; AYE, Linda Rindell ; AYE, David Sabato; AYE, Chairman Kutter; AYE, Michael Herec; AYE, John Cima; AYE, David Knupfer; AYE.

#### **RESOLUTION 23 of 2012—JEFFREY HUMEL/ SITE PLAN ADMENDMENT**

**Jeffrey Humel** has submitted application #12.06.02 requesting a Site Plan Review Amendment for the alteration of a pole barn with the addition of a tight tank located at 1633 Indian Falls Rd., Town of Pembroke and identified as Tax Map #12.-1-5.11.

**RESOLVED** that said Site Plan Amendment is hereby **APPROVED** by the Town of Pembroke Planning Board with the following stipulations.

- A copy of the letter from the DEC is provided to the Town of Pembroke Planning Board.

#### **DISCUSSION:**

#### **OLD BUSINESS:**

#### **NEW BUSINESS:**

A **MOTION** to adjourn the meeting was made by David Knupfer, and seconded by Michael Bakos.

ALL AYES—MOTION CARRIED

Meeting Closed at 10:15 pm.

Respectfully Submitted,

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Doneen Pfalzer—Acting Recording Secretary

Richard Kutter—Chairman

*These minutes are a draft only, subject to revision and or change prior to approval by the Town of Pembroke Planning Board.*