

**TOWN OF PATTERSON
ZONING BOARD OF APPEALS
March 22, 2010**

AGENDA & MINUTES

**Winding Glades, LLC – Interpretation of Club
*Special Meeting***

PLANNING DEPARTMENT

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**TOWN OF PATTERSON
PLANNING & ZONING OFFICE**

**ZONING BOARD OF
APPEALS**

Howard Buzzutto, Chairman
Mary Bodor, Vice Chairwoman
Marianne Burdick
Lars Olenius
Gerald Herbst

PLANNING BOARD

Shawn Rogan, Chairman
Charles Cook, Vice Chairman
Michael Montesano
Maria DiSalvo
Thomas E. McNulty

**Zoning Board of Appeals
March 22, 2010 Meeting Minutes
Held at the Patterson Recreation Center
65 Front Street
Patterson, NY 12563**

Present were: Chairman Howard Buzzutto, Board Member Mary Bodor, Board Member Marianne Burdick, Board Member Gerald Herbst, Board Member Lars Olenius, Carl Lodes, Attorney with Town Attorney’s Office Curtiss & Leibell and Rich Williams, Town Planner.

Chairman Buzzutto called the meeting to order at 7:04 p.m.

Chairman Buzzutto led the salute to the flag.

There were approximately 35 members of the audience.

Sarah Wagar was the secretary for this meeting and transcribed the following minutes.

Chairman Buzzutto stated Sarah [referring to The Secretary doing the roll call].

Roll Call:

Board Member Bodor	-	here
Board Member Burdick	-	here
Board Member Olenius	-	here
Board Member Herbst	-	here
Chairman Buzzutto	-	here

1) WINDING GLADES CASE #01-10

Mr. Michael Zarin, Zarin & Steinmetz, was present.

The Secretary read the following legal notice:

NOTICE IS HEREBY GIVEN BY THE TOWN OF PATTERSON BOARD OF APPEALS of a public meeting to be held on Monday, March 22, 2010 at 7:00 p.m. at the Patterson Recreation Center, 65 Front Street, Patterson, Putnam County, New York to consider the following application:

Winding Glades, LLC Case #01-10 – Interpretation; Held over from the January 20, 2010 meeting

Applicant is requesting an interpretation of §154-95 of the Patterson Town Code; Clubs. The Applicant is looking for an interpretation that their proposal qualifies as a club. The Applicant is proposing to develop a non-profit club, which would operate a rally car research and development facility. The Racing Club would consist of three structures: a 25,000 square foot garage, a 6.42 acre parking lot and vehicle testing skidpad, and an approximately one-mile long dirt track with several “connector” paths within its diameter. This property is located along Route 22 (C-1 Zoning District).

Chairman Buzzutto stated the applicants for the Winding Glades is here.

Mr. Michael Zarin stated yes.

Chairman Buzzutto stated you want to come up.

Mr. Zarin stated good evening.

Chairman Buzzutto stated good evening.

Mr. Zarin stated Mr. Chairman, members. I appreciate the opportunity to speak tonight. My name is Michael Zarin, and as you know, I am with the law firm Zarin and Steinmetz, on behalf of Winding Glades, LLC, the owner of the property formerly known as Patterson Corporate Park. I guess, I just would ask that you bear with me. I wanted to go through a number of the issues that I guess were raised by these proceedings. In fact, we had an opportunity, very briefly, to see today a copy of Zoning interpretation prepared by Curtiss & Leibell to the Board dated, or received, March 22, 2010. I'd also like to comment on that. I've been involved in zoning and land use for a long time, both on your side of the table and as representing the applicant. As you might know, our firm represents numerous municipalities as special land use counsel, and I've been on the other side of the table with respect to representing zoning board of appeals with respect to interpretations. I guess there's a couple of principles that have always at least guided me when I've made recommendations to my particular boards. In fact, I think are applicable to all land use applications. And it's these types of issues, interpretations, somewhat where rubber hits the road. And those principles are expectations of the public, of the applicant, of the landowner when they come to this Board. I mean, what are fair and reasonable expectations. In fact, those terms are used by the United States Supreme Court in one of the more recent seminal land use cases on takings. What is a legitimate, reasonable expectation that a landowner should have when they seek to use their property. And that's typically guided by the zoning, what they are noticed, or what they are told about the property, and alike. I think another fundamental principle is fairness. I know these are all sort of motherhood apple pie, but I think are particularly applicable here. Is their application being prejudged. Have they had an opportunity to put forward the facts on their application before that application is ruled upon either directly or indirectly. Have they been targeted. Have their properties been targeted in connection with a particular use. Again, I think a principle that has a significant amount of applicability. Due process; Fundamental due process. Have they had an opportunity to make their case on their purported use. The determinations

that are being made by particular governmental agencies, the rationale being put forward. Are they being explained in writing. Does the...Is the landowner on notice why certain decisions are being made and what basis they're being made. And if they happen to make certain presentations as to why they believe a certain fact or a certain legal or other principle, if that's being rejected, why and on what basis. And that, I would submit, is a fundamental due process. And then I guess, at the end of the day, just the basic honesty or integrity of the process. And I'm not talking about the honesty, integrity of any of you sitting here personally, because I don't question that for a second. I know that this is a thankless job. You do it because of your attachment and care about the community. You don't put in these types of hours and have to listen to people like me because you like it and you have nothing else to do this evening. You do it because you want to preserve the community, the quality of life of the residents of the community, and you want to do it in a fair and honest way. And with that comes, I think, the flipside; Are there other things going on, if you might. Are there other motivations at work. Are there other agendas at play. And while not necessarily influencing your particular decision in tonight as we sit, but in the greater context. And I would submit to you, as respectfully as I can, and as humbly as I can, that when you look at the full record of this matter of our application to make a certain use of this property, that many of these principles are being compromised in certain respects. And we do something in our business; we call it the statement of facts. And we sort of...We try to pull all the facts together in a particular application or (inaudible) proceeding, and we tell the story. And many times when you look at each of those facts in isolation, they don't tell the story. They tell the story of some very committed people trying to do their job and good faith and the best way they can. But when you start to begin to look at the facts of all...the whole story, with all the different actors and players and all the intangibles that are going on, that statement of facts looks a little different. And it begins to tell somewhat of a different story. And I think when you look at the facts that had proceeded in a part of the context, again, I would submit to you that these principles leave something in question as to the process. Again, not in anyway am I saying that your application may not have impacts. And I am not saying in any way that any of the legitimate...any of the concerns here about potential noise or impacts on the people...on the homeowners and landowners quality of life are not legitimate. Because frankly, if I was living next to any type of use like this, I might be here, too, and I might be wanting the facts. And I might be wanting to ensure that that use is not going to otherwise destroy my quality of life and affect my property values or violate my day-to-day expectations and why I moved and why I brought my children up in a certain area. So, I no way am questioning those. And I would submit to you that the process was in place to answer those questions. Both within your duly adopted regulations and rules, where we would have to come before you for a special use permit. And in the same respect, going before the Planning Board. And instead of arguing about interpretations of club, we would be here today fully explaining all the facts of our proposal, presenting you with real, verifiable data about noise, about visual, about all the issues the people here are concerned about. And you would have experts questioning our data, evaluating our data, and telling us whether we meet your criteria and really whether we would violate or whether we would be approvable under your rules and regulations. And the people here would all get a chance to comment on that data. We would have to public hearings on that information, between both you and the Planning Board, and people would have real, hard data to react to, instead of blogs, instead of people's videos saying oh, this is what it's all going to be about. And all the other information that has been circulating the community while we have been unable to proceed and be able to make the type of presentations that a landowner, I would submit to you, has a right to. So when you look at the history of this, how does it start. It starts in January...or before January. But January 2010, while our interpretation is pending, Rich Williams, and who again no way demeaning him because I think he's doing his job the way he deems most appropriate, introduces amendments, quote "In response to concerns about Winding Glades application". Those are the amendments that are made now, proposed amendments, to the Town Board. And at the 2-23 Planning Board work session, Rich again admits that applicable case law requires, quote "a broad interpretation (inaudible) of the term club." And thus, rezoning was initiated in response to the acknowledgement of our application. In fact, if I can quote for you the minutes. These are the verbatim

minutes. Rich Williams stated that they met...I guess Winding Glades. The statutory definition of club is defined by a variety of court decisions. We've taken a look at them and realized there are some ambiguities within our Code. There. The way our Code addresses clubs, it leaves it open to broad interpretation. And that interpretation currently is before the Planning Board. And nowhere in any of the letters, or at least within the opinion that I saw rendered by Curtiss & Leibell, did I see any discussion of the accepted law, which is undisputed, that any ambiguity, any broad interpretation of the term club, must be interpreted in favor of the landowner. And in fact, the case Willow Woods was exactly that; where there was some interpretation, and that interpretation was favored, with respect to club, in favor of the landowner. That doesn't mean that, you know, the Town Board for whatever reason, wants to go and look at their comprehensive plan and decide to address the comprehensive plan and address some of those issues. But if there is a broad interpretation, or there is an ambiguity, it's undisputed legal, and that's not covered at all in your attorney's opinion to you because frankly, you can't. I mean, it's an unqualified and well documented and well established principle of law. Then, as we mentioned, that occurred. And then all of the sudden, there are several (inaudible) of zoning amendment, proposed to, quote-on-quote, "clarify the meaning of club", and then submitted to the Town Board. So, supposedly, there's no ambiguity, or there may not be an ambiguity, or that there may be...that this must be interpreted...So now, all the sudden, the Town Board is looking at different zonings to clarify the meaning of club while this Board is in the process of rendering an interpretation of it. And one would think if the Town Board was honest with process, they would wait till you render your opinion before they start amending or needing to, quote-on-quote, "clarify". And if it needs to be clarified, then what does it need to be clarified from. A different opinion. A different interpretation. Then the Town Board realizing, well, maybe we're ahead of ourselves. They refer it to the Planning Board for their discussion and interpretation. And the Planning Board receives...appoints a committee of two individuals to, I think, correctly look at the comprehensive plan and come back and report to the Zoning Board...to the Planning Board. The night before the Planning Board meeting, I called various members of the Town to say, is this going to be on the agenda tomorrow because I haven't seen any document from the committee. I haven't had any public hearings from the committee. I haven't seen any reports from this committee. I'm not aware of what their view is of the comprehensive plan and alike. And I was told no, we also, the Planning Board, haven't seen anything so don't worry, you don't have to come to this meeting. Low and behold, there's a meeting, and the two members make a presentation to the Planning Board saying we don't think it's consistent with the comprehensive plan. The existing zoning term...interpretation of the term club. And we recommend that the Town Board take a look at that and determine whether to amend it. Well, a resolution is voted upon. There's no resolution on the table. And the next day, a memo is sent to the Town Board: To Town Board, From Planning Board. And I happen to know...And authored by...and I happen to know that that memo went out, and nobody from the Town Board had seen that memo. And that memo declared: we found that it's not consist. We found, quote-on-quote, "With the comprehensive plan. And we think there should be a moratorium for all new and pending applications." And in fact I was told that that wasn't, and I looked at the minutes, that wasn't what they, quote-on-quote, found. But nobody from the Planning Board had even seen that memo when it went to the Town Board. So, then March 8th...So all during this time, we are not permitted to go back the Planning Board to make the presentation on our application. We have to essentially sit back for the last three or four months while the discussion of our application, which is all the zoning is targeted at, is done in these types of meetings, the blog, brochures, leaflets, zoning interpretations, resolutions that people don't see. That's, with all due respect, in our opinion, respectfully, not the way that land use policy should be debated. And not...certainly not the way an applicant, a landowner, who has a reasonable expectations under your terms club to come in here and at least get a fair hearing on their application, as written. Then as before, we said, then we see the March 22nd memo that came out. The March 22nd memo has no legal basis in it. No supporting basis for any of the contentions in it. Doesn't address our memo at all. We took the time to prepare what we thought was a lengthy and factual 12 page memo, citing to other zoning all around the county. Interpretation on club. All the applicable legal principles. Many of the issues that I've

just raised. The only reference to it in the half a page memo to this Board: is we've read it, we disagree with it. Now, I would submit to you that that could not pass the most fundamental muster...legal muster. There must be a record. There must be something for us to under...Both on a legal but also just, I think, an (inaudible) moral basis. What did we say that you disagree with. Why did you disagree with it. I mean, we try to purposely in our memo, not be poetic, not throw out adjectives, not get personal, not just rant and rave and get hysterical. We tried to really take the time to recognize what people were trying to do in good faith legitimately, and show why it was not the correct interpretation, and why Rich Williams was frankly wrong. Including in his initial interpretation he didn't even cite to the number one appellate case, Willow Wood, on the matter. And nowhere in this half a page memo is there even any discussion on (inaudible) except we agree with Rich William's memo. At least, on the record in public, you may know things that we don't, but what was published in your half a page memo is what becomes the, quote-on-quote, administrative record. And again, nowhere does it refute any of the points we made. Nowhere does it refute that if a statute is unambiguous on its face, then the ZBA need to look no further. But if is ambiguous, it must be interpreted in our favor. Nothing...Nowhere does it dispute the proposition in Willow Wood that a broad in...That there must be, by law, a broad interpretation of the term club unless there's specific limiting language in the reso...in the statute. And to this, I don't see...I mean, we didn't see any limiting language except you had to be a nonprofit, of which we will be. We will not try to operate this under any other scenario. But that's the only limiting...That's the only limiting language. The...It's clear...I mean it was almost the exact same situation in Willow Wood that's occurred here. It did not address our points of view that said that we didn't believe that the interpretation that's been given by Mr. William's was consistent with the comprehensive plan. No discussion of the comprehensive plan in the opinion from Curtiss & Leibell. In fact, again, we stated in our letter, we could operate, the landowner, as of right, an active indoor and outdoor for-profit recreational facility, on this property. That's under the zoning permitted. And it supports the comprehensive plan which provides to promote the development of new opportunities for recreational activities, while at the same time increasing the Town's tax base. So, Mr. William's interpretation was he didn't think that the term club permitted anything but fraternal, indoor membership, and if you were going to do anything outdoors, you couldn't do anything that would disturb the property. That was his interpretation of club, and he thought that was consistent with the comprehensive plan. Well, under the comprehensive plan, if we charge admission for what we're proposing, and we call ourselves a for-profit, which I know the memo addressed, than there's unquestionably we would be permitted under the comprehensive plan. So, if the comprehensive plan was to govern uses and impacts, how can what we're doing...or proposing, which would be so far less impactful than what would be permitted, unquestionably permitted, how can that be inconsistent with the comprehensive plan. And again, nowhere was it addressed. In fact, the memo refers to...In his memo, "We have considered the comments of the Town Planner as the draftsman of section 154-95." And we submitted about two pages of good legal authority why the views of the draftsman is not applicable. Where there's no contemporaneous record. Where there's no legislative record, because the draftsman...You can't have somebody who drafts something and then 10 years later says, this is what I meant. Unless there's a legislative record, minutes at the time it was drafted, minutes from the legislators who adopted it and alike. The law's clear that that's not a factor that can be taken into consideration. And that was one of the critical factors that was cited in here. Again, no reference is made to any of the cases that we've cited, or any of the principle law or alike. The memo finally ends with the very strong conclusion. Sort of, you know, this is it. This is our summary and, you know, with all that said, this is really what this is. That this is, quote "Nothing more and nothing less than a private garage." Well, has anyone looked at the definition of private garage under your Code. Private provides for a portion of a principle building or an accessory building, and it gives some measurements, which is larger, exceeds in size and bulk, the principle dwelling, and does not exceed in height of the principle structure and was just used principally for the storage of motor vehicles, and used exclusively of the occupants of the lot upon which the building is erected. The private garage is clearly directed at a dwelling. And it's clearly directed at traditional, private garages that are associated with

residential dwellings. This is, with all due respect, not a private garage. It's...I mean, you...Again, people might disagree with the impacts and alike, but that's a statement that I think doesn't comport with your own zoning code. Again, you know, I come to these and I obviously feel like, you know, I'm somewhat, a little bit, a hamster on a wheel. I run to you. Then I have to...Then I run to the Planning Board to out the finger there. Then I run to the Zoning...To the Town Board to deal with that. You know, it's just, with all due respect, it's not the way the process was meant. It shouldn't be this concerted effort of all the boards collaborating, in their own way, to ensure that this application never even gets it's fair hearing, and allow it to go forward. And there's, frankly, there's such a degree of, sort of, inconsistencies in the record already that, we would again, respectfully submit and hope that the Zoning Board of Appeals would recognize, like it or not, and again it goes to the Town Board, that under the governing rules of law, we do fit under the term club as written. Maybe it could be clearer. I'm not saying it couldn't be. Maybe when it was drafted it could have been longer and it could have been more elaborate, and maybe it will be. And maybe the comprehensive plan should change and maybe the uses in this site should change. But under the zoning as it exists today, and under the law that exists today, we do have to right to go forward with our application and come before you under your due authority...duly vested authority, and some very broad authority, to look at our application, hear us out, determine whether our impacts and uses comply with the zoning and comply with the general standards in the community, and go forward on that basis. That's, with all due respect, what I believe is the right, fair thing to do in these circumstances. And we'll have an opportunity to address many of the concerns that you'll hear tonight in a fair and honest way, having hard data both before you and before the residents. And I thank you for your indulgence. I know I went on for awhile. It's...We're passionate, and we just feel that the way that this has happened is not the way it should happen. So, I'm willing to entertain any questions now or at a later, after you hear...

Chairman Buzzutto stated well, tonight's basically...It's just for an interpretation of the club, nonprofit. There's no input from the audience particularly tonight. We're just here to address the application that's on the agenda tonight. We're not here to discuss a variances for what's private garage and what is not on the agenda tonight. So, that we should not really address. Do you have things written...Anybody have cell phones on, will you please turn them off, please. Well...Carl...

Carl Lodes stated you should close the meeting up.

Board Member Bodor stated I think the applicant has had, contrary to what I was hearing in some of the presentation, you have had ample opportunity to present your case to this Board. So I think that fairness has been there; granted to you. You've presented on numerous occasions not only to us, but other boards also. Having said that, I'd like to call the meeting to a close, and offer a resolution on the case as it stands before us...the interpretation of club for this application.

Chairman Buzzutto stated alright.

Board Member Burdick stated second.

Chairman Buzzutto stated all in favor. Motion carried by a vote of 5 to 0.

Chairman Buzzutto stated so be it.

Board Member Bodor read the following resolution:

IN THE MATTER OF THE APPLICATION OF
WINDING GLADES, LLC FOR AN

INTERPRETATION OF CHAPTER 154,
SECTION 154-95 OF THE PATTERSON TOWN CODE

WHEREAS, Winding Glades, LLC (hereinafter referred to as the "Applicant") has made application to the Patterson Zoning Board of Appeals for an interpretation of Chapter 154, Section 154-95 of the Patterson Town Code; and

WHEREAS, the interpretation of an existing zoning regulation constitutes a Type II action under 6 NYCRR Part 617.5(31), and therefore, requires no further review under the State Environmental Quality Review Act (SEQRA), and

WHEREAS, a public meeting was held on the application at the Patterson Town Hall, 1142 Route 311, Patterson, New York on January 20, 2010 and continued on March 22, 2010 at the Patterson Recreation Center, to consider the application; and

WHEREAS, the applicant is seeking a determination that all aspects of the application which has been submitted qualifies as a "bona fide non-profit club" as such term is used and defined in Section 154-95 of the Patterson Town Code; and

WHEREAS, the Patterson Zoning Board of Appeals has given careful consideration to the facts presented in the application and by the Applicant appearing before the Zoning Board of Appeals and finds for the reasons more fully set forth in the Memorandum of the Town Planner, dated November 4, 2009, which the Patterson Zoning Board adopts as its own, that the proposed racing club is not a "bona fide nonprofit club" as that term is utilized in Section 154-95 of the Patterson Town Code.

NOW, THEREFORE, BE IT RESOLVED, that the Patterson Zoning Board of Appeals hereby determines that the racing club proposed to be formed by the applicant is not a "bona fide non-profit club" as that term is used in Section 154-95 of the Patterson Town Code.

Board Member Burdick stated second.

Board Member Bodor	-	yes
Board Member Burdick	-	yes
Board Member Herbst	-	yes
Board Member Olenius	-	yes
Chairman Buzzutto	-	yes

Resolution carried by a vote of 5 to 0.

Mr. Zarin stated I see I was very persuasive.

Board Member Bodor stated you tried.

Mr. Zarin stated yes, yes, yes. Can I possibly ask one question. Just...Aside from the November 4th letter from Mr. Williams and the opinion of Curtiss & Leibell to the Chairman of the Zoning Board of Appeals dated March 22nd, can I ask if there's any other documents that are part of the record that are the basis for this decision that I should be aware of.

Chairman Buzzutto stated I have none....received none.

Board Member Bodor stated offhand, I couldn't...I have all these papers. Your application and whatever had presented to us as part of the record, which...

Mr. Zarin stated and aside from the submissions that we have made, there's nothing else on the record that you're aware.

Board Member Bodor stated not that...

Mr. Zarin stated that you used as a basis for your decision. Okay.

Board Member Bodor stated not that we're aware of.

Mr. Zarin stated okay. Thank you very much. I appreciate it. I appreciate the time.

Board Member Bodor stated thank you.

Chairman Buzzutto stated I want to thank the audience for your cooperation during all of this. There will probably be another meeting this.

Board Member Bodor stated thank you all for attending and for your input in the past. The meeting is adjourned. All in favor. Motion carried by a vote of 5 to 0.

Meeting was adjourned at 7:40 p.m.