



**THE TOWN OF PEMBROKE  
PLANNING BOARD  
1145 Main Rd., Pembroke, NY 14036  
Minutes for the regular meeting held on September 28, 2016**

**ATTENDANCE:**

- Thomas Schneider—Chairman
- David Knupfer—Vice Chairman
- Mike Bakos
- Linda Rindell
- Richard Kutter
- Greg Kuras
- Diane Denton—Acting Recording Secretary

**PUBLIC PRESENT: Yes**

MEETING called to order at 7:30pm.  
Chairman Schneider led the “Pledge of Allegiance”.

**A MOTION TO APPROVE the Minutes from August 31, 2016** made by Mr. Kuras; second to Motion was made by Mr. Knupfer.

**Voice Vote: ALL AYES—MOTION CARRIED.**

**Public Hearing  
Special Use Permit/Site Plan Review  
Tim Hortons/Clark Holding/Bergman Associates  
1106 Main Rd., Town of Pembroke  
Tax Map # 19.-1-14.1  
Zoning District: Interchange  
*Required referral to Genesee County***

**PUBLIC HEARING** was opened at 7:31pm. The Notice of Public Hearing ran in the Batavia Daily News September 20, 2016, was posted on the Town’s Bulletin Board, and letters were sent to adjoining property owners within 500 feet.

- Kurt Harland was present to represent Clark Holding/Tim Hortons.
- County approved the Special Use Permit for a Drive-thru and Site Plan with modifications: 1) (concerning the ZBA not PB)The applicant eliminate one wall sign as at least one sign will be redundant given the proposed pylon sign and this would also eliminate the need for the sign area variance; 2) Given that the Short Environmental Assessment Form (EAF) states that the project is located in an archaeological sensitive area, the applicant obtain documentation from the State Historic Preservation Office (SHPO) as to the project's impacts on archaeological resources; 3) Given that the Short EAF states that endangered or threatened species or their associated habitats are known to be

within the boundaries of the project site, the applicant obtain documentation from the New York State Department of Environmental Conservation (DEC) as to the project's impacts on such species; 4) The applicant obtain driveway permits from the New York State Department of Transportation (DOT) for the proposed driveways onto NYS Routes 5 and 77; and 5) No northbound turns be permitted onto Rt. 77 from the proposed driveway onto that highway.

- The Site Plan also shows future retail space on RT. 77, although no construction is planned for it at this time.
- The request for two accesses off of RT. 5 and RT. 77 has been submitted to NY DOT. In preliminary discussions, the DOT didn't seem to have any problems with the request. Once the DOT does engineering reviews, driveway permits should be approved. It can take up to six months.
- They've touched base with SHPO (State Historic Preservation Officer), received a negative declaration from for any archeological and Fish and wildlife impacts. They are still waiting to hear back from the National Heritage's review, but because the parcel was previously disturbed, no problems are foreseen.
- The project will tie in its utilities with those available on RT 77, including sanitary, gas, electric, and water. Storm water will be handled on site, meeting all NYS and DEC requirements for quality run-off and run-off reduction volume. There will be an onsite retention basin that doesn't retain water, but during storm events will charge up with water, the structure that controls that pond slowly releasing it and, therefore, decreasing the amount of storm water run-off.
- The project meets all requirements for set-backs, parking (18 spaces), lighting (dark-sky), and green space. There is some landscaping proposed.
- Mr. Harland explained the reason for the sign variances (the number and the size of the pylon sign) they need to get through the Zoning Board of Appeals. The variance was tabled at the ZBA's September meeting as the board didn't have a super majority to overrule County's determination.
- Mr. Harland hoped the Planning Board could approve the Site Plan on the contingency that the sign variances are approved by the ZBA.
- Mr. Knupfer noticed that one of the County's restrictions was that no northbound turns be permitted onto RT 77 and wondered if the DOT had said anything about it. Mr. Knupfer thought that would have a huge detrimental effect on the business and Mr. Harland agreed. Mr., Harland said it had been discussed with the DOT and they didn't seem to have an issue with both south and northbound turns being allowed. Chairman Schneider thought that if it was put in as a stipulation, they could override County. Mr. Kuras felt that restricting the access onto RT 77 to southbound only was a good idea.
- Mr. Kutter brought up the issue of drivers cutting through via the Tim Horton's accesses to avoid the intersection. Mr. Harland and other board members said it was hard to control drivers who break the rules.
- Mr. Harland mentioned that the drive-thru access was one of the longest they had ever done. The large setbacks from roads put parking inside, which is also unusual for Tim Horton's sites.
- Chairman Schneider had read some of the traffic study and noted that it was very detailed. He also spoke to the School Board regarding any concerns about children crossing RT 77 to go to Tim Hortons. The children already walk down to Subway, etc. Any cross walk would fall under the DOT's jurisdiction.
- Mr. Kuras thought there were too many Tim Hortons already in the area. Mr. Kutter said that a free enterprise company couldn't be turned down for economic reasons. The courts would most likely never uphold such an action.

- The lighting on the site would be dark sky compliant.
- There was a question from a member of the public regarding the additional retail space on the plan. They were concerned it would eventually be another restaurant. Mr. Harland assured that nothing was currently or in the near future planned for it and that any development for the space would have to come before the Planning Board. He said that it was included in the plan mainly to help with designing the infrastructure: parking, storm water, etc.
- Tim Hortons is a Canadian company with a US expansion program and consider this location a prime one.
- The Special Use Permit application is just for the Drive-thru, as restaurants are allowed in an Interchange district.
- The amount and size of signs are a determination to be approved or denied by the ZBA. The Planning Board has no say in them.

**Public Present: Yes**

**Motion to Close the Public Hearing** made by Mr. Bakos and seconded by Mr. Kutter.

**Voice Vote: ALL AYES—MOTION CARRIED.**

**The Public Hearing Closed at 7:55pm**

On **MOTION** made by Mr. Kutter and seconded by Ms. Rindell to make a **negative Declaration on the SEQR short form.**

**ROLL CALL VOTE:** Mr. Bakos-Aye; Ms. Rindell-Aye; Mr. Kutter-Aye; Mr. Knupfer-Aye; Mr. Kuras-Aye; Mr. Schneider-Aye  
**ALL AYES-MOTION CARRIED**

On **MOTION** made by Mr. Kuras and seconded by Mr. Kutter **to approve the Special Use Permit for a drive-thru as presented.**

**ROLL CALL VOTE:** Mr. Bakos-Aye; Ms. Rindell-Aye; Mr. Kutter-Aye; Mr. Knupfer-Aye; Mr. Kuras-Aye; Mr. Schneider-Aye  
**ALL AYES-MOTION CARRIED**

On **MOTION** made by Mr. Kutter and seconded by Mr. Knupfer **to approve the Site Plan with the following restrictions as per County except for their modification #5 (right-turn only onto RT 77):**

- **Dark sky compliant lighting**
- **DOT approval for driveways**
- **SHPO approval**
- **DEC approval**

**ROLL CALL VOTE:** Mr. Bakos-Aye; Ms. Rindell-Aye; Mr. Kutter-Aye; Mr. Knupfer-Aye; Mr. Kuras-Aye; Mr. Schneider-Aye  
**ALL AYES-MOTION CARRIED**

**Public Hearing**  
**Special Use Permit/Home Occupation/  
Site Plan Review**

**Zachary Landis**

602 Cohocton Rd., Town of Pembroke

Tax Map # 22.-1-16.112

Zoning District: AG/RES

*Required referral to Genesee County*

**PUBLIC HEARING** was opened at 8:20pm. The Notice of Public Hearing ran in the Batavia Daily News September 20, 2016, was posted on the Town’s Bulletin Board, and letters were sent to adjoining property owners within 500 feet.

- Mr. and Mrs. Landis were present. Mrs. Landis is a Lularoe fashion consultant who conducts parties (similar to Avon or Tupperware) to sell women and children’s clothing. She holds 2-3 parties per week, some in her home. Ladies come to the parties to try on and purchase clothes. Currently, her customers try on the clothes in her children’s bedroom, but she would prefer to have another area for them to do so. Most of her customers are her friends and members of her church. The parties are all times of the day and run about an hour and a half, the average size with ten to twenty people attending. Occasionally, outside of a party, someone might come to look at her stock.
- Mrs. Landis just became aware that as she also sells online she needed to apply for a Special Use Permit for a Home Occupation. Lularoe doesn’t allow her to have a permanent storefront, so she can’t have a permanent sign up, just temporary ones on the days of the party.
- The Landises have a large driveway to accommodate parking during parties.
- Product is purchased by the Landises ahead of time, so customers walk out with what they purchase. Deliveries are made to the Landises by UPS once, maybe twice, a week.
- County approved with the required modification that any signage be no larger than 4 sq. ft. per the Town's Zoning Law. It seems they weren’t aware that the Town had changed the text to allow up to a 6 sq. ft. sign.
- One letter, including a petition, was received from neighbors with concern that their neighborhood would change from a residential to business district, not realizing that a Home Occupation was allowed in Agricultural/Residential districting.
- Chairman Schneider remarked that this was the perfect case for a Home Occupation.

**Public Present: Yes**

**Motion to Close the Public Hearing** made by Ms. Rindell and seconded by Mr. Kutter.

**Voice Vote: ALL AYES—MOTION CARRIED.**

**The Public Hearing Closed at 8:35pm**

On **MOTION** made by Chairman Schneider and seconded by Mr. Bakos to make a **negative Declaration on the SEQR short form.**

**ROLL CALL VOTE:** Mr. Bakos-Aye; Ms. Rindell-Aye; Mr. Kutter-Aye; Mr. Knupfer-Aye; Mr. Kuras-Aye; Mr. Schneider-Aye

**ALL AYES-MOTION CARRIED**

On **MOTION** made by Mr. Kuras and seconded by Mr. Knupfer to **approve the Special Use Permit/Home Occupation.**

**ROLL CALL VOTE:** Mr. Bakos-Aye; Ms. Rindell-Aye; Mr. Kutter-Aye; Mr. Knupfer-Aye; Mr. Kuras-Aye; Mr. Schneider-Aye  
**ALL AYES-MOTION CARRIED**

## **Land Separation**

**John Zoladz**

Cleveland Rd., Town of Pembroke

Tax Maps #16.-1-41.112

Zoning District: AG/RES

- Mr. Zoldaz was present. He wants to separate 200 ft. off of TM# 16.-1-41.112 to sell.
- The intent is to merge with 16.-1-41.12, but not required as separated parcel would have 206 ft. frontage and, therefore, be in compliance.

On **MOTION** made by Mr. Kutter and seconded by Mr. Bakos to make a **negative Declaration on the SEQR short form.**

**ROLL CALL VOTE:** Mr. Bakos-Aye; Ms. Rindell-Aye; Mr. Kutter-Aye; Mr. Knupfer-Aye; Mr. Kuras-Aye; Mr. Schneider-Aye  
**ALL AYES-MOTION CARRIED**

On **MOTION** made by Chairman Schneider and seconded by Mr. Knupfer to **the Land Separation as presented.**

**ROLL CALL VOTE:** Mr. Bakos-Aye; Ms. Rindell-Aye; Mr. Kutter-Aye; Mr. Knupfer-Aye; Mr. Kuras-Aye; Mr. Schneider-Aye  
**ALL AYES-MOTION CARRIED**

## **Land Separation and Merger**

**Craig Blake**

1199 Sliker Rd., Town of Pembroke

Tax Maps #9.-1-48

Zoning District: AG/RES

- Mr. Blake was present. He wants to separate  $\frac{3}{4}$  of an acre with 100 to 150 ft. frontage along Gilmore Rd. to sell to Tony & Maureen Holohan.
- It must be merged to the Holohan's parcel, TM# 9.-1-43.1 in order to create a conforming lot.

On **MOTION** made by Mr. Kutter and seconded by Ms. Rindell to make a **negative Declaration on the SEQR short form.**

**ROLL CALL VOTE:** Mr. Bakos-Aye; Ms. Rindell-Aye; Mr. Kutter-Aye; Mr. Knupfer-Aye; Mr. Kuras-Aye; Mr. Schneider-Aye  
**ALL AYES-MOTION CARRIED**

On **MOTION** made by Chairman Schneider and seconded by Mr. Kuras **to approve the Land Separation on the contingency that it is merged with TM# 9.-1-43.1.**

**ROLL CALL VOTE:** Mr. Bakos-Aye; Ms. Rindell-Aye; Mr. Kutter-Aye; Mr. Knupfer-Aye; Mr. Kuras-Aye; Mr. Schneider-Aye  
**ALL AYES-MOTION CARRIED**

**New Business: None**

**Old Business: None**

**A MOTION** to adjourn the meeting was made by Mr. Kutter, and seconded by Chairman Schneider.  
**ALL AYES—MOTION CARRIED**

Meeting Closed at 8:55 pm.  
Respectfully Submitted,  
Diane M. Denton,  
Acting Recording Secretary  
Thomas Schneider Chairman

*These minutes were approved by the Town of Pembroke Planning Board October 26, 2016*