AGENDA SPECIAL MEETING OF THE PUTNAM COUNTY LEGISLATURE CALLED BY THE CLERK AT THE REQUEST OF THE CHAIRWOMAN TO BE HELD IN ROOM 318 PUTNAM COUNTY OFFICE BUILDING CARMEL, NEW YORK 10512

Thursday June 22, 2017 (Immediately following Personnel Committee Mtg. beginning at 6:00 P.M.)

The meeting was called to order at 7:08 P.M. by Chairwoman Nacerino who requested Legislator LoBue lead in the Pledge of Allegiance. Chairwoman Nacerino led the Legislative Prayer. Upon roll call, Legislators Scuccimarra, Addonizio, Albano, Jonke, Castellano, LoBue, Sullivan and Chairwoman Nacerino were present. Legislator Gouldman was absent. Also present was Legislative Counsel Firriolo.

Item #4 - Approval/Litigation Settlement/ Levy v. Smith was next.

Chairwoman Nacerino stated that the Legislature was faced with the arduous task of approving the Litigation Settlement in the Levy v. Smith matter. She explained that using taxpayer monies to settle the case was troublesome to the Legislature, as it is to every taxpayer in Putnam County. She stated that having our Sheriff, by his own admission, admit to actions which adversely affected people's lives, is not only disappointing but shatters the faith and trust in elected officials and shakes at the core of our little County. She stated that tonight we are not here to judge, but rather under the circumstances presented make a sound decision. She stated that upon the recommendation of our Legislative Attorney, County Attorney, NYMIR's trial counsel and claims counsel, we remain cognizant that although this is not an ideal situation, settling the case is in the best interest of the taxpayers. She stated that risking an adverse verdict, additional legal fees, costs and expenses for trials and possible appeals would be foolhardy. She stated that it was her opinion that it was the responsible thing to do and for each Legislator to move this forward. Chairwoman Nacerino requested a motion to approve the litigation matter.

Legislator Castellano made a motion to approve the litigation settlement Levy v. Smith; seconded by Legislator Sullivan.

Legislator LoBue stated that she would be voting in favor of the settlement for the reasons Chairwoman Nacerino brought forward. She stated that it is a matter of saving taxpayer money. She explained that if the litigation were to move forward, we would exceed our deductible of \$250,000. She stated that this decision does not come easy. She explained that the litigation commenced in 2013 and she did not believe that the Legislature had the full picture of what was taking place. She stated that in 2013 the former District Attorney, Adam Levy wanted an apology and now years later we are in this position. She stated that she does not want to spend \$1.00 of taxpayer funds defending the Sheriff. She explained that she had given the Sheriff the benefit of the doubt, but when he signed the letter of apology admitting to what he did, she stated that he put this County at risk and this is not the only litigation that we are facing. She stated that it is with a heavy heart that she made the decision to approve this settlement.

Legislator Jonke stated that today was a sad day for the taxpayers of Putnam County. The admissions in Sheriff Smith's letter to Mr. Levy were disappointing to him. He stated that he would be voting to approve the settlement with Mr. Levy because it is the prudent financial decision that minimizes the Putnam County taxpayer's current and future fiscal exposure to litigation matters.

Legislator Albano stated that this upsets all of us deeply, but the bottom line is that we have to do what is most cost effective. He stated that he would vote in favor of the settlement too.

Legislator Addonizio stated that with the advice of counsel, this settlement makes sense for the taxpayers and we are here to protect the taxpayers.

Legislator Scuccimarra concurred. She stated that this is disappointing. She explained that she had a lot of faith in the Sheriff and this matter has shaken her faith. She believed, like the rest of the Legislature, that this was the way to proceed with this matter.

Chairwoman Nacerino called for a Roll Call Vote.

RESOLUTION #131

APPROVAL/LITIGATION SETTLEMENT/ LEVY V. SMITH

WHEREAS, a Summons and Complaint was served upon the County of Putnam in a certain matter captioned, <u>Adam B. Levy v. Donald B. Smith, et al.</u> in which the Plaintiff commenced a claim in the Putnam County Supreme Court for defamation in connection with a Sheriff's Department March 2013 rape investigation; and

WHEREAS, any liability therefor was denied and defended by counsel assigned by NYMIR, the County's insurer in this case; and

WHEREAS, Plaintiff sought both compensatory and punitive damages for said alleged defamation; and

WHEREAS, Plaintiff agreed to a settlement with the County, subject to the Legislature's approval, in which the County agreed to pay Plaintiff the sum of one hundred and twenty-five thousand (\$125,000.00) dollars and the Defendant, Donald B. Smith, agreed to personally pay the Plaintiff twenty-five thousand (\$25,000) dollars and also contained certain non-monetary concessions from Donald B. Smith personally; and

WHEREAS, the County Attorney, trial counsel assigned by NYMIR and NYMIR's claims counsel all recommended the settlement so as to avoid the possibility of an adverse verdict, avoid the need to expend further legal fees, costs and expenses for the trial and any subsequent appeals, and in order to protect and preserve the interests of the taxpayers in separate pending litigation; and

WHEREAS, NYMIR, through its claims representative, has in fact settled the matter with the Plaintiff for the sum of one hundred and fifty thousand (\$150,000.00) dollars, of which one hundred and twenty-five thousand (\$125,000.00) dollars will be paid by the County and twenty-five thousand (\$25,000) dollars will be paid by Donald B. Smith personally; and

WHEREAS, the terms of the settlement of this matter were placed on the record in open court on June 13, 2017 and the jury was dismissed; and

WHEREAS, a Stipulation of Discontinuance will be filed with the Court by Plaintiff's counsel which will fully and finally dispose of this matter with prejudice; and

WHEREAS, the Legislature has considered the facts and circumstances of this case, as well as the advice of counsel, and has determined that settlement is in the public interest and has avoided potentially greater exposure to liability; now therefore be it

RESOLVED, that the settlement of this matter for the sum of one hundred and fifty thousand (\$150,000.00) dollars, of which the County will be required to pay one hundred and twenty-five thousand (\$125,000.00) dollars, is hereby approved.

BY ROLL CALL VOTE: EIGHT AYES. LEGISLATOR GOULDMAN WAS ABSENT. MOTION CARRIES.

Item #5 – Approval/Budgetary Transfer (17T114)/ County Attorney/Settlement of Levy v. Smith was next. Legislator Castellano made a motion to move the following; seconded by Legislator Sullivan.

RESOLUTION #132

APPROVAL/BUDGETARY TRANSFER / COUNTY ATTORNEY/SETTLEMENT OF LEVY V. SMITH

WHEREAS, the County Attorney has requested a budgetary transfer (17T114) to provide funding for the settlement of the Levy v. Smith litigation; and

WHEREAS, the Rules, Enactments & Intergovernmental Relations Committee has reviewed and approved said budgetary transfer; now therefore be it

RESOLVED, that the following budgetary transfer be made:

Increase Estimated Appropriations:		
10193000 54933	Judgement & Claims	125,000
Decrease:		
10199000 54980	Contingency	125,000
	2017 Eigeal Impact \$125,000	

2017 Fiscal Impact \$125,000 2018 Fiscal Impact – 0 –

BY ROLL CALL VOTE: EIGHT AYES. LEGISLATOR GOULDMAN WAS ABSENT. MOTION CARRIES.

Recognition of Legislators.

There were no further Legislators that commented.

Recognition of Public.

Ms. Liz Armstrong from the Highlands Current questioned why Sheriff Smith was not paying the \$125,000 instead of the taxpayers. She questioned if the Sheriff has threatened to counter-sue the County if the County does not cover the \$125,000. She

questioned what the reason was that the taxpayers have to ante up the funds as opposed to the Sheriff and his private bank account.

Chairwoman Nacerino stated that the Sheriff has not threatened to sue the County to her knowledge; however that does not mean there is not a possibility. She stated that the consideration before the Legislature this evening is not centered around that, but the fact that we do not want to incur any more costs in pursuing the matter. She stated that if we did, it would cost the taxpayers even more money.

Ms. Armstrong requested an explanation on why it would cost the taxpayers more money.

Chairwoman Nacerino explained that if he did counter-sue the County there would be additional legal fees and expenses associated to that. She also explained if the trial had went on longer, it would have cost the taxpayers more money. She explained that the settlement although disappointing and troublesome, the Legislature as a whole believes would be best for the taxpayers in the long run.

There being no further business, at 7:18 P.M., Legislator Castellano made a motion to adjourn; seconded by Legislator LoBue. All in favor.

Respectfully submitted by Diane Schonfeld, Clerk.