



TOWN OF PATTERSON

PLANNING BOARD MEETING

August 25, 2011

Work Session

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TOWN OF PATTERSON
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ZONING BOARD OF APPEALS
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PLANNING BOARD
Shawn Rogan, Chairman
Charles Cook, Vice Chairman
Michael Montesano
Thomas E. McNulty
Ron Taylor

Planning Board
August 25, 2011 Work Session 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, Ted Kozlowski, Town of Patterson Environmental Conservation Inspector, and Andrew Fetherston of the Town Engineer's office Maser Consulting.

The meeting began at 7:02 p.m.

There was no audience.

Michelle Lailer was the Secretary and transcribed the following minutes.

1) RCA ASPHALT PLANT SITE PLAN – Public Hearing

Chairman Rogan stated RCA Asphalt Plant we did the site walk, we scheduled a public hearing, has it been thirty days...

Rich Williams stated yes we are in a position or we will be next Thursday...

Chairman Rogan stated next Thursday...

Rich Williams stated to take whatever action you want to take on this, whether you want to do SEQRA, certainly they need SEQRA to you know move forward with their DEC application. I've looked at the plans, the plans have cleaned up all the little details, they also submitted an estimate of the improvement for the performance bond and for an erosion control bond, I don't know if you want Andrew to take a look at them or this is such a nothing that you know it is, what it is, she's got one typo, I did take a look at it, she's got one typo, she sent me late today the revised estimates.

Chairman Rogan stated okay.

Board Member McNulty stated it looks like they noted a change in where they were going to pave in one area...

Rich Williams stated yeah.

Board Member McNulty stated is it anything significant, I didn't look at the plans, on their latest memo...

Rich Williams stated yeah, no, the Board had granted a waiver for them for not paving certain areas and everything else was going to be pave, they now show that correctly on the plans.

Board Member McNulty stated different markers, I think they listed between this mark and that mark.

Rich Williams stated yeah, you see the line.

Board Member McNulty stated okay...

Rich Williams stated yup.

Chairman Rogan stated good.

Rich Williams stated so...

Chairman Rogan stated so we can wrap up SEQRA and do a public hearing and see...

Rich Williams stated I didn't even do a review memo because there is really nothing to comment on...

Chairman Rogan stated that's fine and did we get a response from Putnam County National Bank on the letter...

2) PUTNAM COUNTY NATIONAL BANK – Release of Bond

Rich Williams stated we did not.

Chairman Rogan stated okay, I would really, since they are requesting something from us which was the release of the bond and our action on that has some significant, what is the word I'm looking for...

Rich Williams stated implications...

Chairman Rogan stated implications, thank you that is exactly the word I was thinking of, I'd want to at least hear from them before we take an action, rather than them say oh I didn't get the letter and then we look like dolts or something. I'm hoping that they are going to say we understand the implications but we want our bond back and in which case we'll release it and we dissolve any, you know rights or obligations they have to the site plan.

Rich Williams stated okay so you would like you to go to the next meeting, see if we get a response, if there is no response we'll send a follow up letter.

Chairman Rogan stated I think so yeah.

Rich Williams stated okay.

Chairman Rogan stated yeah I think that builds the case for the Town that at least puts us where we've given them every opportunity to be put on notice, does everybody agree, I mean it's not hurting us to not act at next month or this month rather...

Board Member Montesano stated no.

Rich Williams stated can we take a step back.

Chairman Rogan stated sure.

Rich Williams stated RCA Asphalt...

Chairman Rogan stated yeah I'm sorry, I didn't mean to move on...

Rich Williams stated would you like Andrew to look at the bond estimates or you're just comfortable with Theresa's estimates, it's under \$55,000 dollars.

Chairman Rogan stated discussion by the Board, if it's a small project like that...

Board Member McNulty stated I don't have a problem with it, it looks like she detailed it pretty well.

Chairman Rogan stated okay.

Board Member Montesano stated what do you think Andrew, do you feel offended.

Andrew Fetherston stated not in the least.

Chairman Rogan stated all right, fair enough.

Board Member Cook stated all right, tie breaker.

Board Member Montesano stated that's the way.

Chairman Rogan stated save a little bit on that.

Rich Williams stated (inaudible) just go with Theresa's...

Chairman Rogan stated tell her if she's wrong we'll scrutinize it all the more the next time.

Board Member Montesano stated from then on, no more being nice.

Chairman Rogan stated okay...

3) OTHER BUSINESS

a. Boniello Site Plan

Chairman Rogan stated and the Boniello Site Plan, Rich you want to...

Rich Williams stated yeah, I just wanted to update that Board, you've all got the review memo...

Board Member McNulty stated Rich I'm just confused, we received just plan S-2 or plan S-2 and S-2a.

Rich Williams stated no, I received everything that is on the list on the back.

Board Member McNulty stated okay.

Rich Williams stated all right and that includes a full set of plans and what he did though is originally he had within the set of plans drawing S-2 rather than revise S-2 to address all the comments, he created a second plan and then address some of the comments on S, some of them on S-2a...

Board Member McNulty stated it sounded confusing...

Rich Williams stated but the plans now don't match, they've got different spot elevations, different topo's, it was a mess and you know a long time ago the Board said to Joel Greenburg, you know whenever you submit in response to a review memo, we want to a detailed written review, you know comment letter back telling the Board how he addressed the comments, that is what he did, he marked it up in red...

Board Member McNulty stated okay.

Rich Williams stated no, I wasn't kidding...

Chairman Rogan stated oh you literally mean, oh no that is not acceptable we are not going to...

Board Member Cook stated no.

Chairman Rogan stated that's really taking a step back and that's a bit insulting...

Rich Williams stated well you know I didn't hear from anybody, I didn't want to...

Chairman Rogan stated insulting and you know admittedly I understand that but...

Rich Williams stated so I did do a full review on it...

Chairman Rogan stated yeah, thank you but that's, hey Ted how are you...

Board Member Cook stated hey Ted, yeah but I sent you a note that said return it back to him.

Rich Williams stated yeah well unfortunately when they submit it Charlie, it becomes part of the record...

Chairman Rogan stated yeah.

Rich Williams stated then that is the only copy I've got but...

Chairman Rogan stated you know what, that's embarrassing, not for us...

Board Member Cook stated well.

Rich Williams stated you know hence some of my comments...

Chairman Rogan stated but for his office...

Rich Williams stated well this is what, I called Anthony Boniello, I said I got the memo and the plans and the review memo, I think you should come in and we should sit down and go through it...

Chairman Rogan stated I agree.

Rich Williams stated so I can explain to you why I responded the way I did because...

Board Member McNulty stated it seems like there are a ton of inconsistencies where...

Chairman Rogan stated that is insulting to the work that has been done and to the process to send something back with notes scribbled on it, that says done or whatever, marked up in red...

Board Member McNulty stated that is generally what an architect does.

Rich Williams stated that's what he is, he's an architect.

Board Member McNulty stated okay, that's why he did it, that is how I get plans back all the time.

Rich Williams stated all right, I mean I say you have to label the wetland boundary line and he writes done, there is no label...

Chairman Rogan stated but it wasn't done, saying its done and doing it are clearly two different things but yeah I think that is a great idea, if we can get Anthony in here and you know sit down with him, that tends to probably be the best way to you know make sure things are clear.

Rich Williams stated yup because this is in response to actually going out in the field with Nick Lamberti, Anthony Boniello and myself and Joel Greenburg and saying here are your plans, here is what the field conditions are, it will match, you have to fix it.

Chairman Rogan stated when you, if you can set that appointment, Charlie if you are available, would you be so kind as to stop in and sit with that so Rich has a little back-up and support.

Board Member Cook stated yes.

Rich Williams stated all right I will call you tomorrow when I hear from him, what it was is I said can you come in, can we go through this but he says yeah but I can't give you a time, I'll call you Friday when I can come over.

Chairman Rogan stated this weather coming in, god knows what's going to happen.

Rich Williams stated well this was before the weather even started.

Chairman Rogan stated but obviously if he can't, let me know also because you know if it comes down to it, I might be able to take some time and swing it but...

4) MINUTES

Chairman Rogan stated okay and then we have minutes that everybody should be looking to review for approval at the next meeting hopefully. Does anyone have other business.

Ted Kozlowski stated could I possibly in the future, I don't need the whole thing of the minutes but you know I don't see the minutes and I do say things I would like to see what I say.

Board Member McNulty stated Michelle will send them to you on e-mail.

Board Member Taylor stated (inaudible).

Rich Williams stated listen, we've got some of your things framed.

Ted Kozlowski stated well yeah, so I'd like to...

Chairman Rogan stated I think you should see them.

Ted Kozlowski stated comment, I mean I don't want a whole...

Rich Williams stated you want them electronically or you want them...

Ted Kozlowski stated yeah if that makes it easier.

Chairman Rogan stated sure.

The Secretary stated I can send them to you electronically...

Ted Kozlowski stated yeah.

Ted Secretary stated I'm not going to take them apart for you just for your part...

Ted Kozlowski stated no...

Chairman Rogan stated no, nobody would ask you to do that.

Ted Kozlowski stated if it's just a matter of pressing a button, then do it.

The Secretary stated yeah, I'll add you to my e-mail list.

Ted Kozlowski stated that would be nice, thank you.

Chairman Rogan stated do you get them electronically, you do.

Board Member Taylor stated yup.

Board Member McNulty stated I get them that way too.

Chairman Rogan stated you know what, you can add me to that list, I don't like to read on e-mail but I don't read the minutes verbatim anyway, I trust you...

The Secretary stated that is so heartbreaking.

Chairman Rogan stated 100% and I don't want to read them, it's bad enough sitting through it once.

Board Member McNulty stated and the minutes scan through pretty good on the...

Chairman Rogan stated yeah, just to save the paper.

Board Member McNulty stated PDF...

Board Member Taylor stated they don't come in the e-mail, they come in as a PDF.

Chairman Rogan stated well that's what I meant, I just meant, I just meant electronically.

Rich Williams stated all right can you close it, I'll come, I'll check it later, okay, all right bye.

Chairman Rogan stated okay, anything anybody wants to discuss if not...

Thunder Ridge Discussion

Ted Kozlowski stated I was up at Thunder Ridge...

Chairman Rogan stated are you talking about the wetlands application.

Ted Kozlowski stated no, I just wanted to see if they were doing some of the things...

Board Member Taylor stated the erosion stuff.

Ted Kozlowski stated that we had all asked them and I see he was working, have you been up there, he had a machine, he looked like he was putting pipe and stuff.

Rich Williams stated he's repairing the pipe, yeah.

Ted Kozlowski stated yeah he's doing that but he still didn't do some of the simple things like put the hale bales around the and we had all that rain, did you Rich, I wasn't here I was away, did you happen to look over there when we had all that rain last week.

Rich Williams stated no.

Board Member Montesano stated go Monday morning, there might be some rain.

Ted Kozlowski stated I'm worried about the horse farm across the street from it.

Levine Fill Permit

Board Member McNulty stated any word on Levine.

Board Member Taylor stated that's what I was going to ask...

Rich Williams stated M&S Iron...

Board Member McNulty stated Levine, no Levine, the landfill.

Rich Williams stated Levine, no, DEC has not commented back. DEC is getting very funny...

Ted Kozlowski stated getting...

Rich Williams stated back in June we were pulled in on a Notice of Violation for the petroleum tanks not being registered and not being in compliance over at highway, so we've cleaned all that up but of course you know they have to give you a consent order and they say this is what you have to do, a, b, c, d and they were supposed to mail it to me within a week or e-mail it to me, one or the other, I've called them twice now, they won't even respond.

Ted Kozlowski stated but isn't that amazing because I know the petroleum bulk storage laws, I run them for the [Westchester] County, it's not a big deal yet they jump all over the Town for that but Levine for more than a year now, its just amazing how they pick and choose.

Rich Williams stated but Ted this issued a Notice of Violation, they pulled us up to New Paltz, we had to sit there and promise never to do it again but then they never follow up.

Chairman Rogan stated yup.

Ted Kozlowski stated it's just incredible.

Board Member McNulty stated I would not follow up with them on future things.

Rich Williams stated yeah but you know if you don't, if you don't do it, right...

Board Member McNulty stated document it, that's all.

Rich Williams stated yeah if you don't do it, then what happens is a year later they come back with another inspection and you get another Notice of Violation and now they double the penalties because you didn't do it the first time, so you know what, clean it up, stay in compliance, it was good to do...

Board Member Montesano stated they didn't stay with gun.

Board Member McNulty stated we can't penalize them for not responding.

Rich Williams stated no.

Board Member Taylor stated and we have to wait on them for Levine.

Rich Williams stated no, you don't, absolutely do not, you can make a decision, say this is what we're doing and I suggested that to the Board I think a month or so ago is you know decide what you want to do,

send them a letter saying if we haven't heard from you in 30 days, this is the final disposition of this case bam, we're done.

Board Member McNulty stated have you heard from Mr. Levine has he started any kind of action plan further than what was initially...

Rich Williams stated no, he is just waiting on everybody and it all comes down to the DEC and whether the DEC is going to say there is something that is really nasty on the site and it shouldn't be there and it either has to get capped in a certain way or it has to get pulled off the site.

Ted Kozlowski stated Rich, has Mike Griffin had a conversation with Willie Janeway on this.

Rich Williams stated no.

Board Member McNulty stated whose Willie...

Ted Kozlowski stated he is the regional director for the DEC for region 3.

Board Member Cook stated they ignored Tim Curtiss' letter way back when, who was sending it on behalf of the Planning Board and the Town Board. I would wait until Monday and the rain has stopped, maybe just take a little ride up, take a look at it...

Rich Williams stated Levine.

Board Member Cook stated yup and then send off a letter or prepare a letter for Shawn and let's fire it away and do something here.

Board Member McNulty stated a letter to who...

Board Member Cook stated DEC and say...

Board Member Taylor stated where (inaudible).

Chairman Rogan stated it will be spring before we can do anything...

Board Member Cook stated this is the action we're going to take since we haven't heard from you.

Ted Kozlowski stated the other thing...

Rich Williams stated well that you're going to have to wait for Thursday to do that because the Board's got to decide what action they're going to take, I don't know if you want to dust off Beth's, not Beth's...

The Secretary stated Terri Hahn...

Rich Williams stated who.

Board Member McNulty stated Terri.

Chairman Rogan stated Terri Hahn.

Rich Williams stated Terri Hahn's plan.

Board Member Cook stated fine.

Andrew Fetherston stated she gave you recommendations as to what her action...

Board Member McNulty stated right.

Ted Kozlowski stated the other thing I would like to report is that I went up to Catalano's property...

The Secretary stated Castellano.

Ted Kozlowski stated Castellano, you remember his neighbor was worried about that overflow pipe, I went there after all that rain, there wasn't a drop coming out of that pipe and there was no evidence that the pipe overflowed in any, it was pretty dry, so I have never seen that pipe running, yet...

The Secretary stated check it Monday.

Chairman Rogan stated Monday or Tuesday may be a whole different thing for some of these but I'm sure it will be fine up there.

Board Member McNulty stated back to Levine quick, Terri Hahn's action plan, wasn't that prior to any soil samplings.

Rich Williams stated yes.

Chairman Rogan stated yes, a lot of it spoke about removing most of, it still brings up a whole question of what we're going to do regardless of what happens with Levine, with the neighboring property, that you know, that is going to be for the lawyers to...

Board Member Montesano stated we can only work with what we have and we don't have any response...

Chairman Rogan stated what do you have the guy do remove the soil to the edge of his property and taper it back...

Board Member Montesano stated you can't order him to trespass on the other guy's property.

Chairman Rogan stated yeah and I agree, I understand.

Rich Williams stated well I do have contact information for her now and she is kind of wait to see what happens and we are waiting for the DEC...

Chairman Rogan stated sure, yeah...

Ted Kozlowski stated the thing that is very disconcerting about all of this outside of DEC, is that you know, this guy, right or, you know, knowingly or unknowingly, ignorant or not, he brought in a tremendous amount of fill in a residential area and if we don't make him take it out or substantially clean it up, you're just setting a precedent...

Board Member McNulty stated why don't we write to the Governor...

Chairman Rogan stated we also don't know what 10 or 15 years from now is going to migrate into the water...

Board Member McNulty stated he's in charge of the DEC is he not...

Ted Kozlowski stated right.

Board Member McNulty stated so go right to the top...

Board Member Montesano stated if you want I'll call my friend Al Gore, he can come up and make a big t.v. special out of it.

Board Member Taylor stated why don't we just proceed instead of keep going after the DEC let's send him the damn letter and say you're got your 30 days, this is what we're going to do and proceed with it, I've been trying to say this for a year now, let's forget about the DEC, they are not responding, let's get this dealt with.

Board Member McNulty stated the only problem I think why we've held off, my feeling is I'm not expert and I don't know if anybody else here is an expert on that type of situation and anything we state to do, are we correct, are we doing the right thing...

Ted Kozlowski stated see the thing is...

Andrew Fetherston stated Tom, you have experts on hand...

Board Member McNulty stated I forgot, sorry Andrew.

Andrew Fetherston stated I've got environmental remediation experts and I'm assuming that is what Terri-Ann Hahn is or someone in her office, I'm assuming they are the same thing, I have environmental experts that do nasty clean-up projects and they either cap it and leave it or they take it away, one or the other.

Ted Kozlowski stated but is he going to have to take it to a certified landfill...

Andrew Fetherston stated I'm not the one though, I'm not the expert but (inaudible).

Chairman Rogan stated right.

Ted Kozlowski stated who is making that call because...

Andrew Fetherston stated well obviously you're taking DEC out of the picture you have decided enough is enough we've given you a notice, we've tried to contact you for a year, here is 30 days, here is what we are going to do, here is the plan, if you have any comments on it, we'd love to hear from you otherwise this is the plan that is going to be executed at this time because we've got lack of response period and then you lay out that plan whether it is cap it, whether it is take it to a certified landfill, whatever it is, here is the plan...

Ted Kozlowski stated but who makes that decision for what landfill it goes to because that's an important factor.

Andrew Fetherston stated I don't know how to answer that, I just think you have to have the plan and you have to have that in the plan, the expert will have it.

Rich Williams stated our plan isn't going to go that far, it is going to be up to his people...

Board Member McNulty stated yeah because we're not paying for it.

Rich Williams stated to do it in accordance with state and federal requirements, so if it has to go some place special, they have to take it there, if they don't that is on them, all right...

Board Member McNulty stated okay.

Ted Kozlowski stated that's good.

Rich Williams stated now understand all this and I agree with Ron but if DEC does a 180° six months from now says we don't like what you did, they have the authority to override us...

Chairman Rogan stated or we would have left it and capped it and that would have cost two grand but what you did cost the guy sixty grand or a hundred grand...

Rich Williams stated right but...

Ted Kozlowski stated but Rich (inaudible).

Rich Williams stated but that, but then, oh yeah we have a clear paper trail and that paper trail then would be used by Mr. Levine in his fight against DEC however he wants to take that fight.

Ted Kozlowski stated I'm not worried about him, I'm worried about us, you know is...

Rich Williams stated our jurisdiction is concurrent, it doesn't supersede DEC but you know it's there...

Andrew Fetherston stated I don't, just to move it along I think, I don't profess that any of us are going to put our lawyer hats on but I'm sure that the Town Board and the Planning Board will consult their attorneys, you know, on this letter and this action, you know prior to taking it. Let the attorneys do what they do, let the experts do what they do, you make your motion, that's it let everybody work what their expertise is, get it done.

Chairman Rogan stated from day one, once we determined this is contaminated soil, I have no been comfortable with any idea that would allow the soil to remain on site, except if the DEC said this is our plan and you know then at least you have them who are supposed to know a little bit more about this, saying this is a normal action, its okay, its not going to migrate and contaminate wells but in lieu of that I wouldn't feel comfortable 10 or 15 years from now finding out there is a contamination there and we were the ones that said eh, go ahead cap it and leave it, that is not something I am going to be in favor of...

Ted Kozlowski stated Rich, what was the last thing DEC said to you besides good-bye.

Rich Williams stated they said that they had the sample, they haven't had time to test them.

Chairman Rogan stated so they are just sitting there...

Rich Williams stated they are just sitting.

Ted Kozlowski stated how long ago was this.

Rich Williams stated well this was last month.

Chairman Rogan stated but they also have copies of our results that...

Rich Williams stated yes.

Chairman Rogan stated so they have some basis.

Rich Williams stated well they reviewed our results and said wow we better take a look at this.

Andrew Fetherston stated the longest that we have had, you know testing out, like air sampling or something, is four weeks...

Chairman Rogan stated right.

Andrew Fetherston stated here is four weeks later we have our results, outside worst case, you know, it just doesn't take long.

Rich Williams stated it doesn't take that long to do the sampling and once you actually start doing...

Chairman Rogan stated I think we need some political influence here.

Rich Williams stated no, not the sampling but the testing, once you do the testing...

Board Member McNulty stated well just legal, anyway to tell us are we doing the right thing.

Rich Williams stated their problem is either they don't have the funds or they don't have the man power to do the testing...

Andrew Fetherston stated I'm not even talking about DEC, I'm talking about a competent, somebody who would do it...

Rich Williams stated right...

Ted Kozlowski stated but they are not declaring this an illegal landfill.

Rich Williams stated they're not doing anything.

Chairman Rogan stated declared it anything, we need, with all due respect to everybody involved, we need now to I think to try to somehow take this to a level whether it means politically or administratively to a much higher level so that they realize whoa this is something we need to say to whoever would do it, let's

get this done and get these people an answer within one to two weeks because this has gone long enough, puts everyone in a bad situation.

Board Member Cook stated I think we should review Terri Hahn's memo from last year as part of the whole file and some of the things that she was saying that they were willing to do, the applicant and see if we wanted to concur with that and get her moving on it.

Chairman Rogan stated and just remember that her recommendations were based still on it not being proven to be contaminated, she may have used that planning assumption but we still need to...

Ted Kozlowski stated what about sending a whole package with a letter to the Commissioner of DEC in Albany and with the whole timeline and say hey...

Chairman Rogan stated yeah this has been ridiculous.

Andrew Fetherston stated assuming that you're, assuming you're not, assuming one more letter to DEC and that closes it, I'm just making assumption, Terri Hahn is given the soil sampling and say hey we got this since your last letter, if there is anything your letter changed, if the Board wanted, we could review the adequacy of her action, what she is proposing the action is and comment on it and then the Board would have it from two experts, the Town's hired expert and their hired expert, well...

Chairman Rogan stated oh, right, right.

Andrew Fetherston stated you know Levine's expert, you know get the two and then you would have an action plan there, I'm sure we could, between my office and Terri's office I'm sure we could come to a happy medium you know on the suggestion to make to give to the Board on the action that you're going to impose.

Board Member McNulty stated sure our biggest role at this point is limiting our liability as a Town on the whole situation.

Ted Kozlowski stated you know I just think all of us have done as much as we could, I really think this needs to go to a higher level and you know because this really is DEC jurisdictional issue.

Chairman Rogan stated yeah.

Ted Kozlowski stated it's a Town issue, its sitting there but its but they are obviously ignoring us and you're a volunteer Board, not a volunteer Board but you're not...

Chairman Rogan stated right.

Ted Kozlowski stated you know this is above and beyond what we are doing here and it's...

Chairman Rogan stated and could a court or some, and Mike is famous for saying this that it depends on the judge sitting there on the bench at the time but could somebody say we acted outside of our purview and jurisdiction and acted more so than it were just illegal fill, erosion control like we are normally dealing, this is a whole other layer that's been, that's come out.

Ted Kozlowski stated you know God forbid a neighbor gets sick and then...

Chairman Rogan stated we have a cluster case of cancer...

Ted Kozlowski stated start putting two and two together and the next thing you know we are dragged into issues, we've been trying to resolve over a year.

Andrew Fetherston stated were you diligent...

Chairman Rogan stated right.

Andrew Fetherston stated come on, please, were you diligent, as laypeople you did not decide the action to be undertaken...

Chairman Rogan stated right.

Andrew Fetherston stated you had their expert, you had our expert combined, this is how we would do it and how we would seek a permit if they were responding to us, we're not going to do it differently than we would normally, you know...

Chairman Rogan stated right.

Andrew Fetherston stated but you know I agree, have your counsel...

Ted Kozlowski stated we did, the counsel, Tim Curtiss sent a letter and then he got nothing right.

Rich Williams stated yeah, no response, there was no response.

Andrew Fetherston stated no, ask the counsel about this action that you're contemplating because it is out of your purview.

Board Member McNulty stated well we have new counsel so he should be brought up to speed.

Chairman Rogan stated right.

Andrew Fetherston stated right, right.

Rich Williams stated yeah but I just, I want to jump in, its not out of your purview, the Town has absolute legal authority to issue fill permits, we have an absolute right to mitigate any fill permit that you're issuing and as long as you keep within that boundary, you know, you're not exceeding your authority, you're not, you've done your due diligence, you are not exposing the Town so whatever action you're going to take in that regard, you're fine and you've done your due diligence by sending everything to the DEC...

Chairman Rogan stated sure.

Rich Williams stated by testing and finding problems and notifying the appropriate agency which deals with that, you also notified the Health Department so you've done your due diligence...

Chairman Rogan stated Levine...

Ted Kozlowski stated I understand that Rich and that is perfectly sensible but the problem I have with all of this is in my mind that is clearly a DEC violation, there may be something there that we don't know about that we're fooling, we're not fooling around with but we are telling these folks that they have to remove it, blah, blah, blah, there is an agency there that is responsible to take that task and they're not...

Chairman Rogan stated you're right.

Rich Williams stated I understand you're absolutely frustrated with DEC but at some point everybody has to say stop, it's gone on long enough, a decision needs to be made, we can't force DEC to do something...

Andrew Fetherston stated sorry Shawn...

Chairman Rogan stated no, go ahead.

Andrew Fetherston stated if the Town Planning Board is recommending to the Town Board you want that stuff removed, we don't know what's in it, it is contaminated fill, its in violation of a fill permit, you just devalued all of these properties because of what this is around all these, you placed it, you illegally trespassed and placed it on another parcel, you know there's a lot here, there is a lot more than its...

Ted Kozlowski stated what happens, I mean, let's take this a step further, what happens if we find out all of a sudden its radioactive, do we still throw our hands up and say well we've done...

Board Member Montesano stated we can do...

Ted Kozlowski stated when do we, the next step is a political one.

Andrew Fetherston stated I don't think you're putting a shovel in the ground and moving it though, you're saying Levine get it out of here in accordance with all applicable laws but we're saying get it out of here.

Board Member Taylor stated the other issue I think here which I think you're avoiding in some way, you think the DEC is going to come around, I think what is happening economically is we are going to see more and more of this, we are going to see them ignoring more and more things and we, if we're going to be responsible, we've got to be responsible and if it's in our purview and it's in our Town and we're concerned with this, we've got to take some action, the fact that they are dragging their heels and there is a possibility of all these other things, they can't predict this either, they can't predict those things.

Ted Kozlowski stated but Ron I am not saying throw it on them and walk away from it, I'm saying they should be part of this...

Board Member Taylor stated I understand that but they're not.

Ted Kozlowski stated and they should be supportive and that is their jurisdiction...

Board Member Taylor stated and I don't think they are going to be.

Rich Williams stated it's all a friendly family.

Andrew Fetherston stated hello.

Board Member McNulty stated if I remember right the last time Mr. Levine attended a meeting, I think we mentioned to him about putting an action plan together, is there any way Rich that we can send him a letter or notify him again that based on the samples and the testing that was done, can he have his engineer re-evaluate an action plan.

Rich Williams stated he hasn't had her [Terri Hahn] do anything since the initial plan, she hasn't, I don't even remember if I've sent her the results, you know he paid her for that, you know here's a kid that says he doesn't have a lot of money, so he hasn't had her do anything since...

Board Member McNulty stated but maybe we can get him at least come Thursday, get a letter to him and say listen you need to re-evaluate the soil samplings and have a new action plan put into effect and then our engineer can at least review that...

Board Member Montesano stated we're making this guy, we're having this guy spend money, either we're going to get on the train and pull it out of the station or we're going to keep the train running while its sitting there, it's going to be in neutral, we're going nowhere. DEC is not going to do spit, they don't have the money, they are waiting for their new budget to come in, whatever the case may be, they are not moving. If we proceed is that going to give them the precedent to say oh the Town took care of it, we don't want to be responsible anymore, Towns can take care of their own problems and then they will eliminate all of the DEC...

Rich Williams stated that works for me.

Andrew Fetherston stated that definitely works for me.

Board Member Montesano stated well look, this is what you talk about politics...

Board Member McNulty stated the less involvement the better.

Board Member Montesano stated this would give people an ideal thing, get rid of one government agency that we don't need because they are not doing their job, the excuse we don't have the personnel, we don't have the financing, hey then make the person that you're testing pay for it, they are in violation, if you spend money you go to court, you show that you had spend the money for the testing, they are responsible...

Ted Kozlowski stated well the smartest thing I heard so far in my estimation is that he is in violation of Town stuff, give him 30 days, get rid of it, get it out, its illegal and you have to conform to all state and federal laws.

Board Member Montesano stated we're going to talk about this for the next 8 or 10 hours and its going to be round and round we go and we end up chasing our tails again.

Chairman Rogan stated the only thing is once we come up with some kind of an idea of what, like you said, its one thing to say just remove it all but there has to be a plan, a mechanism but secondly because we and the DEC have drug our heels for a year, I don't think it's fair to then say to the guy okay now you've got 30 days and if not you're being thrown, you know what I mean, I'm just saying...

Ted Kozlowski stated whatever time frame you want to...

Chairman Rogan stated you know time to line up people...

Board Member Montesano stated let's put it this way, we're not dragging, we're the ones pushing, they are dragging and its their problem, the object is okay you don't want to hurt the guy because he is a resident of the Town so fine, look this is what we're going to do we would like you to have 60 days, 90, you have to get it out of here, we'll give you the limit, you have want 60 days or 90 days but its got to be taken out.

Rich Williams stated you're not going to do any of that, if you want it out of there what you're going to do is you're going to deny the fill permit...

Chairman Rogan stated okay.

Rich Williams stated all right, then it's up to Nick [Lamberti]...

Chairman Rogan stated then there is a remediation plan, isn't there.

Rich Williams stated not necessarily...

Chairman Rogan stated so then how do you control...

Ted Kozlowski stated he has to give a remediation plan to DEC probably.

Rich Williams stated well he would to DEC, I don't...

Board Member McNulty stated yeah but we're overruling DEC, he needs to give us a remediation plan...

Board Member Montesano stated he's going to give it to Nick...

Chairman Rogan stated how about we approve a fill permit to say that we would approve clean fill to be put in...

Board Member McNulty stated oh we're not overruling...

Chairman Rogan stated with certain parameters but you remove and it's a remediation plan...

Rich Williams stated now he had had somebody lined up to take the old fill out and bring new fill in...

Chairman Rogan stated yeah, right but you need to really monitor that because before you know it, it turns out that it's you know, they are only removing part of the old fill and they are burying...

Rich Williams stated I'm just thinking, yeah, if you deny it then its up to Nick to issue a Notice of Violation, and that Notice of Violation would be the mechanism to get a remedial plan in to remove the fill.

Board Member Taylor stated all right, then let's deny it.

Board Member McNulty stated let's get the procedure...

Chairman Rogan stated I would be very curious Andrew, if you could find out based on the type of contamination we're dealing with because your office already knows that, what it will cost to property dispose of that contamination fill per cubic yard at a proper landfill because I think it is quite high...

Ted Kozlowski stated oh it's going to be enormous.

Chairman Rogan stated I would be willing to bet, you're talking about a very expensive clean up.

Andrew Fetherston stated what is it per yard knowing what it is, sure.

Board Member McNulty stated well I just went through clean up here, big money...

Andrew Fetherston stated truck it off, take it away dispose of it...

Board Member Montesano stated one question...

Chairman Rogan stated when it's contaminated with diesel oil how much it is...

Board Member Montesano stated if he walks away and abandons the property what happens now.

Board Member Taylor stated we go after the bank, right, they would be the next owner.

Rich Williams stated whoever takes, yeah whoever the property owner is.

Board Member Montesano stated whoever has the mortgage company.

Ted Kozlowski stated they would probably easier to deal with.

Chairman Rogan stated oh I don't know, don't count on it.

Board Member Montesano stated that depends on how fast they go into bankruptcy.

Chairman Rogan stated all right, let's wrap so we can start with the people out there and I think everybody is on the same page on this to one extent to another. Okay, have minutes to look at, motion to adjourn.

Board Member McNulty seconded the motion.

Chairman Rogan asked 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 7:34 p.m.