

**AGENDA
SPECIAL MEETING
OF THE
PUTNAM COUNTY LEGISLATURE
CALLED BY THE CLERK AT THE REQUEST OF THE CHAIRWOMAN
Held Via Audio Webinar Pursuant to Temporary Emergency Orders**

**Tuesday August 11, 2020
(Immediately following Protective & Eco Mtgs. starting at 6:00 P.M.)**

The meeting was called to order at 6:34 P.M. by Chairwoman Addonizio who led in the Pledge of Allegiance and Legislative Prayer. Upon roll call, Legislators Montgomery, Gouldman, Nacerino, Albano, Jonke, Castellano, Sayegh, and Chairwoman Addonizio were present. Also present was Legislative Counsel Firriolo. Legislator Sullivan arrived at 6:40 P.M.

Item #4 – Approval/ Litigation Settlement was next.

Chairwoman Addonizio explained that this proposed litigation settlement needs further discussion and legal advice from our County Attorney. She called for a motion to go into executive session.

At 6:36 P.M., Legislator Albano made a motion to go into executive session; seconded by Legislator Jonke. All in favor.

At 7:13 P.M., Legislator Jonke made a motion to come out of executive session; seconded by Legislator Albano and Sullivan. All in favor.

No action was taken.

Chairwoman Addonizio called for a motion to move the resolution.

Legislator Jonke moved the following resolution; seconded by Legislator Sullivan.

Chairwoman Addonizio stated that we had the opportunity to thoroughly discuss this matter in executive session tonight, and at least twice before. She stated that we had the opportunity to ask questions to our County Attorney and Legislative Counsel. She stated that in our discussion now, she cautioned all the Legislators not to discuss any confidential information as part of their comments on this resolution.

Legislator Albano stated that this is the most difficult decision he has had to make in his nine (9) plus years serving as Legislator. He stated that his vote is based on advice and input from those who are very familiar with this case, which includes our insurance provider and attorneys. He stated that he is compelled to make this decision; and it is not a decision he makes from his heart. He stated that he will be voting yes.

Legislator Jonke stated that the County would be faced with a potential catastrophic loss if this case went the wrong way. He stated that the insurance companies are not in the business of handing out money; yet they are recommending this settlement. He stated

that we have been given advice by the attorney for the insurance company, by our Commissioner of Finance, County Attorney and Legislative Counsel. He stated that, as distasteful as it is, to vote yes would be a decision to minimize the fiscal risk to the taxpayers of Putnam County. Therefore, he stated that unfortunately he would have to support the settlement.

Legislator Sullivan stated that this is a very distasteful position to be in as a County official. He stated that the approval of a settlement of such a large sum of money, \$12 million, is not taken lightly. He stated that he is loathed to agree to the payment of any some of money to someone who could have possibly committed such a heinous crime. However, he is supporting this decision because it is fiscally prudent and has been unequivocally recommended by our counsel, our insurer and our Commissioner of Finance. He stated that there are many factual allegations which could prove to be problematic to the County at trial, not the least of which is the fact that various Sheriff's Department personnel involved in the case provided contradictory and troubling testimony regarding their investigation of the crime, and actually admitting to having a policy at the Sheriff's Department of not adhering to the requirements of turning over evidence which could have been helpful to the defense. He stated as many people may be aware, we have been reviewing the policies and procedures of the Sheriff's Department. He stated that it behooves us, as a Legislature, to review the many policies and procedures of the Sheriff's Department to mitigate future risks to the County. He explained that it is the Legislature's role to limit the County's liability in any way possible. He stated that this case only reinforces the need for the Legislature to review many of the policies and procedures of the Sheriff's Department to protect the County and the taxpayers from any future lawsuits. He stated that the decision to settle, therefore, is simply a mechanism to eliminate the risk of the possibility of a devastating jury verdict later on. He stated that trying a Federal case in the current environment of anti-law enforcement may prove to be risky. He stated that given these facts, he believed that the settlement of this case, with a total liability of \$200,000 to the County, is a successful resolution of this case.

Legislator Nacerino stated that while this matter may be challenging to all of us on a multitude of levels, it is our fiduciary responsibility to remain focused on the best interest of the taxpayers of Putnam County. She stated that given the information and risk factors presented to us by the attorneys and our Commissioner of Finance, she believed we were doing just that. Therefore, she stated that she would be voting yes with a heavy heart this evening.

Chairwoman Addonizio stated that we have taken serious consideration on what is before us this evening. She stated that this is an issue of great magnitude. Mr. DiPippo was acquitted and today he is a free man who is bringing a lawsuit against Putnam County. She stated that our County insurance coverage counsel, along with our County Attorney, Defense Counsel and Legislative Attorney, strongly recommend that we settle this case. She stated that the settlement of \$12 million will cost the County \$200,000. She stated that as a Legislative body, we have a fiscal responsibility to the taxpayers of Putnam County. She stated that if we do not settle this case, the County could face paying millions of dollars more plus the cost of legal fees for both sides. She stated that we would be faced with a tremendous amount of risk. She stated that we could also lose our Moody's bond rating, resulting in a loss of hundreds of thousands of dollars. She stated that she was sorry this was before us this evening and that this was one of the most difficult decisions that she had to make as a Legislator.

Legislator Montgomery explained, that as a matter of principal, we do not settle a litigation to maintain the County's bond rating. She stated that we are not in a position to be borrowing money anyway. She explained that our District Attorney has advised us strongly. She stated that she appreciated the hard work that has gone into this on both sides, however, she stated that she would be voting no.

Chairwoman Addonizio called for a Roll Call Vote.

RESOLUTION #138

APPROVAL/ LITIGATION SETTLEMENT - DiPIPPO V. COUNTY OF PUTNAM

WHEREAS, on or about October 16, 2017, the Plaintiff, Anthony DiPippo, commenced a federal civil rights action against the County of Putnam, the Putnam County Sheriff's Department, Sheriff Robert Thoubboron, Daniel Stephens, Patrick Castaldo, William Quick and Victor Nestor alleging malicious prosecution and a violation of his constitutional right to due process stemming from the rape and murder of Josette Wright in 1994; and

WHEREAS, Plaintiff sought recovery for compensatory, consequential and punitive damages as a result of this claim; and

WHEREAS, Plaintiff has proposed a settlement with the County, subject to the Legislature's approval, in which the County would pay Plaintiff the sum of twelve million (\$12,000,000.00) dollars; and

WHEREAS, the County Attorney and the County's insurance coverage counsel, John J. Walsh, II, both recommend the settlement as an alternative to trial; and

WHEREAS, NYMIR has not yet agreed to the proposed settlement, but is convening a claims panel meeting for Wednesday, August 5, 2020 to discuss the potential for settlement in the amount of twelve million (\$12,000,000.00) dollars; and

WHEREAS, the County of Putnam strongly urges NYMIR to approve the settlement as an alternative to trial so as to minimize the County's exposure and risk of an exorbitant verdict; and

WHEREAS, the settlement is in the public interest and would avoid the costs of further litigation, of liability for an enormous counsel fee award and the risk of an extremely high jury verdict; now therefore be it

RESOLVED, that the County of Putnam approves the settlement of this matter for the sum of twelve million (\$12,000,000.00) dollars.

**BY ROLL CALL VOTE: EIGHT AYES. ONE NAY – LEGISLATOR MONTGOMERY.
MOTION CARRIES.**

Item #5 Other Business

Item #5a - Approval/ Memorialization/ Opposing Governor Cuomo's Executive Order 202.52 was next.

Chairwoman Addonizio made a motion pursuant to Rule 5(A)-9 to present a pre-filed Resolution for addition to the agenda for discussion and vote; Seconded by Legislator Jonke.

Legislator Montgomery stated that this resolution did not receive a second to move out of Economic, Development & Energy Committee meeting.

Legislative Counsel Firriolo stated that any Legislator is allowed to bring forward a pre-filed resolution as other business/ new business at a Full Legislative meeting as long as it has been pre-filed and there is a majority vote to add it to the agenda as other business.

BY ROLL CALL VOTE: SEVEN AYES. ONE NAY – LEGISLATOR MONTGOMERY. ONE ABSTENTION – LEGISLATOR GOULDMAN. MOTION CARRIES.

Legislator Montgomery stated that once again the Legislature is sending a resolution up to the State and she hoped for more action to be taken to respond to the COVID crisis being that we don't have a line item in our budget for an epidemiologist. She stated that we have not responded or asked pertinent questions to the response for COVID. She stated that we are just sending a resolution to the State on something they have already acted on. She said, why don't we take care of our own?

Chairwoman Addonizio called for a Roll Call Vote.

RESOLUTION #139

MEMORIALIZATION/ OPPOSING GOVERNOR CUOMO'S EXECUTIVE ORDER 202.52 REQUIRING BUSINESSES LICENSED BY THE STATE LIQUOR AUTHORITY TO SERVE AN ALCOHOLIC BEVERAGE ONLY IF SUCH ALCOHOLIC BEVERAGE IS ACCOMPANIED BY A FOOD ITEM

WHEREAS, on July 16, 2020, Executive Order 202.52 was issued by Governor Cuomo which requires businesses, licensed by the New York State Liquor Authority for on-premises service of alcoholic beverages, to serve an alcoholic beverage only if the service is accompanied by the purchase of a food item by each individual that is being served an alcohol beverage; and

WHEREAS, Putnam County has suffered significant economic losses due to the COVID-19 shutdown; and

WHEREAS, under Executive Order 202.52, small businesses will no longer be able to keep a bar open unless the kitchen is open, which will result in shorter hours, reduced revenue and reduction in employees; and

WHEREAS, small businesses are the key driver of our County's economy, and they have been disproportionately impacted by the shutdown and are in grave danger of failing and may never re-open; and

WHEREAS, the restrictions issued under Executive Order 202.52 cause undue hardship for bars and restaurants within Putnam County and may cause some to close permanently; now therefore be it

RESOLVED, that the Putnam County Legislature hereby strongly urges Governor Cuomo to rescind Executive Order 202.52 immediately; and be it further

RESOLVED, that the Clerk of the Putnam County Legislature forward a copy of this resolution to Governor Andrew M. Cuomo, Senate Majority Leader Andrea Stewart-Cousins, Assembly Speaker Carl Heastie, Senator Susan Serino, Senator Peter Harckham, Assemblywoman Sandra Galef and Assemblyman Kevin Byrne and New York State Association of Counties.

BY ROLL CALL VOTE: SEVEN AYES. ONE NAY – LEGISLATOR MONTGOMERY. ONE ABSTENTION – LEGISLATOR GOULDMAN. MOTION CARRIES.

There being no further business, at 7:28 P.M., Chairwoman Addonizio made a motion to adjourn; seconded by Legislator Albano. All in favor.

Respectfully submitted by Diane Schonfeld, Clerk.