

PATTERSON TOWN BOARD MEETING
PATTERSON TOWN HALL
1142 ROUTE 311
PATTERSON, NEW YORK 12563
March 25, 2015

MINUTES

PRESENT: MICHAEL GRIFFIN, SUPERVISOR
KEVIN BURNS, COUNCILMAN
CHARLES W. COOK, DEPUTY SUPERVISOR
PETER DANDREANO, COUNCILMAN
SHAWN ROGAN, COUNCILMAN
ANTOINETTE KOPECK, TOWN CLERK
DONALD M. ROSSI, TOWN COUNSEL

Salute to the Flag and Roll Call.

Supervisor Griffin called the Patterson Town Board meeting to order at 7:00 p.m. with 11 in attendance.

AUDIT OF BILLS

Mr. Cook made a **motion** that the Town Board accept Abstract No. 5 as written:

General Fund \$54,028.41, Highway Fund \$68,555.59, Waste Water Treatment Plant \$198.69, Capital Fund \$415.73, Putnam Lake Light District \$1,107.73, Patterson Light District \$1,156.52, Patterson Refuse District #2 \$651.20, Patterson Park District \$1,328.88, Putnam Lake Park District \$1,229.83, Alpine Water District \$117.35, Dorset Hollow Water District \$150.00, Fox Run Water District \$24.41, Trust & Agency \$300.00, Grand Total Abstract \$129,264.34.

Seconded by Mr. Burns. Roll Call Vote: Mr. Burns, yes; Mr. Cook, yes; Mr. Dandreano, yes; Mr. Rogan, yes; Mr. Griffin, yes.

KEVIN BURNS

ALL BOARDS MEETING - UPDATE

Mr. Burns stated we had a meeting last Thursday with the Zoning Board, Planning Board and the Town Board. I had been asking for this for some time now with the idea that we might update our Master Plan. I think overall the meeting was positive. There was a certain sense of skepticism that fell over the meeting. I think there is a certain frustration within the Town, in terms of the regulations we are facing by DEC, the water shed limitations that are imposed on the Town and the issues we have with the development of Front Street. One of the things that came out of the meeting was to accept the limitations that we have and focus on the strength that the Town does have. Some of the things we spoke about were promoting eco-tourism, farming, and farm to market, which is very big these days, encouraging micro-breweries, bike trails and artisan communities. We also spoke about meeting again in a few months. I would like to have a meeting before our budget meeting, because it would be prudent to consider whether some funds would be expended, whether it is directly towards the Master Plan or pursuing grants etc.

Mr. Rogan stated I thought that the point for scheduling the follow-up meeting was specific to the Master Plan and furtherance to that. It wasn't just a let's meet every three months just to keep in the loop. That we should do at a minimum of yearly, if not every six months. I think it was more related to where we are going with the next Master Plan revision and how do we want to achieve that.

HIGHWAY REQUEST – NEW AUCTION HOUSE

Mr. Burns stated the Highway Department will be trying out a new auction company to auction off certain equipment. The auction company is Absolute Auctions & Realty, Inc.

Mr. Burns introduced the following **Resolution Online Auction Contract with Absolute Auctions & Realty, Inc.:**

R-0315-03

WHEREAS, the Town of Patterson Highway Department desires to offer certain equipment and other items for sale to third parties from time-to-time; and

WHEREAS, Absolute Auctions & Realty, Inc. provides online auction services to facilitate such offers to sell at no cost to the Town, by charging the buyer of such items a buyer's premium of 10% of the sale price; and

WHEREAS, Absolute Auctions & Realty, Inc. has submitted an Auction Marketing Proposal for Municipal Surplus Assets to the Town setting forth the terms of such online auction services (the "Proposal"), a copy of which is annexed hereto and hereby made a part hereof; and

WHEREAS, the Town Board wishes to authorize the Highway Department to use the services of Absolute Auctions & Realty, Inc. to offer certain equipment and items for sale to third parties on terms consistent with the Proposal;

NOW, THEREFORE, BE IT RESOLVED, that the Town Board of the Town of Patterson hereby accepts the terms set forth in the Proposal annexed hereto; and

BE IT FURTHER RESOLVED, that the Town Board of the Town of Patterson hereby authorizes and directs the Supervisor to execute any and all documents necessary to give effect to this resolution, consistent with the terms hereof and in such form as is satisfactory to the Town Supervisor and the Town Attorney.

Seconded by Mr. Cook. All In Favor: Aye. Carried.

AWARD HIGHWAY MATERIAL BIDS

Mr. Burns introduced the following **Resolution for Acceptance of Bids for Materials and Services for Highway Department:**

R-0315-04

WHEREAS, the Town Board of the Town of Patterson has duly advertised for bids to purchase various materials and services for the Highway Department of the Town of Patterson; and

WHEREAS, the Town has received bids in response to said advertisement; and

WHEREAS, the Highway Department has recommended that certain bids be accepted and awarded to the following bidders (collectively, the "Successful Bidders") for the materials and/or services and at the prices set forth in the Proposal submitted by each of the Successful Bidders (hereinafter referred to as the "Proposals"), a copies of which are annexed hereto:

Crushed Stone - F.O.B.	- Putnam Materials,
Bituminous Concrete - Laid in Place	- Kect Construction,
Annual Tree Work	- Laurel Oak,
Washed Sand for Ice Control - F.O.B.	- Harlem Valley Sand and Gravel,
Diesel Fuel	- Stormville Oil

WHEREAS, the Town Board of the Town of Patterson wishes to follow the recommendations of the Highway Department to accept the bids from the Successful Bidders as specified in the Proposals;

NOW, THEREFORE, BE IT RESOLVED, that the Town Board of the Town of Patterson hereby accepts the bids of the Successful Bidders hereinabove named for the respective services and/or materials, and at the costs set forth in the Proposals, full and complete copies of which are annexed hereto and made a part hereof; and

BE IT FURTHER RESOLVED, that the Town Board of the Town of Patterson hereby authorizes and directs the Town Supervisor and/or the Town Highway Superintendent to award the bids as herein provided for to the Successful Bidders and to execute any and all documents as may be necessary to give full effect to this Resolution.

Seconded by Mr. Cook. All In Favor: Aye. Carried.

TRAINING REQUESTS

Mr. Burns made a **motion** to approve five (5) conference requests for various mandatory training for several employees to maintain their licensing requirements.

Seconded by Mr. Cook. All In Favor: Aye. Carried.

PETER DANDREANO

PLPAB REQUESTS

Mr. Dandreano made a **motion** to approve the request for pay rates for the year 2015 for Head Coach, First Assistant and Second Assistant.

Head Coach	\$12.00 per hour for 15 hours per week for six weeks = \$1,080.00
First Assistant Coach	\$ 9.00 per hour for 15 hours per week for six weeks = \$ 810.00
Second Assistant Coach	\$ 8.00 per hour for 15 hours per week for six weeks = \$ 720.00

Total: \$2,610.00

Seconded by Mr. Rogan. All In Favor: Aye. Carried.

RECYCLING CONTRACT – DISCUSSION/RENEWAL

Mr. Griffin stated Re-community, Frank Farrell, Frank Grady and myself were supposed to meet on Friday, but the local CEO from Re-community couldn't make it. We will have to re-schedule and bring it up at the next meeting.

Mr. Dandreano stated we will have to table the above topic until the next meeting.

DIRECTOR OF CODES REQUEST – PERMANENT APPOINTMENT

Mr. Dandreano introduced the following **Resolution to Appoint Robert McCarthy as Director of Codes Enforcement:**

R-0315-05

WHEREAS, by Resolution dated April 23, 2014, the Town Board of the Town of Patterson appointed Robert McCarthy to serve as the Town's Director of Codes Enforcement commencing on July 1, 2014; and

WHEREAS, the Town Board is satisfied with Robert McCarthy's performance in his position as Director of Codes Enforcement to date; and

WHEREAS, the Town Board desires to appoint Robert McCarthy to the Director of Codes Enforcement position on a permanent basis consistent with the Civil Service Law and the personnel policies of the Town of Patterson;

NOW, THEREFORE, BE IT RESOLVED, that the Town Board of the Town of Patterson hereby appoints Robert McCarthy to the position of Director of Codes Enforcement on a permanent basis, consistent with, and subject to, the Civil Service Law and the personnel policies of the Town of Patterson; and

BE IT FURTHER RESOLVED, that Mr. McCarthy shall be compensated at an annual salary of \$72,098.00; and

BE IT FURTHER RESOLVED, that the Town Supervisor is hereby authorized and directed to execute any and all documents necessary to give effect to this Resolution, consistent with the terms hereof.

Seconded by Mr. Rogan.

Mr. Griffin stated discussion. Cheryl, do you have any thoughts on this matter.

Ms. Cheryl Smith, Building Secretary stated keep him.

Mr. Cook stated I have some comments. He's a good guy.

Mr. Burns stated you are doing a great job.

Mr. McCarthy stated thank you.

All In Favor: Aye. Carried.

ANNOUNCEMENTS

Mr. Dandreano stated I have been working with the Patterson Chamber of Commerce on the Second Annual Child Safety Day. It is being held on Sunday, April 26, 2015 from 12:00 p.m. to 3:00 p.m. at the Putnam Lake VFW. We will be doing child finger print kits, I.D. cards with the Sheriff's office, car seat checks, police canine demonstrations, Putnam Lake Fire Department will have fire trucks and ambulances for the kids to look at and raffles, etc.

Mr. Dandreano made a **motion** to approve the PLPAB request of ECO site development LOC to install a curtain drain at Memorial Field in Putnam Lake Park District at a cost not to exceed \$5,431.25.

Seconded by Mr. Rogan. All In Favor: Aye. Carried.

Mr. Dandreano made a **motion** to approve the request of the PLPAB for Bill Henry Tree Service, Inc. to remove two large trees and grind stumps at Memorial Field in the Park District at a cost not to exceed \$3,000.00.

Seconded by Mr. Rogan. All In Favor: Aye. Carried.

Mr. Cook stated do we have to get Ted Koslowski, ECI to look at the trees first.

Mr. Williams stated he looked at them.

CHARLES COOK

PAB REQUEST – LAWN MAINTENANCE

Mr. Cook made a **motion** to approve the request for the Veterans Memorial Park Advisory Board to award a contract for lawn maintenance application at the lacrosse/soccer field, and caretaker's property to TruGreen in an amount not to exceed \$1,200.00.

Seconded by Mr. Burns. All In Favor: Aye. Carried.

EMERGENCY REPAIRS RECREATION CENTER - ACTUATOR

Mr. Cook made a **motion** to approve work that was done at the Recreation Center for an emergency repair on the heating unit that supplies heat to the community room and arcade area at an amount of \$1,105.00 to ITC North that was done on March 9, 2015.

Seconded by Mr. Burns. All In Favor: Aye. Carried.

MINIMUM WAGE - DISCUSSION

Mr. Cook stated a meeting or two ago, I brought up the topic that the minimum wage in New York State has recently been approved to raise it to \$8.75 per hour. It is higher than what we are paying some of our employees at the Recreation Center and different park employees. I spoke with the Town Comptroller and she mentioned that if we are going to bring them up to \$8.75, it would cost the Town approximately \$5,000.00. I spoke with Matt, because the bulk of the people are in the Recreation Center and he brought up a very good point that while he had no trouble increasing the minimum wage, it has this ripple effect on the other folks that are above that or at that pay rate for however long. He suggested addressing this at budget time, which I agree with.

Mr. Cook received an email from Matt regarding events and cancellations at the Recreation Center.

EXECUTIVE SESSION – VETERANS PARK LEGAL OPINION/SETTLEMENT

Mr. Cook made a **motion** to defer the Executive Session – Veterans Park Legal Opinion/Settlement until the end of the meeting.

Seconded by Mr. Burns. All In Favor: Aye. Carried.

SHAWN ROGAN

ALTERNATE BOARD MEMBERS – FOLLOW-UP

Mr. Rogan stated the first thing on my agenda is a continuation of a discussion we had about changing our Town Code Chapter 2, which allows alternate board members for Planning and Zoning Board. The suggestion is to also allow both Park Advisory Boards with the idea that this would be a great step for the Town in promoting having alternate board members, so we can do some mentoring and have some planning for continuity of operations for the future.

Mr. Rogan introduced the following **Resolution Introducing Local Law I-1 of 2015 and Providing for Public Notice and Hearing, Change in Town Code Chapter 2, Entitled “Alternate Board Members”**:

R-0315-06

BE IT RESOLVED that an amendment to Patterson Town Code Chapter 2, entitled “Alternate Board Members”, is hereby introduced by Shawn Rogan, as Introductory Local Law No. I-1 of the year 2015 before the Town Board of the Town of Patterson in the County of Putnam and State of New York, and

BE IT FURTHER RESOLVED, that copies of the aforesaid proposed amendment, which is attached hereto, be laid upon the desk of each member of the Board, and

BE IT FURTHER RESOLVED, that the Town Board will hold a public hearing on said proposed amendment at the Town Hall, in the Town of Patterson, New York at 7:00 o’clock p.m. on April 22, 2015, and

BE IT FURTHER RESOLVED, that the Town Clerk publish or cause to be published a public notice in the official newspaper of the Town of Patterson of said public hearing at least five (5) days prior thereto.

Seconded by Mr. Dandreano. All In Favor: Aye. Carried.

PLANNING BOARD RECOMMENDATION - RESTAURANTS

Mr. Rogan stated we have a Planning Board recommendation for our discussion and our codes which relates to restaurants in Town. There was a little bit of discussion at the last meeting, but also at our all Board’s meeting. I believe, Councilman Cook made a recommendation. The Planning Board said they would like us to clearly define restaurants, fast food, catering and hours of operation within our code to allow some flexibility for any concerns that may arise and also to not limit future development, but to allow a good exchange of information. I believe

Councilman Cook asked the Planning Board to suggest those definitions, so that it would be appropriate for the situation and to make sure it met with their recommendation contained in their memo, dated March 10. I would ask to table this at this time. I would ask that the Planning Board get us the proposed definitions by the next Town Board meeting. Rich would you ask them.

Mr. Williams stated absolutely, we have it on the agenda for the next Planning Board meeting.

Conversation ensued.

WOMEN OF DISTINCTION – REQUEST NOMINATIONS

Mr. Rogan stated I have a notice from the New York State Senate and they are announcing that they have a 2015 Women of Distinction Program that gives opportunity to recognize and honor outstanding women who made our communities a better place through achievement and business, charitable work, education, the arts, etc. You can take part in this program by nominating a Women of Distinction. The entry deadline is Friday, April 3, 2015. The application is through Senator Terrance Murphy's office. Forms are available by emailing T.J. McCormack at tmccorma@nysenate.gov. Sue Brown also has forms.

ANNOUNCEMENTS

Mr. Rogan stated Mr. Cook gave me a copy of a newspaper article that appeared in the Courier on March 19, 2015. It is a picture of some local restaurateur's from Putnam County that I happened to be a part of that received commendations from the Health Department. Every year the Health Department holds a food operative seminar and part of that is acknowledging outstanding achievement. Our very own Patrick Lacaugue from Rocco's Pizza was honored for the second time with a "Commissioners Gold Award", which is the highest commendation that the Health Department gives for restaurants.

Mr. Rogan stated the Shop Putnam and Home Expo will be held on Sunday, April 19, 2015 at 11:00 a.m. to 4:00 p.m. at Mahopac High School. Free Admission.

Mr. Rogan stated on April 25, 2015 from 9:00 a.m. to 4:00 p.m. the Militia and Night Collector Show at the Patterson Recreation Center sponsored by the Duffle Bag in Patterson. Admission is \$5.00 and children under 12 are free with an adult.

MICHAEL GRIFFIN

ANNUAL AUDITS – COMPTROLLER RECOMMENDATIONS

Mr. Griffin made a **motion** to approve the Annual Audit findings from the Town Comptroller and I ask the Town Clerk to make them available through public records.

Seconded by Mr. Cook. All In Favor: Aye. Carried.

HIGHWAY SALT SHED – SOIL TESTING

Mr. Griffin made a **motion** to follow Ron Gainer's recommendation to hire Geo-Technical Engineer, Kevin Patton to perform soil testing at the Highway Garage, in advance of building the new salt shed in an amount not to exceed \$1,000.00.

Seconded by Mr. Cook. All In Favor: Aye. Carried.

LOSAP REFERENDUM – DISCUSSION/RESOLUTION

Mr. Griffin stated we have gone around and around with the fire department for several years now. There was a lawsuit filed on Long Island by a number of volunteer firemen that were past the age of entitlement for their LOSAP programs. Because some of them never got to the point where they received their maximum benefit, but were still active and getting their points, they filed a grievance with the EEOC, Equal Employment Opportunity Commission. They were successful. Since Patterson LOSAP only started 18 years ago, there were members that were age 65 who were then excluded from the plan, but did continue to make their points. The only way a LOSAP plan can be amended is either through court order or through referendum. Since

the fire department chose not to take us to court to amend the plan, following the recommendation of the Town Attorney, we have a resolution for referendum on the amendment of LOSAP. I have a couple of questions. Counselor, have you had a chance to speak with Mike Liguori.

Mr. Donald Rossi, Town Attorney stated I have not discussed this with him.

Mr. Griffin stated ok, I will discuss it with him tomorrow when I see him. I think I will table this for tonight, because I want to know if there are other opportunities. This is very specific about the EEOC issue. I want to make sure if there are other things that the Board would like to consider in amendments to the plans. The point system, some departments get half points instead of full points, which requires more time. Also, in 2013 other conversations have taken place in the Town. We had problems getting ambulances out, getting responses to fire departments and we had almost 90 individuals eligible for LOSAP, yet at the same time we were struggling to get out the ambulances, etc. The discussion came up about whether there is a possibility of limiting the number of people in particular aspects. In other words, Interior Tact Fire Fighter is one designation of a fire fighter. General Services is another designation. Fire Police, EMS, etc., we want to find out if there is a possibility to limit the number of individuals. I know we capped the number of individuals that can be in the program. Does anyone else have any thoughts.

Mr. Dandreano stated I think that is a good idea.

Mr. Griffin stated the LOSAP Program runs almost \$140,000.00 a year to the taxpayer's. When we are talking about spending another \$300,000.00 to pay for ambulance service, we have to look at all areas where we could potentially save some money. \$1.4 million for fire and ambulance now potentially could go to \$1.7 million, its big dollars. This EEOC claim will probably cost just about double that number for the year in which it is implemented. We have about 8 individuals that will be entitled to substantial checks and they will see their benefit checks go from \$40.00 to \$50.00 to as much as \$400.00. So, I think we need to take a look at all aspects of what we are doing with Emergency Services.

Conversation ensued.

MUNISTAT – CONTRACT RENEWAL

Mr. Griffin introduced the following **Resolution Professional Services Contract with Munistat Services Inc. for Municipal Finance Advisory Services:**

R-0315-07

WHEREAS, in connection with its efforts to obtain professional advice concerning the planning and implementation of capital financing for the Town of Patterson, the Town Comptroller has received a proposed Municipal Advisory Services Agreement (the "Agreement") from Munistat Services Inc. of Port Jefferson Station, New York (the "Agency"), a copy of which is annexed hereto and hereby made a part hereof; and

WHEREAS, the Town Comptroller has recommended that the Town retain the Agency relating to professional municipal finance advisory services; and

WHEREAS, professional services contracts under \$20,000 are not subject to competitive bidding pursuant to the Town's Procurement Policy, and the Agreement sets forth fees for the Agency's professional services that are under \$20,000; and

WHEREAS, the Town Board desires to retain the services of the Agency in accordance with the terms set forth in the attached Agreement;

NOW, THEREFORE, BE IT RESOLVED, that the Town Board of the Town of Patterson hereby accepts the terms set forth in the Agreement annexed hereto; and

BE IT FURTHER RESOLVED, that the Town Board of the Town of Patterson hereby authorizes and directs the Supervisor to execute the Agreement and any and all documents

necessary to give effect to this resolution, consistent with the terms hereof and in such form as is satisfactory to the Town Supervisor and the Town Attorney.

Seconded by Mr. Cook. All In Favor: Aye. Carried.

Mr. Griffin made a **motion** to add one item to his agenda.

Seconded by Mr. Cook. All In Favor: Aye. Carried.

PUTNAM COUNTY REAL PROPERTY TAX SERVICES CONTRACT

Mr. Griffin introduced the following **Resolution Approving Putnam County Real Property Tax Service Contract for Calendar Year 2015:**

R-0315-08

WHEREAS, the Town of Patterson has received from the Director of Real Property Tax Services of the County of Putnam an agreement entitled "Putnam County Real Property Tax Service Contract" in the form annexed hereto (the "Contract") whereby the County proposes to provide real property tax-related services to the Town for the 2015 calendar year as described in the Contract; and

WHEREAS, the Town Board of the Town of Patterson has determined that the Contract is in the best interests of the Town and desires to enter into the Contract;

NOW, THEREFORE, BE IT RESOLVED, that the Town Board of the Town of Patterson hereby approves the Contract with the County of Putnam in the form annexed hereto; and

BE IT FURTHER RESOLVED, that the Town Board of the Town of Patterson hereby authorizes and directs the Supervisor to execute the attached Contract and any and all other documents necessary to give effect to this resolution.

Seconded by Mr. Cook. All In Favor: Aye. Carried.

OTHER BUSINESS

Mr. Griffin stated Don do you want to talk about the Release and Waiver of Liability.

Mr. Rossi stated it is a release for persons who volunteer and covers both volunteer, him or herself and if under the age of 18 appropriate indications of the guardian of parent to confirm that the volunteer is basically serving at their own risk and they agreed to release and waive any claim other than those related to gross negligence or bad faith on the part of the Town. It's a form our office has reviewed and revised.

Mr. Griffin made a **motion** to approve the Release and Waiver of Liability.

Seconded by Mr. Cook. All In Favor: Aye. Carried.

PUBLIC RECOGNITION

Mr. Griffin stated I bet Joe is going to raise his hand and ask why the All Boards Meeting wasn't taped. I spoke to the videographer and he said it would be almost impossible to make an audio out of it based on the way we had the microphones configured. If we do another one, we will have to move it to a different location. Paul seems to think he can rustle up about eight microphones. I think we have the same amount, so that would mean everyone would get a microphone.

Ms. Dede Lifgren stated you've seen me before, but I must once again petition the Town to take some action about the BBQ place in Putnam Lake. I would like to review our personal situation one more time. We bought our home in the 1980's in a residential district with residents all around. After we moved in, the Town inappropriately approved a home behind our house to be used as a restaurant, even though it was in a residential district. This was an 816 square foot house on a small piece of property, less than a third of what is required now. The approval was a mistake and was done without any public notification, without a public hearing and without

knowledge of adjoining property owners. No site plan or building permits were even required. When we found out after the fact, we were told nothing could be done when the restaurant suddenly appeared. To make matters worse, years later, a line redrawn on an updated zoning map placed this property within a general business district. Although also a mistake, it nevertheless gave the property sudden rights as a general business entity, instead of a residential one it was in. Without any approvals, without any Town notice, without any adjoining property notices to adjoin property owners, we suddenly boarded a business district. Jump to today, these mistakes have led to the worst kind of scenario for us. Last year, the building was rented and the Town allowed an established BBQ caterer to open up a business that smokes and processes meat 24 hours a day, fifty feet (50) from our home. To be clear, we never would have bought a home behind the restaurant. The Town just took our residential boundary away. That is bad enough, but we never would have imagined that the restaurant would be allowed to smoke meat all day and all night. We work from home too, so literally we can't get away from it. I can really tell you, this redefines peaceful enjoyment of one's property. The Town has created this whole problem for us and now the Town refuses to fix it or act in any way to help. Let me review our request. We first asked the Town to help mitigate the smoke, noise and the odor coming from the new restaurant. The Town said it did not have the authority under the code to help relieve any of the impacts. We asked that the smoking, the utility fan and compressors be stopped during the night time hours for some peace and quiet. The Town said no, it could not stop a restaurant from operating all night long. We then asked the catering business operating out of the restaurant to stop. Catering is, after all, restricted in the district all together. Clearly promoted on their website, the quantities being cooked for fairs and other events, produce more smoke, more smell, more activities than this little restaurant with only four tables could possibly produce. The Code Enforcement said, catering is accessory normal restaurant activity there. Despite the fact, it's volume out numbers restaurant activity and requires extra cooking through the night. How can the catering be part of a restaurant activity, if the restaurant is closed all winter long. Is it normal for restaurant activity to close down on summer weekends to sell food at offsite locations instead. If I could read the current Town code definition of restaurants, it says; a building or portion thereof, where food and beverages are sold for consumption to customers seated within the building. A building or portion thereof, with the main portion of food and beverages are sold to patrons at drive-in windows or stand-up counters, shall not be considered a restaurant. With all due respect, it's business can't even qualify as a restaurant under the Town code. All the take-out and catering, disqualifies it. How can the Town be consistently using this reason for taking no action. It is defined under the code as a fast food establishment, because it sells food from a limited menu of specialized items, the food is preprocessed, it's all served out of disposable containers, all sales are conducted at a stand-up counter, all food is served from its stand-up counter. As it happens, both fast food and catering are not permitted in this general business district. Patterson Code Enforcement refuses to acknowledge that any violations exist, either under the definition of restaurant, fast food, catering service or restricted activities within the district. I just want my family to enjoy our property like all of you do. We do not want to live and breathe BBQ for the rest of our lives on our own property. This isn't right. I would please appreciate if the Town Board considered for request, which I will email to you. I would like the Town Board to consider redrawing the zoning line to reflect the original residential boundary, as it was supposed to be. Maybe it is too late to rescind restaurant use, but at least the Town would be forced to recognize that people actually live with the consequence of this thing so close. I request that the Town Board take action to rectify the situation it caused. BBQ should never have been allowed so close to anyone's home and let alone near a residential district. They have been turned away everywhere else in Patterson. It is wrong that this is here and I think you are all aware of that. If the Town Board is telling us this mistake has to stay, that the impacts and use are allowed, because it is a BBQ restaurant, then the Town Board should make it comply as a restaurant. The Town is now permitting it to operate as a fast food and catering business, which are not allowed. Knowing these activities are causing more impacts for our residents, I request that the Town Board direct the Code Officer to enforce compliance. Lastly, I have submitted multiple Freedom of Information requests, maybe a half a dozen or so since August, to access Building Department records. I have been denied copies. I would like the Town Board to direct the Building Department to release these files.

Mr. Griffin stated it just so happens that our newly minted Director of Codes is here.

Mr. Robert McCarthy, Building Inspector stated a lot of these issues, obviously came before July. I inherited this.

Mr. Griffin stated understood.

Mr. McCarthy stated I feel the problem is we have a restaurant there. It has four tables, seating capacity for sixteen to twenty. Is it a restaurant; yes. Does it have take-out; yes. You said they do catering, that is why it is in front of you, so you can do something about catering and take-out and redefine restaurants. If I go after Triple B, do I stop there. Do I go after Sauro's, the Carriage House, they all do take-out and catering. This is the situation I am in. If I go after Triple B, I have to go after every restaurant in this Town. Do I go around and shut every restaurant down in this Town. Also, whatever boundaries there were, about a compressor and everything else, yes; there is a slight hum, I do hear it. It is behind a business district. Do I find it above 45 decibels; no, but it is not in my back yard. I understand the 24/7. Anything that is 24/7, I am going to feel it is obnoxious. That is my decision. I have been out there a number of times and unfortunately, I don't smell it, but I don't live there. The biggest thing is, where are we going to go with the catering and take-out. What do you want me to do.

Mr. Burns stated Don, you can't comment.

Mr. McCarthy stated Don and Hogan and Rossi have to recuse themselves.

Mr. Burns stated Dede, I think we are all sympathetic to the situation. I think Bob has done everything but stand on his head. My sense from hearing Rich talk about the case, is that I don't know that the Town acted improperly, it's being a Monday morning quarterback and looking back at the situation, maybe there were better ways that could have been approached. I don't know if there was anything unlawful or improper as to what the Town did.

Ms. Lifgren stated the definition under restaurant is clearly saying that it should be consumed inside. There is no way that the cooking is supplying four measly tables.

Mr. McCarthy stated you're right, it is a restaurant.

Ms. Lifgren stated also, the fact that it is serving everything out of a counter. It says it will not be considered a restaurant if it has stand-up counters.

Mr. Burns stated we have gone through these issues almost every meeting you have come to. You have every right to do that, but at the end of the day if the Town acted improperly, there are two legal remedies that you have. You can file a petition seeking to reverse the finding of the Town. If the Town acted improperly, you could bring a petition to vacate some action we took, if we acted unlawfully. I don't think that will go anywhere, but you should speak with an attorney about it if you really feel that the Town of Patterson acted unlawfully in granting a CO to this restaurant. You certainly have legal remedy. We don't think looking at the code that there is something we can undo at this point. The second legal remedy you have, I know I mentioned to you a few months ago, is an action to quite a nuisance. That is an action by someone who can bring a private citizen who is grieved by the actions of the neighbor.

Ms. Lifgren stated I'm still not understanding how these are allowed. If the amount of catering and take-out exceeds the business of a restaurant, how can you allow it to go on.

Mr. Burns stated the Monday morning quarterback aspect of this is looking back at how we reviewed that application. There wasn't very clear definitions in our zoning and I think it went within the definitions we had at the time.

Ms. Lifgren stated that would mean every caterer or take-out place could put in one table and by this definition.....

Mr. Burns stated from what I heard, I don't know if there is anything more that we can do.

Ms. Lifgren stated so they are allowed to close down and take their food and sell off-site. They are allowed to close down all winter and continue catering during the winter, even though the restaurant is closed.

Mr. McCarthy stated according to Bob, I did speak to him after the email we received, he didn't open up. I asked him if he opened up and do you do catering and offsite carry out, he told me no.

Mr. Burns stated the only other thing I can suggest to the Town Board for consideration is since our Town Counsel is recused, we can certainly retain Special Counsel to look at the situation if we feel that is something we would like another person to look at this.

Mr. Rogan stated I was going to ask a general question of Counsel, unrelated to this facility. Since we are looking at the definitions, as we speak, for catering for restaurants, when those definitions are created and amended within our code, does that change the application of the code to existing and future facilities.

Mr. Rossi stated as far as the authority to amend the code and have some type of amortization effect or an ability to zone out existing uses, I believe there is some authority for that, but it is a very stringent test for the Town Board to meet. An example, I know off the top of my head, if a zoning code is adopted in a junk yard, for example, what is now become a residential neighborhood, there are local codes that have been upheld that said once this goes into effect the use can continue for a certain period of time geared to ensuring some reasonable return on investment, hence the term amortizing of the use. Whether this rises to that level and is all a matter for the Boards to consider. Again, I am sympathetic to Dede's situation, but I know the operator.

Mr. Griffin stated I think Kevin's suggestion of the possibility of Special Counsel is probably a good suggestion, at this point. If catering and fast food is ancillary to the restaurant business, and this restaurant is closed down, then the catering is the principle business and it's not allowed. Seems pretty cut and dry to me. If the restaurant is closed and all he is doing is catering, then you have no reason not to shut him down.

Mr. McCarthy stated I spoke to the guy and he claims he didn't.

Mr. Griffin stated if the sign on the door says closed for the winter and he is still smoking away.....

Ms. Lifgren stated his employees work upstairs. They don't have to open to do this.

Mr. Griffin stated I understand that, but catering is an ancillary use as opposed to the principle use and the restaurant is closed and this has become the principle use, it is not permitted.

Ms. Lifgren stated what about the definition that says, "stand-up counters shall not be considered a restaurant" and they serve from stand-up counters.

Mr. Griffin stated so does Kentucky Fried Chicken and McDonalds etc., the bottom line here is if the restaurant is closed for the winter and they are doing all this cooking on site, he is not serving the food on site, obviously he is catering. Catering is not a permitted principle use. There is no reason you can't go out there and tell him to stop.

Mr. McCarthy stated I go by there once a week, if not more and I never see it open.

Ms. Lifgren stated you are not going to see anything. They are cooking....

Mr. McCarthy stated how do you expect me.....if I don't see anything what am I going to do.

Ms. Lifgren stated I'm saying, you are not going to see them opening. They don't open, they just make the food and take it away.

Mr. Rogan stated if there is smoke coming out of the chimney, Bob, and it says closed for the winter, clear, right.

Mr. McCarthy stated yes. Did I see smoke coming out of there, no.

Mr. Rogan stated to get to your point about other facilities, I think that is a more complex issue we have to look at. Every deli, by nature of the definition of deli, and that is probably what we should look at, is classifying restaurants/deli's, because every deli out there is a take-out style business. That is inherent to the approve of a deli and I think we need to look at that. If that style business isn't going to work where it's being proposed, we need the flexibility within our code. By getting you to enforce the catering aspect, as Mike just described, is not a direction then to go and apply the same philosophy or logic for every deli in Town. Also, in this case we

do have active complaints. There is an implication that there is a public health concern, noise concern and a quality of life concern. We haven't had those issues lodged against other active deli type businesses.

Ms. Lifgren stated the last time I was here, there was discussion about the amount of catering and take-out compared to what is being eaten inside the building. I think that alone is not even being looked into.

Mr. McCarthy stated how can I do that.

Ms. Lifgren stated I bet if you sat there in your truck and watched people eat versus take things out and watched the catering go out, visually it would be very easy.

Mr. Rogan stated catering is different than take-out.

Ms. Lifgren stated they are not eating at the tables. The amount of meals being served at the tables is minuscule. It is really a take-out place. They are a caterer and they are catering and bringing meals by the tray fulls. I cannot believe that our property has to live breathing this and smelling it every single day. There has to be a way.

Mr. Burns stated we do have a remedy. I gave you two. You can sue the Town, you can sue the other entity.

Mr. Lifgren stated thank you, Kevin.

Mr. Burns stated you are throwing up your arms saying there is nothing you can do. There are two things you can do, you don't want to do them. You want us to do something.

Ms. Lifgren stated yes, I do. I want the Town to do something.

Mr. Burns stated we are trying to do something. The times you came up here and presented your case, and I'm sympatric to the situation, I haven't seen an obvious move for the Town. Am I alone on this. I don't think anyone here has said, why don't we do, we need to do A, B, and C and this is going to be fixed.

Ms. Lifgren stated so far the amount of sales or the amount of food being served has never been quantified. That you haven't done. You haven't shown me and since I'm coming to you saying that the amount of catering and take-out far exceed the restaurant, which is what it is supposed to be.

Mr. Burns stated as a Town, we are not going to put the Building Inspector out in front of Sauro's and every Italian restaurant and deli in Town to measure take-out versus who is eating in.

Ms. Lifgren stated so you are not going to enforce the code.

Mr. Burns stated I'm not saying we are not. We have been trying to enforce the code, there is only so many limited resources. He has been out there and it's not as if we just said we are not going to do anything about it, we tried. You can set up a surveillance camera. You can't come before us and say you are helpless.

Ms. Lifgren stated I'm not saying I'm helpless, I'm saying I want you to help me more than you are doing.

Mr. Burns stated I think we tried.

Ms. Lifgren stated so, the last time I was here, I did ask you to look into the amount of catering and take-out and you did say that you would look into it. Are you saying you cannot do that.

Mr. Rogan stated that is a difficult thing to quantify. I'm not sure how we would do that short of the owner being very honest with what their production is versus what they sell on site. One thing, Bob, I think we can do is speak to the owner. If he is advertising on his website for catering, that is within his right, but what is not within his right is to do the catering out of this facility. Unless he can identify to you another permitted facility in some other County, because

he doesn't have another one here in Putnam, then somehow or another unless he has a mobile operation or going to people's houses, because catering allows that. Catering allows for him to take his mobile operation that he is permitted to have, let's say a BBQ truck, and go to someone's backyard and do a pig roast, supported by the restaurant, but not cooked on site. Let's make that distinction. That is perfectly acceptable.

Ms. Lifgren stated I think Bob told me he was doing this at home.

Mr. McCarthy stated yes, in White Plains.

Ms. Lifgren stated I went to North Salem and they said, "first of all he is not allowed to do that" and they did not find any evidence that he was cooking there.

Mr. Rogan stated he is permitted to have a catering operation via this mobile vehicle by Putnam County and we wouldn't have any problem with that, because we don't have any jurisdiction over that. The big issue is, if he is doing this, he either has to be doing it out of the mobile permitted vehicle, or doing it out of another permitted commissary, if you will. Some place that he has approval to go and prepare foods at a location other than Putnam Lake and he hasn't proven that. That is a conversation you can simply have with this gentlemen. I agree with you, that if he has doing catering and we can prove that and it's not permitted on site then we have to take an action on that. We tell him it's a violation if you are doing this sort of operation. Take-out is different than catering. If someone walks in to use the counter, that's not the idea, I believe, that was intended in the code. That is more like a Red Rooster or a walk up type of operation.

Ms. Lifgren stated but it is in the restaurant.....

Mr. Rogan stated I think the essence of what is intended that every business does take-out and delivery. Those definitions do not create catering. You are talking about two separate things. I'm not disagreeing with you on the catering aspect. If Sauro's wants to deliver a pizza to someone's house and drop it off at their front door, that is not catering, it's delivery.

Ms. Lifgren stated if this was really a restaurant and people were eating at four tables, I don't think we would be having this discussion. The amount of fast food and catering going out of there is cooking all night long and that wouldn't have to happen. How are we leaving this. At least you will look into the catering.

Mr. McCarthy stated I will wait for the Board to tell me.

Mr. Griffin stated I think your instructions were very clear from Shawn. You are to speak to the gentlemen that owns the restaurant.

Mr. McCarthy stated which I did.

Mr. Griffin stated if he tells you he is cooking and serving food out of there while the sign says closed, then I think you are well within your authority to close it down.

Mr. McCarthy stated I spoke to him after the last email we received. It was open for a special event and he claims he did not open.

Mr. Rogan stated no, you are missing the conversation. After today, go there tomorrow or the next day and meet with him. Pull up his website and if he is advertising for catering right now and if I can call him on the phone right now and say, "I would like you to cater my sons party" and they say, "yes" and you ask, "where are you doing this", and if he says, "at the restaurant", you tell him it is not an appropriate use of this site. That is not what this site is supposed to be used for. If he can cook it on his mobile truck, that is a whole different scenario.

Mr. McCarthy stated he is claiming he is catering out of Fairfield Drive.

Mr. Griffin stated we have the picture really clear.

Mr. Rogan stated the second half is our definitions, which we are working on.

Mr. Griffin stated it's the same thing with a burning permit. If you have a burning permit and your neighbor complains, you have to stop burning. End of story. No one is complaining about other restaurants, someone is complaining about this place. If someone was BBQing next to my house 24/7, I would be here doing the same thing. I will have an internal discussion with Bob. We will invite Bob into our Executive Session to discuss this a little further. If decided that Special Counsel would be appropriate, we will come out and move to hire Special Counsel.

Ms. Lifgren stated I appreciate it. Thank you.

Mr. McCarthy stated I would like to say thank you very much for this appointment. This is a job that is something I didn't expect. I was in the building trade for 30 years and built a lot of things and made a lot of people happy. I can't make everyone happy here, but I try. I work for the Town, but I also work for the residents, too.

Mr. Rogan stated we just ask you to be fair.

Mr. McCarthy stated I try to be fair.

Ms. Lifgren stated can I ask one more question. Can I get the file of the FOIL request I requested.

Ms. Cheryl Smith, Building Department Secretary stated I have been advised by Counsel to run everything past them first and to my understanding, everything was going to be referred from Hogan and Rossi to a Special Prosecutor.

Mr. Griffin stated as far as your records are concerned, we won't use Prosecutor as the term, but Special Counsel may be it. I will consult with Special Counsel tomorrow and I will get an answer for you forthwith.

Ms. Smith stated that would be good. I was told that there are things in the files that are not privy to the public and before I give things under a FOIL.....

Mr. Griffin stated you really never met Bob Freidman, have you.

Ms. Smith stated no.

Mr. Griffin stated for many years he was in charge of the Freedom of Information for the State of New York and there was no such thing as far as Bob was concerned.

Ms. Smith stated then Bob and I would have an argument, because there are things that are not privy to the public.

Mr. Griffin stated I will get an answer for you as to what can and can't be released.

Ms. Lifgren stated I did speak directly to Executive Director, Bob Friedman specifically about this. He did say you have some discretion, but in this case, since the Counsel was used for creating policy and letters went out to that effect, it is public record.

Mr. Griffin stated thank you.

Mr. Rich Williams stated I'm very concerned about what I just heard here. Don, did you actually suggest that on a FOIL request that was made back in August that we not release the records.

Mr. Don Rossi stated Rich, I have to say, number one I think we can give a general request. I don't recall personally having said we can't release it. We have acknowledged from the beginning of discussions on this matter the conflict that I have. So that everyone knows, Bob Soto, who is the owner of this place, is a neighbor of mine. We have not opined on any matter related to this. I don't recall the exact communication, but I don't think we would have said, "don't release anything". We never inspected the file, we never made a determination on the specifics of it and quite frankly, I think we can give Cheryl and Bob a generic rubric of what is and what might not be discoverable and disclosable.

Mr. Williams stated are there items in our files that should not be disclosed. From my office, we go on the principle that everything within our files are open to the public. We are here to serve the public and the public should be able to come in, whenever, anytime and open those files up and see what is going on. I'm very concerned when we start talking about withholding records from the public. I think it is not appropriate.

Mr. Rogan stated Rich, there isn't personal information that you redact from records when you send out FOIL's.

Mr. Williams stated there are certain requirements within Public Officers Law. That section which things are not subject to disclosure. Generally, in our records, in Building Department records, we are not going to have that, it is going to be more in personnel records, like social security records.

Mr. McCarthy stated it was actually Mike Liguori who said we wanted to refrain from holding some stuff back and we are waiting on Special Counsel.

Mr. Griffin stated I will follow up with the Attorney.

EXECUTIVE SESSION PERSONNEL

There being no further business, Mr. Burns made a **motion** to go into Executive Session at 8:15 p.m.

Seconded by Mr. Cook. All In Favor: Aye. Carried.

Mr. Burns made a **motion** to close Executive Session at 8:50 p.m.

Seconded by Mr. Cook. All In Favor: Aye. Carried.

Mr. Griffin called the meeting back to order at 8:50 p.m.

ADJOURNMENT

There being no further business, Mr. Rogan made a **motion** to adjourn the Town Board meeting at 8:50 p.m.

Seconded by Mr. Burns. All in favor: Aye. Carried.

Respectfully Submitted,

Antoinette Kopeck, Town Clerk