

APPROVED MINUTES of the Special Meeting of
the City Council of the City of Rye held in City Hall on
July 10, 2001 at 8:00 P.M.

PRESENT:

STEVEN OTIS, Mayor
CAROLYN CUNNINGHAM
ROBERTA DOWNING
ROBERT H. HUTCHINGS
ROSAMOND LARR
DOUGLAS MCKEAN
ARTHUR STAMPLEMAN
Councilmen

ABSENT: None

1. Pledge of Allegiance

Mayor Otis called the meeting to order and invited the Council to join in the Pledge of Allegiance.

2. Roll Call

Mayor Otis asked the City Clerk to call the roll; a quorum was present to conduct official city business.

3. Authorization for the City Manager to enter into an Intermunicipal Agreement with the County of Westchester for the purchase of property known as the Rye Nursery

Mayor Otis announced that this meeting was primarily to continue the discussion of the purchase of the Rye Nursery property. He said the Council now had a draft of an Intermunicipal Agreement (IMA) which had been worked out with the County by himself, the City Manager and the Corporation Counsel. He said that the County had been very receptive to suggested changes and had willingly made the two following additions which successfully answered the questions of control and autonomy:

Section 2.0. Added the sentence: "the City shall have sole authority and control over the operation, management, design, use, scheduling and maintenance of the Property."

Section 3.1. Added the section: "The Property shall not be under the jurisdiction of or incorporated into the County's Playland Park, nor shall it be utilized for Playland Park related purposes."

The Mayor also reported on the experiences of other Westchester municipalities with County-owned parks with playing fields. In both Mount Pleasant and North Castle, where long-standing agreements are in place, the supervisors reported that the County has had a complete "hands off" attitude. He said both were enthusiastic and urged Rye to go ahead with the agreement. Recreation Superintendent William Rodriguez reported that his investigation has proven that such relationships can be very positive and that in one case, the town had even made improvements the County had had no interest in even reviewing. He said the fields were primarily used by local playing teams.

The Mayor, giving great credit to the County, said County Executive Spano and his staff and commissions had been very supportive; they want Rye to be comfortable with the agreement; they don't want to be involved now or in the future; and that the only caveat is that no one can be barred from using the park. He also gave credit to Project Impact which enabled the City to address our flooding issues so that this project, which is good for flood control, the environment, and recreation, could go forward.

Mayor Otis said everyone had worked very hard to see that the City is on schedule to close and reported the County Board of Legislators' Budget committee had actually already reviewed the legislation and found it to be fine. He reiterated that the City could pay for the property, but that there are other pressing issues, such as the Recreation Master Plan, the Board of Education's needs for Milton School, the Police Headquarters and Courthouse, which will need bonding so it would be good for taxpayers if the IMA is accepted. In conclusion, he said that he is comfortable with the agreement; that it is good for the City; and that he recommends the Council move ahead.

Councilwoman Downing said that she agreed that the City should acquire the property, but there are other ways to do it. She does not agree that the Council should enter into the agreement with the County for the following reasons:

- 1) Rye's sovereignty will be compromised. Out of Rye's seven open spaces, only three are not owned by the City, and this would be the first non-owned property in a residential area which is contiguous to County property. Is the City willing to relinquish another large parcel of land to a co-ownership arrangement? The IMA does not address the amount of hard work and compromise necessary in any partnership. She cited Playland as an area where cooperation takes a lot of work and is not always successful. Is Rye willing to take the chance that this partnership might not always be successful?
- 2) The timing is too fast. The Council has only had two weeks to digest the fact that Rye will be "tenants in common" with the County and that there has been no significant effort to notify the public to see what they really think. What is the hurry?

- 3) There is no "sole authority" if you are a "tenant in common." She pointed out several sections in the agreement (the last sentence of Section 2.0 which indicates that the repair, maintenance, operation and security would be "all to the satisfaction of the County"; Section 2.5 which indicated that the County Parks Commissioner or his authorized representative can enter the property at any time; and Section 2.6 stating that the "City shall acknowledge the County's ownership interest of the Property on any signs...") indicate that the City would be subservient to the County.
- 4) The transfer of the roads as a condition of the agreement. The Council has discussed taking over County roads, but are these the roads we really want to take over at this time? Should this be a part of the land purchase agreement?
- 5) No examination of other funding options. There is no question that accepting the money from the County is the easiest option, but at what price? There are other options and they should be examined.

Councilman Stampleman responded to these points saying that the contract has been well negotiated and he is prepared to go forward. He said that the reason to speed up the process is that the closing date is approaching; that the Council had agreed to go forward knowing they were taking a risk by not knowing what the contribution of the County would be; and now that we do, the City should move quickly so that the money can be available at the closing. He said speed is also necessary so the County can give the necessary approvals in a timely fashion. He said he felt the City did have sole authority; that the words "all to the satisfaction of the county" referred to the maintenance and security, rather than the operation and scheduling; that the first part of Section 2.0 clearly gives sole authority to the City; that unannounced visits referred only to the Parks Commissioner; and that other funding options would be necessary only if the Council decides not to proceed.

At this point, Councilman Stampleman made a motion, seconded by Councilwoman Cunningham, to adopt the following resolution:

RESOLVED, that the Council approves and authorizes the City Manager to sign an inter-municipal agreement between the County of Westchester and the City of Rye covering the purchase of a parcel of land at 421 Milton Road in Rye corresponding to the draft of such an agreement dated July 6, 2001, subject to minor stylistic corrections.

During the discussion which followed the motion, Councilman Hutchings said he was opposed to voting on the resolution, especially this early in the meeting, because he felt more discussion was necessary. He said he firmly believes the City must procure the Rye Nursery property but cringes at the prospect of being "tenants in common" with the County, especially as there are other funding options which would allow Rye to purchase the property without accepting outside help. He said it is basically

an issue of freedom - to make independent decisions, to decide what we want to do and how, to not have mandated demands. He feels personally that there should be no IMA, but if it is to be, he would need to see the following changes before he could support it:

- 1) Add a section (1.0.1) which would say that Westchester County agrees to transfer their 77% ownership in the property at the end of the bonding period to the City of Rye for a nominal sum of \$1.00.
- 2) Reinstate the willingness of the County to pay up to \$100,000 of the closing costs.
- 3) Add the word "development" to the first sentence of Section 2.0 which gives the City "sole authority" and add the words "without consultation with the County at any level of authority."
- 4) Amend Section 2.1 to read "The City may continue to use its current Rules and Regulations and practices with regard to scheduling the use of the park, along with other City of Rye Rules and Regulations that govern the use of other Rye City parks.
- 5) Delete Section 2.5 which states that the City will comply with Federal, State and Local requirements and authorizes the County Parks Commissioner to make visits to ensure the City is complying.
- 6) Re-write Section 2.6 so that the advertising and signage does not need approval from the County.
- 7) Rewrite Section 2.9 so that the City can impose its current fee structure, its own Parks Rules and Regulations and Procedures for this park.
- 8) Strike Section 6.2 which discusses waivers of rights.
- 9) Amend Section 6.7 so that the Council has the right to approve the final version of the document.

Councilwoman Larr said she was taken aback that there is a motion to approve the IMA before there has been adequate discussion. She said she does not feel this draft adequately protects the citizens of Rye and agreed with Councilmen Downing and Hutchings that she is not in favor of the agreement as drafted.

Councilwoman Larr made a motion, seconded by Councilwoman Downing, to amend the resolution made by Councilman Stampleman as follows:

RESOLVED, that the Intermunicipal Agreement between the City of Rye and Westchester County, dated July 6, 2001 be amended as follows:

- 1) Section 2.1 should be clear that the City will continue its current practices with regard to restrictive scheduling of the park, consistent with other Rye City Parks as evidenced by the existing Rules and Regulations governing fields that will be attached to the document.
- 2) Section 2.1 should indicate that the City shall make all decisions with regard to development, use and scheduling of the property without having to consult with the County at any level.
- 3) Section 2.1 should also state that the County will not force or coerce the City to schedule any activities at the park that is for 100% non-Rye resident use.
- 4) Section 2.5 giving the County the right to enter the property at any time for any purpose without prior consent or permission must be deleted.
- 5) Section 2.6 should state that signage posted at the park will indicate it is a City of Rye park and the County should have no approval over signage.
- 6) Section 2.9 should say the City retains the right to impose its current fee structure and procedures for facility use.

Mayor Otis said he had presented all requested changes to the County; that they had agreed to most; and the only changes not made were rejected because they are standard legal sections. He replied specifically to Councilman Hutchings remarks and Councilwoman Larr's proposed amendment points as follows:

- 1) Selling the property for \$1 at the end of the bonding period. The County has said no; that they want to ensure that it will continue as parkland and open space.
- 2) The County never intended to pay the closing costs. The extra \$100,000 was placed in the agreement to be a buffer for the bond. The City would have to pay if it were buying the property on its own. Perhaps money for closing will come from a State grant.
- 3) Adding the word "development" is a good idea even though he thinks the existing wording already implies that. Councilwoman Cunningham said that Section 2.0 clearly gives incontrovertible sole control.
- 4) Adding "without consultation at any level" is redundant.

- 5) Any reference to Rye's current City Rules and Regulations in Section 2.1 is not acceptable to the County as it is their policy not to incorporate or reference outside documents. He believes the County really feels the City can do what it wants; they won't be looking over our shoulder just as they have not in other communities; and this will be true even though Rye has Playland in the middle of its municipality. Councilwoman Larr said this was not acceptable to her and said she feared the County would book outings on this field, just as they do at Playland.
- 6) Striking Section 2.5 is stock language and boilerplate law so it cannot be deleted.
- 7) The signage issue in Section 2.6 is really an insignificant one. The County just feels they have been generous and would like to be publicly thanked, much in the same way Governor Pataki has been thanked in the sign on the Knapp House grounds. The County is perfectly willing to work out signage with which the City is comfortable.
- 8) Imposing our current fee structure in Section 2.9. The County will not do this for the same reasons outlined in #5 above.
- 9) Striking 6.2 was suggested but it was turned down by the County's attorney because it is a standard contractual provision.
- 10) Seeing the final version. He agreed that it is important the City sign the final version but reminded the Council the present version was the one reviewed and already approved by the County Board of Legislators.

Councilwoman Downing questioned whether the agreement as written would protect the City and give the City the autonomy and authority it wants. Corporation Counsel Neale said that he had never spoken with the County's attorneys, but the draft agreement appears to be a typical County document which could be interpreted differently by different people. He said that based on this document, several alternative scenarios could be predicted for the future, but as a practical matter, the agreement should be analyzed on a cost/benefit basis, which is a policy determination for the Council, rather than a legal basis. He said that the City is morally obligated to close on or before August 1 and if the City does not close as scheduled, there will be an economic penalty, so buying extra time is not without cost. He asked if the Act or the Agreement had been approved by the County and said if it was only the Act there is definitely a possibility the draft Agreement could change and the City should be sure to review the final draft.

Councilwoman Cunningham, also a lawyer, said she is confident that Section 2.0 gives the City proper control but agrees that "development" could be added to the first sentence. She said the words

"to the satisfaction of the county" refers only to the second sentence of the section so that the issue of sole authority is not compromised. She said it was only fair to give the County credit on the sign and believed it was not only easier to accept the money, but fiscally responsible not to put an extra burden on the taxpayers, especially with future bonding needs such as the Damiano Center, Milton School, a parking deck and the Police Station on the horizon.

Councilman McKean said he favored the IMA as drafted, but had no problem adding the word "development" to Section 2.0. He felt that other funding options suggested by the City Manager would require a tax increase; that Section 3.1 solves the question of being an adjunct of Playland; and that the sign issue was not important. He said he was concerned that perhaps if we bought the property with the City's money, we would have to go back to the State at a later date to get the park alienated and this would be a problem. He thanked Mayor Otis for negotiating the agreement and said he thought there had been enough discussion.

Mayor Otis welcomed comments from those in the audience.

- Richard Runes, Rye resident, said he thought the IMA was very favorable to Rye; that he saw the "all to the satisfaction..." phrase as relating to the last sentence only, and pointed out that the park proposed by American Yacht Club would be even less controlled by the City of Rye.

- Leila Bright, Midland Avenue, suggested the Council back up a little and reflect on some of the issues, such as including the streets as part of the agreement. She said it seemed to her if the City now owns the streets, it will have to maintain them so this is not free money. Mayor Otis said the County has long wanted to give the City the roads and that by including them in this agreement the City will get more money to perform intersection improvements at Peck and Midland Avenue and at Grace Church Street and Midland Avenue than if the roads are transferred separately. He added that owning Midland Avenue will allow the City to protect Midland School children and to make sure that there are never diagonal stripes on the Apawamis-to-Playland Parkway block for high school parking. He also said that there are lots of issues, including traffic safety and appearance, on Wappanocca Avenue and it is important that the City have control of this street.

Mrs. Bright said she doesn't see how playing fields protect wetlands. The Mayor said a wetlands study will determine what kind and size of field is acceptable without hurting the environment and that everyone should remember that the alternatives suggested for the property included a medical building and a subdivision which would have been far worse for the environment.

Mrs. Bright also said Rye's relationship with the County in relation to Playland was not a friendly situation and wondered if the word of the Parks' Commissioner was enough. The Mayor said there had been good progress in dealing with the County over Playland and that if we were dealing with a Playland situation, he would not be recommending that we go forward.

- Peter Larr, Fieldstone Road, began his comments by urging everyone to avoid inappropriate remarks during the discussion and saying how important it is to maintain civility despite disagreements.

He said he agreed that purchasing the Rye Nursery Property is a good idea, but questioned how to go forward. He said he was concerned with the partnership concept and would like to see the property revert to Rye at the end of the bond period; that the agreement needs to be more carefully reviewed by Counsel; and that if it should be approved tonight, it should only be done so with the amendments proposed.

- Philip Semprevino, 9 Hill Street, said he felt even though signing the agreement may be the easiest way to finance the purchase, it may not be the best. He suggested examining some of the inconsistencies, such as finding out what exactly the "all to the satisfaction..." phrase refers to.

- Michael Klemens, Charlotte Street, urged the Council to focus on this purchase and not confuse the issue with the AYC land swap issues. He questioned the timing of the bridge loan and was told there would be no money received until October. Mr. Neale cautioned that the City has a verbal commitment for the loan, but that is all. The City Manager said the City will be asking the Council to transfer funds next week so there will be money to close. Mr. Neale said that if the closing were to happen without the County money, it might be possible to buy the property for municipal purposes and dedicate it as a park later. Mr. Klemens also said that he was pleased to see that the agreement calls for a cutting edge wetlands restoration and that he thought the field should be small at best.

Referring to the percentage of ownership, Dr. Klemens pointed out that some of the money is for roads so if that amount is removed from the equation, the actual percentage of co-ownership with the County is far less than 77%.

Dr. Klemens also suggested that Section 6.3 be amended to give Rye an option to escape from the agreement too. He questioned whether the total amount in the "buy-back" shouldn't be less the amount included for the road improvements. Corporation Counsel Neale cautioned that the "escape clause" be carefully drafted and the Council agreed that it would work with Mr. Neale to work out better wording in this section which could be suggested to the County.

- Bill Lawyer, 15 Hillside Place, also President of the Federated Conservationists of Westchester County, said he was grateful for this great opportunity and hoped the Council would accept the money, but only after looking the IMA over carefully. He urged the Council to keep up the good work.

- Sis D'Angelo, 90 Wappanocca, said although she would like to see another ballpark, she did not want the City to become a partner with the County and reiterated that Rye has always done things on its own. She urged the City to make the County do the road improvements first before taking over either street and to slow down so the planning can be more complete. She urged the Council not to vote tonight.

- David Mayo, a very new resident on Vale Place, said most of his neighbors knew little about the purchase which suggests the Council should wait to make a decision.

•Carol Vietor, Wappannocca Avenue, said the park idea for her street was great, but that the City had ignored the area for years and had done nothing at the gas station end. She wondered what the City's plans would be when they took over the street; if the streets and sidewalks will be repaired; if the Metro North bridge will be fixed; and if the City would finally pay attention to her end of town.

•Mark Volow, Halsted Place, shared concerns about the inconsistencies in the IMA and wondered why, if section 2.0 says we are in charge, we need 3.1 which specifies there will be no Playland involvement. He suggested that this be clarified by saying nothing in 3.1 that limits 2.0 lest a future judge misinterpret the meaning. The Mayor said Section 3.1 had been added because people were particularly worried about the proximity of Playland.

•Jack Zahringer, 19 North Street, agreed an escape clause be added and said he saw the "all to the satisfaction..." phrase as referring to the whole section and suggested it be removed.

•Joseph Murphy, Franklin Avenue, congratulated the Mayor and Council for having the concept of acquiring the property. He said the offer was good for the City and urged the Council to accept the agreement.

As there were no further comments from the floor or from the Council, Mayor Otis asked the Council to vote on the two resolutions already on the floor. He requested that the Council first vote on the resolution to amend the IMA as proposed by Councilwoman Larr (see page 5).

ROLL CALL:

AYES: Councilmen Downing, Hutchings and Larr

NAYS: Mayor Otis, Councilmen Cunningham, McKean and Stampleman

ABSENT: None

The resolution failed to carry by a vote of 4 to 3.

The Mayor then asked the Council to vote on the resolution to approve the IMA as drafted as proposed by Councilman Stampleman (see page 3).

ROLL CALL:

AYES: Mayor Otis, Councilmen Cunningham, McKean and Stampleman

NAYS: Councilmen Downing, Hutchings and Larr

ABSENT: None

The resolution carried by a vote of 4 to 3.

Mayor Otis made a motion, seconded by Councilman McKean, to adopt the following resolution:

RESOLVED, that the Mayor will continue negotiations with the County by requesting consideration of additional changes and amend-ments to the Intermunicipal Agreement as follows:

- 1) Add the word "development" to the first sentence of Section 2.0.
- 2) Delete the word "operation" in the last sentence of Section 2.0.
- 3) Discuss clarification of the meaning of "all to the satisfaction of the County" in Section 2.0, possibly dividing the section into two separate parts.
- 4) Add a mirror image reciprocal statement in Section 6.3 affording the City of Rye the opportunity to default or the option to sell (i.e. an escape clause for the City as well as the County).
- 5) Clarify Section 3.1 so that nothing in this section limits the autonomy provided in Section 2.0.

ROLL CALL:

AYES: Mayor Otis, Councilmen Cunningham, Downing, Hutchings, Larr,
McKean and Stampleman

NAYS:None

ABSENT: None

The resolution passed.

Councilman Hutchings voiced his concern that wording can change in documents as they pass through the County Executive office and the various committees. He asked for assurance that prior to accepting any funds from the County of Westchester for the procurement of the Rye Nursery property, the final version of the IMA, as passed by the County Legislature, be reviewed and approved by the Rye City Manager and the Rye City Council for conformity with the agreement agreed to this evening. City Manager Novak said it was her understanding that she had been authorized to approve the draft before the Council this evening with no changes other than the six points approved in the Mayor's motion to amend. She assured the Council that, should any other substantive changes appear, they would have a chance to review the new document.

4. Review of the proposed amendment to the license agreement by and between the Rye Town Park Commission and Starfish Grill, Inc. to operate *Seaside Johnnies* year-round and allow a full liquor license

Mayor Otis announced that State legislation to allow the service of liquor at *Seaside Johnnies* had passed both houses and that the restaurant had also been approved by the State Liquor Authority for a full liquor license. He said the next step is for the Governor to sign the legislation and for the agreement between the restaurant and the Rye Town Park Commission and the municipal boards to be amended. He asked the Council for input on a draft of the new agreement which will be discussed at the next Rye Town Park Commission meeting. Councilman McKean suggested that the agreement require more rent money from *Seaside Johnnies* on a monthly basis now that they have the full liquor license and that the restaurant accept credit cards. Councilman Stampleman suggested that the agreement limit the hours when full liquor can be served; that certain provisions be rewritten and better integrated to reflect the City's right to review; and that it makes clear it is the Commission's right to render opinions on unsatisfactory conduct. Councilman McKean also urged the Commission to review the quality of the food; to make sure unfinished work is completed; and that the inappropriate lights on the beach are removed. Although Mr. Runes, a member of the Rye Town Park Commission, said this was a good opportunity to negotiate an advantageous agreement and that there was no rush, Councilman McKean disagreed, saying that it was in the City's best interest to negotiate now because *Seaside Johnnies* is interested in having the agreement in place so that they can begin now to build business for the winter months.

5. Consideration of request of the Rye Historical Society to use the Village Green on Sunday, July 15, 2001, from 12:00 to 1:00 P.M. to conduct "Rye in the Revolution" activities

Councilman Stampleman made a motion, seconded by Councilwoman Larr and unanimously carried, to approve the request of the Rye Historical Society to use the Village Green on Sunday, July 15, 2001 from 12:00 to 1:00 PM to conduct "Rye in the Revolution" activities.

6. Adjournment

There being no further business to discuss, Councilman McKean made a motion, seconded by Councilwoman Cunningham and unanimously carried, to adjourn the meeting at 11:50 P.M.

Respectfully submitted,

Susan A. Morison
City Clerk