

APPROVED

TOWN OF PATTERSON
PLANNING BOARD MEETING
May 5, 2011

AGENDA & MINUTES

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| 1) Feser Wetland/Watercourse Permit Application | 1 – 7 | Uncoordinated/Unlisted Action, SEQRA Determination granted.
Public Hearing waived.
Permit Granted with conditions. |
| 2) Eurostyle Marble and Table – Continued Discussion | 7 | Discussion of Town Planner’s site visit. |
| 3) Thunder Ridge Ski Area – Continued Discussion | 8 | Request for Applicant to review and respond to all recent correspondence. |
| 4) M& S Iron Works – Site Plan Application | 8 – 12 | Intent for Lead Agency circulation requested.
Discussion of architecture, vernal pond, site walk. |
| 5) Other Business | | |
| a. Levine Fill Permit | 12 – 16 | Discussion of neighboring property fill, DEC response, site walk with PCHD & DEC. |
| 6) Minutes | 24 – 25 | March 31 st and April 7 th Approved. |
| Discussion of Stilwell Dam - 480 Route 164 | 16 | Town Planner to send letter regarding DEC permits. |
| Patterson Library – Site Plan Waiver & Wetlands/Watercourse Permit | 16 – 22 | Waiver of Site Plan Granted.
Recommendation to Town Board for waiver of fees. |

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**TOWN OF PATTERSON
PLANNING & ZONING OFFICE**

ZONING BOARD OF APPEALS

Lars Olenius, Chairman
Howard Buzzutto, Vice Chairman
Mary Bodor
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Gerald Herbst

PLANNING BOARD

Shawn Rogan, Chairman
Charles Cook, Vice Chairman
Michael Montesano
Thomas E. McNulty
Ron Taylor

**Planning Board
May 5, 2011 Meeting Minutes**

Held at the Patterson Town Hall
1142 Route 311
Patterson, NY 12563

APPROVED

Present were: Chairman Rogan, Board Member Cook, Board Member Montesano, Board Member McNulty, Board Member Taylor, Rich Williams, Town Planner, Andrew Fetherston of the Town Engineer's office Maser Consulting, Mr. Ted Kozlowski, Town of Patterson Environmental Conservation Inspector, and Mr. Timothy Curtiss and Miss Melissa Klepack of the Town Attorney's Office.

Chairman Rogan called the meeting to order and led the Salute to the Flag.

The meeting was called to order at 7:03 p.m.

There were approximately 4 members of the audience.

Michelle Russo was the Secretary and transcribed the following minutes.

1) FESER WETLANDS/WATERCOURSE PERMIT APPLICATION

Mr. Kevin Feser, the owner, was present.

Chairman Rogan stated thank you, okay do we have anyone here for the Feser Wetland/Watercourse Application, Feser, is that you sir...

The Secretary stated please step up to the microphone.

Chairman Rogan stated just state your name for the record please.

Mr. Feser stated Kevin Feser.

Chairman Rogan stated okay, we've read some of the correspondence that has been going back and forth between our engineering folks and your engineering folks.

Mr. Feser stated right.

Chairman Rogan stated the Planning Board discussed this at the work session, certainly we don't want to delay you in anyway but what we do want to make sure is that we protect yourself and the Town by good engineering designs so we realize that this isn't something your, a project that you just came up with on your own, the heavy rains kind of dictated...

Mr. Feser stated indeed.

Chairman Rogan stated so what we are hoping to be able to do is to move this application forward with the idea that the, our engineering staff and Mr. Iuele resolve the final design elements but we wanted to be able to get you moving on this because we understand that you're kind of cut off from house here...

Mr. Feser stated indeed.

Chairman Rogan stated and we also see this as potential safety issue.

Mr. Feser stated right, yeah fire trucks and ambulances and whatever.

Chairman Rogan stated fire protection and life saving services, you want to just mention to the Board some of your conversation back and forth with Mr. Iuele...

Andrew Fetherston stated we went back and forth on the, I'm Andrew Fetherston...

Mr. Feser stated oh okay, I've been reading your e-mails.

Andrew Fetherston stated okay, we went back and forth on the opening, I have some concerns, best available data that I have is an unadopted study, a preliminary study by FEMA, its yet to be adopted and finalized and accepted by the Town as their own but it is the best, latest available data, the last data was probably more than twenty years old, I didn't want to use that. My concern was increasing the opening while it may benefit you and others upstream it could be, it could cause real damage down stream, when I looked at the difference in the opening it was a marked difference that it was going to create down stream, I did find some data in that preliminary report that said there are some issues with [Route] 292 flooding in periods, that combined with the opening, combined with the remainder of the study that I reviewed said if you're going to open it, I'm going to ask for a study that shows no impact and I don't suggest that that is what you do because its time consuming and very costly to do, I think you are going to be quicker and better served to just put it back as it was...

Mr. Feser stated yeah, I don't think he had a problem with that.

Andrew Fetherston stated yeah, no he didn't, the last e-mail was to that effect, my structural engineers are looking at it, they think everything is going to be fine, there's one calculation they requested probably 4:30 this afternoon and going through all the last information we got, we didn't get anything back but I...

Mr. Feser stated that was the surcharge one...

Andrew Fetherston stated yes.

Mr. Feser stated yes, I saw that.

Andrew Fetherston stated I suggested to the Board that they approve it pending, approve it this evening recognizing that we'll just have to work out the final details and that's it and I think that is probably going to be done tomorrow.

Mr. Feser stated oaky, did he e-mail you the PDF on the changes that he made.

Andrew Fetherston stated he did, I have all the new plans, the plans are fine its just one more calculation that my guys want to see just to and that will nail it.

Mr. Feser stated okay.

Andrew Fetherston stated so they, my guys requested it, your engineer will probably have it done tomorrow.

Mr. Feser stated okay.

Andrew Fetherston stated as quickly as we've been going back and forth, I don't see any problem.

Mr. Feser stated excellent.

Chairman Rogan stated any discussion from any of you gentlemen on the Board.

Board Member Taylor stated I just had a question about the banks, the orientation of the banks, can something be done so that its not, the stream is not washing against that one side that was washed out...

Chairman Rogan stated that one head wall there.

Ted Kozlowski stated we had an issue when we did the preliminary review, it looked from the topographic lines that the stream was hitting an embankment and then...

Mr. Feser stated eroding...

Ted Kozlowski stated eroding that and then going under the bridge and wanted to know if that was the actual layout or we're going to straighten that, our concern is major storm you're going to get scouring and you're going to undermine all your work so, is that a straight run or not.

Mr. Feser stated well he said he was going to take the rocks that we had and line the banks with the rocks to make it straight, to make it a straight run even with the bridge so that anything coming around that turn which is going to hit a rock wall...

Andrew Fetherston stated I can talk to his engineer on it because I was actually just at a site, I went to a flood conference two weeks ago so its foremost in my mind...

Mr. Feser stated you're talking about the house side where it washed out that right...

Ted Kozlowski stated the front, in front of the...

Andrew Fetherston stated yeah.

Mr. Feser stated there is a better picture right here.

Board Member Taylor stated it's on the side of that, the side, right there, either one of those.

Ted Kozlowski stated you've got...

Mr. Feser stated yeah, right there.

Ted Kozlowski stated you've got potential scouring, so...

Mr. Feser stated right.

Ted Kozlowski stated so you need to protect that and make sure that the stream doesn't do...

Mr. Feser stated what happened was the year before a giant log crossed in front of the bridge and blocked it up like a dam and that's what caused the scouring originally and then this last flood just kept undermining at that point but what started it was that tree that fell in front of it last year.

Andrew Fetherston stated the sooner, the sooner your engineer and probably yourself wouldn't hurt to have a pre-application meeting with DEC as soon as possible.

Mr. Feser stated well I didn't do the DEC thing because I wanted to see you guys first to see what you said and then I'm going to go to DEC because if we have to change stuff on here, they are probably going to say the same thing.

Andrew Fetherston stated understood, yeah but to get into them immediately and express this concern, dredging or, dredging, removing material or filling in a stream is an Army Corp permit depending on how much material you're talking about, so you could be opening a can of worms that is time consuming to do, I would go for the bridge and any other remediation and permits for that maybe at a later date, get the bridge in...

Mr. Feser stated what do you mean.

Andrew Fetherston stated tell them my foremost concern is getting the bridge in, this is something that I would like to address as well that turn, that scouring but please...

Mr. Feser stated okay, right.

Andrew Fetherston stated approve the bridge and we can work this out at a later date.

Mr. Feser stated you think they'll negotiate with me like that.

Andrew Fetherston stated it's a homeowner who can't access his house and if there is a fire at the house then there is a real problem...

Ted Kozlowski stated yeah, there is a health and safety issue there.

Mr. Feser stated okay, so I'll press that as my main concern.

Andrew Fetherston stated yeah, it's a safety issue.

Chairman Rogan stated anything from anyone else. Rich...

Rich Williams stated yeah, Rich Williams, Planner, I just want to interject in here that you know the stones within in a stream channel are very important to the velocity of the water, the stream power that's going through there, if you're going to use the stone from the existing abutments that are there, that's fine but you really shouldn't be taking any stone out of the stream channel because you affect the speed which the water goes down through there, you affect the stream channel roughness, not a good thing, so I wouldn't be taking any stone out of the stream channel other than the ones with the abutments...

Mr. Feser stated right, that was in the plan.

Rich Williams stated okay.

Chairman Rogan stated sound good.

Ted Kozlowski stated you're going to find all the stones by your neighbors house...

Mr. Feser stated they're not far, they're not far, they're right there, they actually only went about five feet away.

Chairman Rogan stated do the a, let's procedurally on this, Tim's here, procedurally we're going to do an unlisted action and uncoordinated review, waive public hearing, do our individual SEQRA determination, approve the permit pending the final work from the engineering, right...

Tim Curtiss stated engineering calculations.

Chairman Rogan stated okay so let's start with a motion to deem this application an unlisted action and conduct a uncoordinated review, so moved.

Board Member Montesano seconded the motion.

Chairman Rogan asks for all in favor:

Board Member Taylor	-	aye
Board Member McNulty	-	aye
Board Member Montesano	-	aye
Board Member Cook	-	aye
Chairman Rogan	-	aye

The motion carried by a vote of 5 to 0.

Chairman Rogan stated and on the, we do a SEQRA determination before the public hearing, right. I make a motion that given the nature of the application that this is an emergency for health and safety reasons and that we are doing an in kind replacement that the Planning Board grants a negative determination of significance of SEQRA in the application of Feser wetland/watercourse permit, so moved.

Board Member Cook seconded the motion.

Chairman Rogan asks for all in favor:

Board Member Taylor	-	aye
Board Member McNulty	-	aye
Board Member Montesano	-	aye
Board Member Cook	-	aye
Chairman Rogan	-	aye

The motion carried by a vote of 5 to 0.

Chairman Rogan stated Charlie.

Board Member Cook stated I'll make the motion that with regard to the Feser watercourse permit application that we waive the public hearing on this project.

Board Member Montesano seconded the motion.

Chairman Rogan asks for all in favor:

Board Member Taylor	-	aye
Board Member McNulty	-	aye
Board Member Montesano	-	aye
Board Member Cook	-	aye
Chairman Rogan	-	aye

The motion carried by a vote of 5 to 0.

Chairman Rogan stated and last we will make a motion to grant an approval for the wetlands/watercourse permit application to replace an in kind bridge, approximately eleven feet wide, pending final engineering details to be approved from the Town Engineer, so moved.

Board Member Taylor seconded the motion.

Chairman Rogan asks for all in favor:

Board Member Taylor	-	aye
Board Member McNulty	-	aye
Board Member Montesano	-	aye
Board Member Cook	-	aye
Chairman Rogan	-	aye

The motion carried by a vote of 5 to 0.

Chairman Rogan stated okay, thank you sir.

Mr. Feser stated do I owe you guys a fee or anything.

The Secretary stated yes.

Chairman Rogan stated we recommended the lowest fee on this, right, residential application, I think it was \$100.00.

The Secretary stated \$100.00, the Town of Patterson.

2) **EUROSTYLE MARBLE AND TILE – Continued Discussion**

Chairman Rogan stated okay, Rich, Eurostyle Marble and Tile.

Rich Williams stated Eurostyle Marble and Tile, I met with Martin Monahan the owner of Eurostyle Marble and Tile on Monday out at the site, we did go through the outstanding punch lists of items that have not yet been completed out there, we talked about how he should proceed forward, he indicated that he was going to immediately start working on some of them, he thought he could get them wrapped up and he was supposed to be here for tonight's meeting, obviously not here, we talked about the lights, we talked about the stormwater ponds, they needed to be cleaned out, the rip rap 100 year overflow being extending up to the top and over the crest of the hill, probably the big thing was the ADA parking, not meeting those and how he was going to address that, restripe it and, no I don't think so, that's Dan...

Chairman Rogan stated okay well maybe he'll show up before we're done tonight.

Rich Williams stated yeah so I did talk to him, he did understand that he needed to get these things wrapped up.

Chairman Rogan stated okay, since no one is here for Thunder Ridge, right...

Rich Williams stated Dan is on his way up...

Chairman Rogan stated okay but why don't we just right ahead M&S Iron Works and work on their, oh Dan is your guy.

Rich Williams stated coming up now, the engineering...

Chairman Rogan stated for M&S, okay I thought you mean for Thunder Ridge.

Board Member Cook stated let's just do Thunder Ridge, they're not here (inaudible).

Chairman Rogan stated okay, all right, in other words you're not doing a big meeting tonight on Thunder Ridge.

Board Member Taylor stated no.

Chairman Rogan stated okay, since we're waiting on the engineer for M&S, we'll go back to Thunder Ridge, I'm going to recuse myself from this application, Charlie take charge.

3) THUNDER RIDGE SKI AREA - Continued Discussion

Vice Chairman Cook stated since there is no one here for Thunder Ridge to discuss this project, for the record I will just restate what we are expecting from the applicant at a future meeting, one for the applicant to the bog turtle report that was previously done for Tractor Supply and comment on that relative to the Thunder Ridge project, we are looking for response to the most recent DEC letter, DEP letter and the ECI letter, we are also requesting the applicant to complete a full Environmental Assessment Form and we are looking for the applicant to recalculate the area of disturbance since its been brought up both here and by either the DEC or DEP letter, in their letter relative to the areas of disturbance, so that's it, anybody want to comment.

Board Member McNulty stated no comment.

Board Member Taylor stated no.

Vice Chairman Cook stated okay.

Ted Kozlowski stated you got a copy of my letter.

Vice Chairman Cook stated yes, we acknowledged that, can you ask Shawn to come back in.

The Secretary stated I certainly will.

Rich Williams stated Shawn.

Chairman Rogan has rejoined the Board.

4) M&S IRON WORKS – Site Plan Application

Mr. Michael Piccirillo, the architect, was present to represent the application.

Chairman Rogan stated okay M&S Iron Works. Good evening.

Mr. Piccirillo stated good evening.

Chairman Rogan stated state your name for the record please.

Mr. Piccirillo stated my name is Michael Piccirillo, I'm the architect.

Chairman Rogan stated oh, they said Ron, didn't Rich say Ron...

Andrew Fetherston stated Dan.

Chairman Rogan stated Dan, oh I thought you said Ron...

Mr. Piccirillo stated Dan Holt is the engineer.

Chairman Rogan stated got it, as you are aware, the Board, I hope you're aware the Board did a site walk...

Mr. Piccirillo stated yes.

Chairman Rogan stated about a week about ago and you know obviously we felt that the site laid out fairly well, there were some site walk comments which I'm sure you've seen...

Mr. Piccirillo stated yes.

Chairman Rogan stated it looked like there were some issues with the stonewalls out front the way they kind of line up to the plan but there were a lot of issues out there that we noticed out there that we noticed but nothing that seemed insurmountable.

Mr. Piccirillo stated we'll certainly address those.

Chairman Rogan stated sure, so why don't you take us through what you've been working on with this lately or changes to the plans or...

Mr. Piccirillo stated well the proposed structure would be a steel building, as you're aware.

The Secretary stated you can take the microphone right out.

Mr. Piccirillo stated thank you, the concept to have the building to have three colors, where the office section of the building would be a red and the body of the building would be beige and then the roof would be a grey. We would have some accents and highlights through the office section, the stainless steel which would mimic the gray and then we would have a wainscot of split face block which would also be a grey. The primary, obviously the primary use of the building is for fabrication of steel and the primary use of the office is to support that business. The right hand side of the building which is going to be used for storage would be open for this because this would not face the road, basically, this would face the side lot of woods, so we don't think we'll be having any impact as far as the character of the building, you know, we have tried and we tried had to make it a really attractive building for what it is and try to really make sure we keep the integrity of the neighborhood and keep as pleasant of a building as we can.

Board Member Taylor stated what about snow loads.

Mr. Piccirillo stated sorry.

Board Member Taylor stated snow loads.

Mr. Piccirillo stated the snow loads are going to be picked up with our structural engineer, I couldn't tell you what they are, what he's using off the top of my head but they are going to be within New York State Code.

Chairman Rogan stated one thing that we noticed, the area that was designated for the subsurface sewage disposal...

Mr. Piccirillo stated okay.

Chairman Rogan stated it seemed to have a lot ledge outcropping in that area, right close to some of the test holes and it was noted by several people that they wanted to and I realize that the Health Department

review and approval on this but just as a point of reference that there was a lot of ledge and want to make sure that that area is going to have the appropriate depth of soil and use for what you're intending.

Mr. Piccirillo stated sure, absolutely, that would be Dan Holt the site engineer but I will make note of that and tell him, you know just remind him, I'm sure he's aware of the ledge issue out there, as we all are.

Chairman Rogan stated okay.

Mr. Piccirillo stated as you said before, everything will be up to Putnam County Health Department standards, so.

Chairman Rogan stated but having said that the area probably isn't very large considering this is all bathroom use for workers, so you're water usage probably isn't all that significant.

Mr. Piccirillo stated correct, it will be minimal because majority of the building is storage and machinery.

Board Member Taylor stated (inaudible).

Chairman Rogan stated done.

Board Member Cook stated since you've see the site walk comments, we are also very concerned about the vernal pool.

Mr. Piccirillo stated correct.

Board Member Cook stated and I want to make sure everything is taken into account, you know so that vernal pool stays the way it is, to the best of everybody's ability there, you know we don't want it lose it either by it drying up or it being flooded.

Mr. Piccirillo stated again, I know Dan is aware of that, Dan Holt the engineer and I'm sure he is making every effort to satisfy those issues.

Chairman Rogan stated Rich, do you have anything you want to discuss tonight.

Rich Williams stated just procedurally where you are, you know you've done your site walk at this point, you have an application pending in front of the Board at this point, next step in the process is typically the Board is going to circulate their intent for assuming lead agency status.

Chairman Rogan stated okay. I'm sorry, I didn't know if you were talking to me or yourself, just don't start arguing.

Board Member Montesano stated it's the only sensible argument he's going to make.

Chairman Rogan stated I'll make a motion in the matter of M&S Iron Works, I thought you were, go right ahead.

Board Member Cook stated I'll make the motion instead...

Chairman Rogan stated very good.

Board Member Cook stated with regard to M&S Iron Works that the Planning Department, Planning Commission, Board declares itself lead agency in this project and that we will do a...

Chairman Rogan stated just, yep.

Board Member Cook stated coordinated review.

Chairman Rogan stated we are going to circulate our intent for lead agency and see if we get an opposition, which in this case I would be doubtful.

Board Member Montesano seconded the motion.

Chairman Rogan asks for all in favor:

Board Member Taylor	-	aye
Board Member McNulty	-	aye
Board Member Montesano	-	aye
Board Member Cook	-	aye
Chairman Rogan	-	aye

The motion carried by a vote of 5 to 0.

Chairman Rogan stated anything from you Andrew, on this for tonight.

Andrew Fetherston stated probably the biggest thing, the main thing is we were looking for the stormwater report and the response from the engineer said it was pending.

Chairman Rogan stated okay, it is just a matter of moving forward, starting to you know, sounds like everyone is comfortable with the you know, the idea of the site plan, where things are going to layout for the site itself, you know the areas that are high spots are going to be knocked down and they are going to generate some good gravel for on site use so its pretty much, we're hoping its going to be a net even use here, not a lot coming on or off site...

Mr. Piccirillo stated correct.

Chairman Rogan stated and you know, again I don't think there is anything that should stop this from moving forward in a very fast manner, do your work and we'll do ours...

Mr. Piccirillo stated terrific.

Chairman Rogan stated we'll take into consideration that vernal pond and just you know make sure we're not going to alter that so much as Charlie had said and see how quickly we can get through things. Anything from us that you need...

Mr. Piccirillo stated terrific, no, thank you very much.

Chairman Rogan stated okay. Have a good evening, enjoy your weekend. Rich is hanging out, can you grab him please, see if we've made any head way on Levine, I mean on DEC...

Board Member Taylor stated if they've responded.

Board Member Cook stated is this guy...

Chairman Rogan stated that is the absentee neighbor.

Board Member McNulty stated the neighboring property.

5) OTHER BUSINESS

a. Levine Fill Permit

Rich Williams stated (inaudible)...

Chairman Rogan stated Levine.

Rich Williams stated Levine...

Chairman Rogan stated yes.

Rich Williams stated I played phone tag with Anne, I haven't talked to her yet.

Chairman Rogan stated all right and then intent for that is to try to coordinate between Health Department, Town and DEC, right...

Rich Williams stated yes.

Chairman Rogan stated okay, all right.

Board Member Taylor stated did they submit a plan for that.

Rich Williams stated they have not submitted anything, I haven't seen anything.

Tim Curtiss stated everybody got memo.

Board Member McNulty stated we talked about though, Mr. Levine last meeting to go ahead and get his together and get it ready to go, is he aware of that...

Rich Williams stated yes, I did speak to him.

Rich Williams stated again we, just to slow down though we spoke at the work session, we originally had a plan from and I can't remember the lady's name...

The Secretary stated Terri Hahn.

Rich Williams stated Terri Hahn.

Chairman Rogan stated it was more of verbal concept of what they intended or were willing to do but...

Rich Williams stated true.

Chairman Rogan stated that is kind of...

Rich Williams stated but that plan was basically to leave the material in place and cap it...

Chairman Rogan stated isn't there some removal mentioned in that, they were planning on removing quite a bit of that material.

Rich Williams stated I didn't think they were, I thought they were going to leave it.

Board Member McNulty stated plus that was prior to the in depth soil testing, as well and we were going to ask them to look at it again with that soil testing.

Rich Williams stated now he's got a contractor who is looking at doing something different.

Chairman Rogan stated okay.

Rich Williams stated the notice of violation did go out to the adjacent property owner.

Chairman Rogan stated thank you, I saw that, thanks for initiating that through Nick. So at this point, as much as it would be great to have a plan, we also need to know ultimately what the DEC is going to do or not do in this case so we can discuss with counsel what the Town's options because this, I think this is a very difficult situation that we're being put in.

Ted Kozlowski stated can you discuss something with the Town counsel on that, is this an appropriate time...

Chairman Rogan stated what's it related to.

Ted Kozlowski stated about the DEC's lack of response.

Chairman Rogan stated I think its absolutely appropriate.

Ted Kozlowski stated Tim, Rich Williams, myself, and whoever else have repeatedly made contact with DEC about this and to me in my experience, this is a clear C & D site, and it's a clear violation of State regulations and we're getting the run around and we're not getting responses, correct me if I'm wrong, we're getting like a different story every time.

Tim Curtiss stated as I recall yes.

Ted Kozlowski stated where do we go next, the governor or what do we do.

Tim Curtiss stated generally what I would do is get in touch with counsel because if you get in touch with counsel's office and say look you've got a real bad situation, its going to blow up, they generally will get involved and see which member of the staff is supposed to handle it at that point in time because you're at the regulatory side and you may have to get to the enforcement side which is really counsel's office.

Ted Kozlowski stated enforcement was the first one I talked to back last July...

Tim Curtiss stated okay.

Ted Kozlowski stated I spoke to a lieutenant at the ENCON office and they promised me they were going to send a cruiser out...

Tim Curtiss stated okay.

Ted Kozlowski stated I gave him my cell phone number, the guy never called me back and then it went to the Regional Engineer and the Regional Director, I don't know if Willie Janeway is still there when they had the change over...

Tim Curtiss stated yeah, I know they had the change over at that point.

Ted Kozlowski stated but...

Tim Curtiss stated the whole agency was sort of influx for awhile and that was part of the problem, everybody was getting switched around...

Ted Kozlowski stated and it came up, a letter to Rich they came up with some cockamamie thing we don't get involved in residential...

Rich Williams stated well just back up, more recently I was contacted again by an ENCON officer who got wind of this and said absolutely regulated, absolutely its under their jurisdiction, absolutely they should have done something, she's going to find why they didn't, we sent all the test data to one of their sanitary engineers who will evaluate it, I sent it up to him and then supposedly got a call back from one of his subordinates who said this is a residential site, I'm aware of it but typically we don't regulate C & D on residential sites but I've been contacted by the Health Department, I'm supposed to go do a site walk out there with them if you'd like to go.

Chairman Rogan stated I think it was even more than that though, from what I remember the last correspondence from the DEC was to the Health Department because we were copied on it was we're ready to go out and take a look at the site but then it was weather related, it was covered in snow so I think the piece that needs to be coordinated now is just for either the Town or the Health Department to reach out to that person and say hey the good weather is here, let's go meet on this site and further this application and Tim just as a refresher you had sent a letter to DEC...

Tim Curtiss stated I did back in September, I remember that yeah and I got no response.

Chairman Rogan stated at this point I think it's just a matter of scheduling, at least I like to believe its just a matter of scheduling with the DEC to get that site visit done so they can see for themselves.

Rich Williams stated I just have to find Anne and I have to find her on three or four different things.

Ted Kozlowski stated it just doesn't seem to get...

Tim Curtiss stated yeah I know that...

Chairman Rogan stated it's not fair to the homeowner either at this point because he's stuck in this situation, whether he created it or not regardless he's stuck on it...

Tim Curtiss stated that's right, he's stuck.

Chairman Rogan stated and now we have also, obviously an adjoining property owner that has been issued a notice of violation.

Tim Curtiss stated notice of violation also...

Board Member McNulty stated which brings the question, do they have to come up with their own plan now or do they have to legally go after the neighbor to it or does the Town have to force them to prove a clean up action.

Rich Williams stated yes, yes.

Chairman Rogan stated yes.

Tim Curtiss stated yes to all the questions, yes, they do have to go after the neighbor, they are going to have to coordinate their plan with the neighbors plan and they are going to have to...

Board Member McNulty stated they'll have to submit a plan to us as well.

Tim Curtiss stated yeah, true.

Chairman Rogan stated I mean best case scenario and this would be that the neighbor authorizes Levine to act on his behalf and says whatever plan that he's willing to do, if that can be carried over to my property but who knows what could happen, the inactivity to this point seems to indicate they don't care much about this because we've notified them way back when that there was a potential concern on their property, you would think that we would have least gotten a phone call to say Mr. Williams can you tell me a little more about what's going on but we've gotten nothing so that is pretty interesting also, so.

Rich Williams stated well I ran into the real estate agent, I told you Rich Ricci...

Chairman Rogan stated yeah.

Rich Williams stated who represents the property, he didn't care.

Chairman Rogan stated wow...

Rich Williams stated and I explained to him there was, you know we've got bad results back in the testing.

Chairman Rogan stated yeah, so we're the only one that cares but you know we're always trying to think about the person that's going to own that property fifteen years from now and...

Tim Curtiss stated yeah, down the line and they get stuck with the problem.

Chairman Rogan stated yeah and we only know the results of what we sampled, we don't know the results of everything that's out there, as somebody had said, I think Teddy had said, somebody goes digging around in there, there is also the liability of the person doing the digging, they hit an underground buried tank or something that was dumped in there you know full of some unknown chemical, its possible, these things happen. Okay, so we're at the point at least we're hoping to get somewhere on this in the next few weeks would be great.

Board Member Cook stated Rich you're going to do the calling to DEC.

Rich Williams stated I'm starting with the Health Department.

Board Member Cook stated Health Department, okay, thank you.

Stilwell 480 Route 164 – Dam Discussion

Chairman Rogan stated and then we had the issue that came up about the Stilwell dam repair, the concerns that we spoke about with that on the work session.

Ted Kozlowski stated a DEC permit is going to be needed.

Chairman Rogan stated yeah.

Ted Kozlowski stated or they have to get a determination from the DEC but I think they are going to need to get a DEC permit.

Rich Williams stated right.

Chairman Rogan stated okay, so that will be communicated to them.

Rich Williams stated I talked to them, I just have to formalize it in a letter.

Chairman Rogan stated okay, other than the minutes we have a little bit of Patterson Library, want to talk about Patterson Library, Ted...

Patterson Library – Site Plan Waiver & Wetlands/Watercourse Permit Discussion

Ted Kozlowski stated Rich Williams asked me to Dan, what was his last name Rich, you remember the guy. I met a representative from the Patterson Library last Saturday...

Rich Williams stated Don Ferrara.

Ted Kozlowski stated Don Ferrara, thank you. They basically as you know there is the parking lot and then there is a grass lawn area directly behind the library that has a sort of a little children's playground, that all is within the wetland buffer of the great swamp which is behind there and that's regulated as you know by DEC and us. The entire area, that entire buffer area has really be altered when it was the Court and the Library and before that the fire station, so it has a long history of being disturbed so we've kind of accepted what is there. The Patterson Library wants to install a new gazebo on that lawn area, the gazebo is already built its one of those pre-builts that sits at the Martin's Country Furniture place in Pawling, New York, its just basically there is going to be no foundation they are going to put just several inches of gravel down and

then Martin's is going to lay the gazebo down on the lawn, they are also going to have a new pathway, they have to put an electric line, an access off the parking lot through the grass to the gazebo so it can be lit at night and I guess for music or for whatever else they are going to do in there. There is really no great disturbance, there is really no impact on the wetland that has already occurred, it's not really a, a real functional buffer area, so...

Chairman Rogan stated okay so you're recommending a waiver of...

Ted Kozlowski stated I don't have real issues with it other than I told them to, I was pretty specific about this, I told them just come in and fill out a permit application anyway so its on record and we document what you're doing there because ten years from now, you know there could be a building there that we didn't approve, so I just want to make it on the up and up. Apparently they did not file a formal application yet, I guess Rich said he'll talk to them tomorrow.

Rich Williams stated they did file a site plan application.

Board Member McNulty stated site plan application.

Ted Kozlowski stated site plan but they need the wetland just to make it formal, I'm not looking for public hearing, I told them I don't have the authority to waive the fee but even waiving the fee, there is very little review here, so I'm throwing it in your lap whether you, you know want to charge them the hundred bucks or not, go ahead Mike...

Board Member Montesano stated with the amount of use that's going to happen now on an area that hadn't been for argument's sake foot travelled, et cetera, would that have any effect on the buffer area.

Ted Kozlowski stated the only thing I would say to that if I was looking for impacts is garbage going into the Great Swamp, if they had even there and kids and stuff but Mike its just lawn, its grass that's cut every day or every week, you know that buffer area has long since been functional, other than the grass lawn area.

Board Member Montesano stated all right.

Board Member McNulty stated is there any distinction from where the disturbance ends and the swamp starts...

Ted Kozlowski stated oh yeah its pretty...

Board Member McNulty stated is there a fence or anything.

Ted Kozlowski stated no, phragmites, there is a line of phragmites and then there is grass, so the phragmites is the line but actually the phragmites will catch garbage but there really isn't, this to me is not a big issue.

Chairman Rogan stated okay.

Board Member Montesano stated so you can bring your go kart...

Ted Kozlowski stated but I'm, again its not a big issue based on what they want to put there okay, it could

become a big issue if something else shows up there which is not on those plans, which sometimes happens to us.

Chairman Rogan stated so that I am clear, we are looking at a site plan waiver but we want a completed wetlands permit application and a recommendation for a nominal hundred dollar application fee for the wetlands permit.

Ted Kozlowski stated no I'm not, I'm saying if you waive it...

Chairman Rogan stated if we waive it, that's what I was thinking.

Ted Kozlowski stated and the public hearing but I'm saying, the only reason why I'm asking again for a wetlands application is just to document what they're putting there, that's all.

Chairman Rogan stated okay and the document that we have here, along with the site plan application isn't documentation enough.

Ted Kozlowski stated that's, that's, if you guys...

Chairman Rogan stated I mean, I guess I'm asking you...

Ted Kozlowski stated well technically they have to go through a wetlands permit because it's within the buffer...

Chairman Rogan stated oh okay, right.

Ted Kozlowski stated so technically they needs a wetlands permit.

Chairman Rogan stated okay, that's what I was trying to find out.

Ted Kozlowski stated all right and we kind of make everybody do this and even though it's the Patterson Library and they are good people and we want it and all that, I just think it should just be the right thing to do and all it is, its going to take them five minutes to fill it out.

Chairman Rogan stated okay.

Board Member Cook stated is this the same procedure, if you will, that we did with Feser a few minute ago...

Ted Kozlowski stated Feser was a little more complicated because had to involve the Town Engineer...

Board Member Cook stated yeah but I'm talking about waiving public hearing, waiving the fee.

Rich Williams stated that's where there's a difference.

Board Member Cook stated okay yea but that's what we have to go through, right.

Tim Curtiss stated yeah, that's pretty much what you have to go through, the same type of procedure.

Rich Williams stated that's where...

Chairman Rogan stated the site plan waiver takes care of what we did with Feser where we did a unlisted action, uncoordinated review, we're doing that in this case because it a waiver, correct...

Rich Williams stated for the waiver that's correct, you don't need to proceed with SEQRA.

Chairman Rogan stated right.

Rich Williams stated but for the wetlands permit you will.

Chairman Rogan stated okay.

Rich Williams stated where I'm suggesting there is a difference is with Feser it was an individual residential property, that application fee a hundred dollars, with the library the application is not just a hundred dollars, its something more substantial based on the amount of impervious surface within the buffer, the Board has the ability to you know, set that fee or they have the ability to recommend to the Town Board either that that fee get waived or it get reduced based on some standard but you can't just waive the fees yourself.

Chairman Rogan stated okay and Ted as our Wetlands Inspector, you're recommending a fee on the wetlands permit of what...

Ted Kozlowski stated zero.

Chairman Rogan stated okay because its already disturbed area (inaudible).

Ted Kozlowski stated we're not involving the Town Engineer, we're not, its basically plopping a gazebo that's already built on the grass, so it's...

Chairman Rogan stated okay, do you want me to take this or do you want to take this Charles.

Board Member Cook stated I'll defer to you.

Chairman Rogan stated oh, thank you. Okay, in the matter of the Patterson Library, I'll make a motion that the Planning Board grants a site plan waiver to allow the placement of a gazebo of not larger than 12 by 24 placed in the location shown on the attached site plan sketch and further make a, let's do that motion first so I can collect my thoughts...

Board Member McNulty seconded the motion.

Chairman Rogan asks for all in favor:

Board Member Taylor	-	aye
Board Member McNulty	-	aye
Board Member Montesano	-	aye
Board Member Cook	-	aye
Chairman Rogan	-	aye

The motion carried by a vote of 5 to 0.

Chairman Rogan stated okay and a motion on the same application, in relation to the wetlands permit associated with this application that we, because the area is disturbed and this is the minimal impact and upon recommendation from our ECI waive the requirement for a public hearing and issue the wetlands permit to allow the impact within the buffer for the placement of gazebo and recommend to the Town Board that the fee be waived, so moved...

Board Member McNulty stated we don't have a permit yet.

Tim Curtiss stated no.

Chairman Rogan stated no, well pending the, you said they're just filling it out.

Tim Curtiss stated you still have to do SEQRA.

Chairman Rogan stated oh I'm sorry.

Tim Curtiss stated you're taking an action, you know and then are you going to have them fill out a permit and submit and then or no.

Ted Kozlowski stated they really should just (inaudible).

Chairman Rogan stated he's saying...

Board Member McNulty stated we should have the permit in front us, no.

Tim Curtiss stated that's what I'm saying, they should actually, I think fill out the permit...

Chairman Rogan stated oh I thought you were just saying for formality because we have the documentation here.

Ted Kozlowski stated yeah, I mean I'm not going...

Chairman Rogan stated because they're going to place this between now and the next meeting, right.

Rich Williams stated they're okay with waiting until the next meeting.

Chairman Rogan stated fair enough, so we've done a site plan waiver...

Tim Curtiss stated right, I would stay there and then get the permit and then do the next step...

Chairman Rogan stated so let me do this then...

Rich Williams stated and I would also make a recommendation to the Town Board to waive the fee.

Tim Curtiss stated yeah, you could do that, you can make the recommendation too.

Chairman Rogan stated okay, so Michelle can you just strike the portion from the minutes relating to everything on that second motion except recommendation to the Town Board to waive the fee.

Rich Williams stated if I can, it's all part of the minutes, we do just about verbatim minutes but there was never any second so it doesn't exist...

Chairman Rogan stated okay.

The Secretary stated so you can make a new motion.

Chairman Rogan stated fair enough.

Tim Curtiss stated this is your parliamentary procedure course today.

Chairman Rogan stated in the matter of the Patterson Library, I will make a motion that we recommend to the Town Board upon recommendation from our ECI that they consider waiving the fee for the Patterson Library for this wetlands permit.

Board Member McNulty seconded the motion.

Chairman Rogan asks for all in favor:

Board Member Taylor	-	aye
Board Member McNulty	-	aye
Board Member Montesano	-	aye
Board Member Cook	-	aye
Chairman Rogan	-	aye

The motion carried by a vote of 5 to 0.

Chairman Rogan stated and we'll stop at that and wait for a completed application. I got confused on that because I was thinking the engineering with Feser, how we were doing that kind of as a condition of the approval, I thought that the paperwork end was just that also, makes sense.

Board Member Cook stated (inaudible).

Board Member Montesano stated you have to have paper, how are we going to save trees if we don't kill them off to make paper.

Chairman Rogan stated yeah, we have a couple of things that came up, go ahead Ron...

Board Member Taylor stated just one point on that, I just, this is not important but it should be noted that the pictures they supplied do not agree with the plan they supplied.

Ted Kozlowski stated you're talking about the library.

Board Member McNulty stated yeah.

Tim Curtiss stated the gazebo.

Board Member Taylor stated yes, its different then the plan they submitted.

Chairman Rogan stated do you think the picture that they supplied is a stock photo of the design elements.

Board Member Taylor stated so is the plan, it's a stock plan, so...

Chairman Rogan stated no, no I mean the, oh...

Board Member McNulty stated we don't know which way it is, if it's a stock plan or stock photo.

Chairman Rogan stated gotcha.

Board Member Taylor stated that's all, I was just making a note, I don't think it affects anything I just wanted it noted that...

Board Member Montesano stated we've got it sitting on grass and here its going sitting on gravel.

Ted Kozlowski stated it will be on gravel.

Board Member Montesano stated do we have to make that as part of the motion originally stated, no.

Rich Williams stated no that is going to be part of the application.

Board Member Montesano stated no because it was stated as going on grass, its not, its going on gravel, minor defects.

Chairman Rogan stated we've had a number of things that have come in. Tim, if we can put you on the spot for a second since the memo was directed towards you, the decision on Meadowbrook HOA, do you remember that...

Tim Curtiss stated yes I do.

Board Member Montesano stated I'm not here, excuse me.

Chairman Rogan stated oh I'm sorry, Mike is recusing himself from talking about this. We had some, Tom you were asking some questions at the work session, a little bit of a confusing...

Tim Curtiss stated yeah what the, you mean the decision of summary judgment with the homeowner's...

Chairman Rogan stated correct.

Tim Curtiss stated yeah the homeowner's had made an application to the court, I was there with the first part of it in which they were alleging that JZG Enterprises owed them 6 years of dues and other fees in relation to the homeowner's association. It really depends upon on how they frame their complaint and apparently, I haven't seen the pleadings, the court reviewed all the papers and there is case law out there that says if they sue under the Martin Act, which is really the securities act for the State of the New York, that is the exclusive jurisdiction of the Attorney General, only the Attorney General can bring that kind of claim because what they are alleging is basically a fraud in the homeowner's association documents and

offering plan which is a kin to a security fraud, so the court dismissed their claim saying that they couldn't bring it that their only avenue was to ask the Attorney General for a regulatory opinion. They then came to the Town Board, they, because only a municipal attorney can request that opinion, the Town Board said yes, I have drafted a letter for their attorney for his review, we are seeking that opinion but it really stems, if they have alleged a common law fraud which is basically that they were promised this, they relied on it, they bought their units on the promises that they were given and based on those promises they were not fulfilled and the fraud has been committed the court would of probably kept the cause of action and allowed them to proceed at that point in time because there is a whole legion of cases going back and forth as to whether its within the Martin Act or outside the Martin Act and if its within you can't bring it as an individual homeowner, if its outside that where you are alleging a comm. Law fraud, you can that was really what the court is talking about.

Board Member Taylor stated so where is it now.

Tim Curtiss stated right now what they have done, there is a motion for summary judgment which was granted, dismissing the homeowner's complaint, they have made application to reargue that in front of the judge saying that he should not have dismissed and alleging I believe some of the common law ailments of their complaint. I am also going to request an opinion from them, they are asking me to ask the Attorney General for two questions, number one is it exclusively a Martin Act claim and number two if it is, what avenue do they proceed with the Attorney General in order to get an enforcement and that is where its going to go from there.

Board Member McNulty stated it doesn't sound like its going to be resolved soon.

Tim Curtiss stated no, I think this is going to go for awhile.

Chairman Rogan stated we'll have different members by the time this is...

Tim Curtiss stated yeah, we'll all be long gone I think.

Board Member Taylor stated and is there still a moratorium on us acting on...

Tim Curtiss stated oh yeah, there still is a moratorium at this point in time, they haven't come back in at this point and there is still some up in the area, there are still some issues as to whether or not they have the right to use this common area to expand that wetlands buffer or wetlands pond at that point.

Board Member Taylor stated right.

Chairman Rogan stated thank you. Anything from anyone you want to discuss, I don't want Michelle to only have one tape to have to work on.

Board Member McNulty stated project updates did...

The Secretary stated that's very sweet of you.

Board Member McNulty stated Tim did you speak with...

Board Member Cook stated I...

Board Member McNulty stated oh you have that Charlie...

Board Member Cook stated he's going to speak to the Town Board next week.

Tim Curtiss stated yeah I did, in fact we discussed it with the Supervisor today and we are going to discuss it at the meeting coming up on Wednesday, some of these important issues.

Chairman Rogan stated and Andrew it looks like the back forth correspondence with Green Chimneys is that they are moving right along with their completion.

Andrew Fetherston stated yes, yes.

Chairman Rogan stated let the record show Mike is back.

Andrew Fetherston stated the only thing that we'll need at the end is the as built, we have one, its lacking some of the elements in the original.

Chairman Rogan stated okay and that is something they are aware that they will be able to modify that.

Andrew Fetherston stated yes, its in my memo.

Chairman Rogan stated okay.

Board Member McNulty stated I think there were minor things about some plantings and things like that that weren't on the original plan.

Andrew Fetherston stated yeah, they put the plantings around the retaining wall, the retaining wall has what they call geogrid plastic netting that holds the wall from overturning and I had my landscape architect take a look at it and just ask them how deep do those roots go, could they interfere with the geogrid which is holding up the wall and would they, my thought was when the laborer install the plants, with a spade shovel, if that's in the way, I'm chopping through, thinking...

Board Member McNulty stated how high is that wall, its in the...

Andrew Fetherston stated I just beg the question, you know, could that have been interfered with...

Board Member McNulty stated is it a high wall, I'm not familiar with that site.

Andrew Fetherston stated its about 6 foot, about 6 foot, it's a wall, the building is on top of it and the walk way is on top of it.

Board Member Cook stated the minutes.

Board Member McNulty stated okay.

6) MINUTES

Board Member Cook stated I'll make a motion that we approve the minutes of March 31, 2011 and April 2, 2011...

Board Member McNulty seconded the motion.

Board Member Montesano stated question, we have an April 2nd or April 7th.

The Secretary stated my minutes probably say April 7th because that was day of the meeting but Rich's agenda says the 2nd.

Chairman Rogan stated so just change that to April 7th, typo.

Board Member Cook stated due to on agenda its April 7, 2011.

Chairman Rogan stated okay, we have a second on that.

Board Members Montesano and Taylor stated second.

Chairman Rogan asks for all in favor:

Board Member Taylor	-	aye
Board Member McNulty	-	aye
Board Member Montesano	-	aye
Board Member Cook	-	aye
Chairman Rogan	-	aye

The motion carried by a vote of 5 to 0.

Chairman Rogan stated okay, anything from anyone, no, we have one more motion, Michelle you want to make that one.

Tim Curtiss stated Michelle would be more than happy to make that motion.

Board Member Montesano stated adjourn.

Chairman Rogan seconded the motion.

Chairman Rogan asks for all in favor:

Board Member Taylor	-	aye
Board Member McNulty	-	aye
Board Member Montesano	-	aye
Board Member Cook	-	aye
Chairman Rogan	-	aye

The motion carried by a vote of 5 to 0.

The meeting adjourned at 7:50 p.m.