

***APPROVED MINUTES*** of the Regular Meeting of the City Council of the City of Rye held in City Hall on September 22, 2004 at 8:00 P.M.

PRESENT:

STEVEN OTIS, Mayor  
FRANKLIN J. CHU  
ROBERT S. CYPHER  
MATTHEW FAHEY  
DUNCAN HENNES  
ROSAMOND LARR  
HOWARD G. SEITZ  
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.

Announcements

Mayor Otis congratulated everyone involved in the installation of the new turf at the High School football field and thanked the committee headed by Steve Joyce, Bob and Kate Niehaus and Bob and Pam Kindler. The new field was dedicated with great success on Friday, September 17, 2004.

The Mayor thanked the Fire Chiefs and all other members of the Rye Fire Department for making the commemoration ceremony on September 11, 2004 a moving and meaningful event.

The Mayor announced that the annual Westchester Triathlon would be taking place all around Rye on Sunday morning, September 26, 2004. He thanked City Manager Paul Shew for spear-heading all the pre-planning for this complicated event by bringing all parties together to make sure everyone works together so the event can go as smoothly as possible.

Corporation Counsel Kevin Plunkett announced that a Public Administrator had been appointed for the estate of Mrs. Thomachewsky, owner of the gas station at the corner of Purchase Street and Wappanocca Avenue and that serious clean-up of the site can commence.

He said he was sorry neither former Councilman Hutchings nor resident Sis D'Angelo were present to receive this good news in person.

3. Residents may be heard who have matters to discuss that do not appear on the agenda.

There were no residents wishing to be heard.

4. Consideration of Right of First Refusal Offer from County of Westchester with respect to the proposed sale of vacant County property located adjacent to 401 Theodore Fremd Avenue

City Manager Paul Shew explained that the County would like to sell property adjacent to 401 Theodore Fremd Avenue (near the access road to Playland Parkway) to the adjoining property owner (Gabelli), but by County Law the land must first be offered to the City. The City could purchase the land for \$1 provided it is used for a playground, but the parcel really has no value to the City. Manager Shew says the City has no problem waiving the right of first refusal, but recommends that the County maintain an easement to provide a greater turning area for trucks. Mr. Shew will inquire from the County about the acceptability of this caveat.

Councilman Seitz made a motion, seconded by Councilwoman Larr to adopt the following resolution:

**RESOLVED**, that the City of Rye waive the right of first refusal with respect to the proposed sale of vacant County property located adjacent to 401 Theodore Fremd Avenue with the caveat that an easement be maintained by the County for a turning area.

ROLL CALL:

AYES: Mayor Otis, Councilmen Chu, Cypher, Fahey, Hennes,  
Larr and Seitz  
NAYS: None  
ABSENT: None

5. Discussion of rock chipping and excavation related noise

Mayor Otis referenced the packet of information he had pulled together after researching what other communities do about rock chipping and excavation related noise saying he thought it would provide background which would advance the discussion about these issues in Rye and help to set direction for future action. He noted, in particular, Briarcliff Manor's laws on excavation and the Town of Mamaroneck's Noise Ordinance, but said both communities were interested in strengthening their laws. He said Rye's blasting law is primitive and he suggests

(long-term) Rye consolidates its blasting and excavation laws into one; and (short-term) that the decibel levels in the existing noise ordinance be reviewed and amended if necessary.

The Council expressed appreciation to the Mayor for all his work on this matter. Councilman Seitz agreed with the proposed approach, but said they would need to explore the ramifications of how any new law would affect property rights and said a restriction of hours might be considered. Councilman Cypher suggested extrapolating other noise restrictions relative to chipping, noting that blasting is quicker, but can be dangerous. He also mentioned limiting hours drags out the pain. Councilman Chu supports the integration of lawn noise with construction noise and suggested combining hours and volume to determine a maximum number of hours and days. Councilwoman Larr suggested people might like half-days of noise, even if it took twice as long, but it was pointed out contractors rent equipment by the day and if limited to half days of chipping might turn to blasting, even if it were not the best solution. Councilman Hennes suggested hearing from the Building Inspector.

Residents of Davis Avenue (where noisy chipping has been taking place) also thanked the Mayor for his consideration and efforts on their behalf. George Bryant, 42 Davis Ave., commented that the close proximity of this project to the neighbors had made it more of a problem and Rhoda Woodthorpe, 11 Davis Avenue, suggested the noise might be a seasonal problem as it would not be as noisy for neighbors during the winter when everyone is indoors. Holly Lehman, 25 Davis Avenue, reported that despite the City's consideration of legislative changes, the neighbors have brought a legal action against the builder in Westchester County and a County Court judge has issued a temporary restraining order against the builder who is now pumping water out of the site onto her property. The judge is considering whether the noise is a nuisance issue; whether the runoff is trespassing; and if negligence is involved. She questioned why the judge is considering these issues when the City of Rye thought everything was fine. Councilman Cypher requested the Council be given a copy of the judge's decision and the papers submitted to the judge by Cuddy and Feder, lawyers for Ms. Lehman. Ms. Lehman, citing sections 133-8-B and 133-2-E of the noise ordinance spelling out the use of power tools and machinery, said she thought the ordinance was fine, but did not agree with the way it is being interpreted by the Building Inspector. Mayor Otis said these were good points, but past practice can lead to current interpretations.

6. Discussion of Bowman Avenue Development Project in Rye Brook

Mayor Otis said a proposal for a development project on Bowman Avenue in Rye Brook is the same as one proposed ten years ago which was opposed by the City of Rye then because of flooding and environmental issues. There will be a public hearing on the current proposal on Tuesday, September 28<sup>th</sup> at 7:30 in the Rye Brook Village Hall on King Street and the Mayor recommended maintaining our opposition. Councilman Hennes suggested the City respond with letters similar to those sent in 1994. The Mayor urged that Planning Staff and Commission members try to attend the public hearing so we can see what the current issues are before responding. Councilman Chu asked if there were legal grounds to oppose this project. The Mayor suggested it could be an issue of public safety. The Mayor said maybe there could be a parkland use of the property in question; that Rye and Rye Brook could share in such a venture and we could be provided with more flood protection; maybe it could be used as an additional

catch basin. He pointed out that Rye Brook also has a flooding problem and Chris Bradbury, Village Manager, used to work in Rye so he is familiar with, and sympathetic to the problems. Holly Kennedy, 105 Mendota Avenue, speaking on behalf of Indian Village, thanked the Council for addressing this issue and strongly urged continued opposition to any development. She thanked City Manager Paul Shew and the staff for listening and addressing Rye's flooding issues.

7. Authorization for City Manager to execute an Inter-municipal Agreement with the County of Westchester authorizing the operation of a transfer station at Public Works for organic waste

City Manager Shew reported that under an Inter-municipal Agreement with the County of Westchester the County removes wood waste at \$10 per ton. He said this is a good arrangement for the City and he recommends the Council authorize him to sign the agreement. He said the City also composts what it can and sells the compost to an outside vendor as part of our recycling efforts. Councilman Seitz asked what other communities do and suggested we make sure we are being reimbursed at comparable rates. He also suggested modifying the agreement to specify days of operation.

Councilwoman Larr made a motion, seconded by Councilman Hennes and unanimously carried, to adopt the following resolution:

**RESOLVED**, that the Council of the City of Rye hereby authorizes the City Manager to sign an Inter-municipal Agreement with the County of Westchester authorizing the operation of a transfer station at Public Works (141 Oakland Beach Avenue) for organic waste.

8. Resolution to add local surcharge to certain vehicle and traffic violations

Corporation Counsel Kevin Plunkett informed the Council that the State now allows a local government to add a local surcharge to violations under Section 1809 of the Vehicle and Traffic Law. He said there is no reason not to add this surcharge so, although it won't heavily affect revenues, why should the City not impose it?

Councilman Seitz made a motion, seconded by Councilman Hennes, to adopt the following resolution:

**WHEREAS**, Chapter 56, Part G, Section 2 of the 2004 Laws of the State of New York authorizes the legislative body of a City to impose a surcharge in an amount not exceeding ten (\$10) dollars for convictions rendered in its court for violations committed between September 1, 2004 and September 1, 2005 where

such convictions are subject to a mandatory surcharge imposed under Section 1809 of the Vehicle and Traffic Law; now, therefore, be it

**RESOLVED**, that effective immediately, the City of Rye shall impose a local surcharge in the amount of ten (\$10) dollars for such convictions.

ROLL CALL:

AYES: Mayor Otis, Councilmen Chu, Cypher, Fahey, Hennes,  
Larr and Seitz

NAYS: None

ABSENT: None

9. Two appointments to the Boat Basin Commission, by the Council, for two-year terms expiring January 1, 2007

Mayor Otis made a motion, seconded by Councilman Cypher and unanimously carried, to approve the appointments of Ford Winter and William E. Blake to the Boat Basin Commission for two-year terms expiring January 1, 2007.

10. Designation of one member to the Boat Basin Nominating Committee

Mayor Otis made a motion, seconded by Councilman Cypher and unanimously carried, to designate Kenneth Dahlgren a member of the Boat Basin Nominating Committee for a one-year term expiring January 1, 2006.

11. Four appointments to the Rye Golf Club Commission, by the Council for two-year terms expiring January 1, 2007

Mayor Otis made a motion, seconded by Councilwoman Larr and unanimously carried, to approve the appointments of Douglas Killip, Michael Hammer, Jim VanGarsse and John Duffy to the Rye Golf Club Commission for two-year terms expiring January 1, 2007.

12. Designation of two members to the Rye Golf Club Nominating Committee

Mayor Otis made a motion, seconded by Councilwoman Larr and unanimously carried, to approve the designation of Adrienne Belluscio and Jim Maione to the Rye Golf Club Nominating Committee for a one-year term expiring January 1, 2006.

13. One appointment to the Recreation Commission to fill an unexpired term

Mayor Otis nominated Mack Cunningham to fill an unexpired term on the Recreation Commission, saying he feels the Committee needs his skills and talent; that his return to the

commission (which he wants to do) would benefit everyone; and he feels it is his right to appoint members to boards and commissions; and he would expect the approval of the Council unless there is really a reason not to grant it. Councilwoman Larr read a statement saying she recognizes Mr. Cunningham's qualifications, but some on the Council would like to see more diversity on the Recreation Commission; that another candidate is willing to serve; and acceptable to the Chair of the Commission as well as to the majority of the Council. Councilman Fahey expressed interest in getting the best candidate and would like to consider a woman or a senior citizen to increase diversity. Councilman Hennes, while supporting Mr. Cunningham, said the Council should look at the composition of the Commission. The Mayor, in response to Councilman Seitz, said Mr. Cunningham had asked that his name be nominated, even knowing he might not be confirmed.

Councilman Cypher moved to table the nomination to avoid further controversy, saying it would not be in the best interests of either the Commission or Rye recreation. The Mayor, ceding to Councilman Cypher's motion, withdrew the nomination and suspended the voting.

14. Approval of the election of a new member to the Rye Fire Department

Mayor Otis, with thanks to the recruitment efforts of the Rye Firefighters, announced that Michael Falci had been elected as a new member of the Fire Department Police Patrol. Councilwoman Larr said she was looking forward to seeing Mr. Falci's resume at some point and everyone expressed thanks to him for volunteering.

Councilman Seitz made a motion, seconded by Councilman Hennes and unanimously carried, to approve the election of Michael Falci to the Fire Department Police Patrol, as approved by the Board of Fire Wardens at its September 13, 2004 meeting.

15. Request for use of Council Chambers on September 29, 2004 for the Rye-Q Program

Councilman Hennes made a motion, seconded by Councilman Fahey and unanimously carried, to grant the request of the producers of the Rye-Q Program to use Council Chambers on September 29, 2004 for a Centennial version of this local quiz show pitting Rye Boy Scouts against Rye Girl Scouts.

15A. Appeal of response to FOIL request submitted for attorney invoices

Corporation Counsel Kevin Plunkett said a FOIL request had been made by Police Officer Timothy Chittenden to obtain additional information from attorney invoices previously redacted due to attorney/client privilege. Mr. Plunkett recommended that the Council deny the appeal.

Councilwoman Larr made a motion, seconded by Councilman Seitz, to adopt the following resolution:

**RESOLVED**, that the Council of the City of Rye hereby denies the request of Police Officer Timothy Chittenden to obtain copies of certain redacted information “in regard to conferences” relating to all invoices from Vincent Toomey from 1/1/2004 to the present concerning an incident between Lt. Verille and P.O. Timothy Chittenden on 12/27/02” on the basis of Attorney/Client privilege.

ROLL CALL:

AYES: Mayor Otis, Councilmen Chu, Cypher, Fahey, Hennes,  
Larr and Seitz  
NAYS: None  
ABSENT: None

16. Draft unapproved minutes of the special meeting held August 16, 2004, the regular meeting of the City Council held August 18, 2004

Councilman Hennes made a motion, seconded by Councilwoman Larr and unanimously carried, to adopt the minutes of the special meeting held August 16, 2004 as amended.

Councilwoman Larr made a motion, seconded by Councilman Fahey and unanimously carried, to adopt the minutes of the regular meeting of the City Council held August 18, 2004 as submitted.

17. Miscellaneous communications and reports

Councilman Chu commented on the September 17 articles in the press concerning Rye Town Park’s finances and said he was pleased that more financial information appears to be forthcoming, improving on the past practices that have been quite unprofessional. He asked that invoices received from the Park be reviewed by the Council. Mayor Otis reported the Town of Rye has brought in Bennett, Kielson, Storch and DiSantis (BKSD) as an outside consultant to advise the Town on the transition to new accounting software and financial practices in hopes that correct 21<sup>st</sup> century practices can be instituted before the new Town Accountant begins. Councilman Hennes said he had been critical of the Town Park financial reporting as he wanted to be sure Rye City taxpayers were not incorrectly taxed and he applauded Mr. Morabito, Rye Town Supervisor, for taking steps to improve the process. Councilman Seitz applauded Councilmen Hennes and Fahey for putting pressure on the Town of Rye. Councilman Cypher said he continues to be disturbed and is distressed to learn more cars in the park have resulted in less revenue. Mayor Otis said everyone wants what is best for Rye Town Park and reported that Mr. Morabito is eager to work with everyone but has been upset by the press and offended by some of the remarks from a sister city. He said he, too, has been pushing for reforms and said even after finance issues there are management issues. He still wants to pursue having more

representation for the City of Rye on the Rye Town Park Commission even though The Rye Town Park Commission has rejected the idea. The Mayor requested that the Corporation Counsel explore looking into forcing this issue through the courts, citing a New York City “one man/one vote” decision relating to the NYC Board of Estimate.

Councilman Chu mentioned that the tentative equalization rate for this year indicates a smaller decrease than other Westchester communities and this could put the City in a better position with County Tax rates for next year. He also urged everyone to come to the Rye Police Auxiliary party in Mamaroneck next weekend.

Councilman Fahey urged everyone to enjoy the Historical Society’s Mill Town Walking Tour on Saturday, October 2<sup>nd</sup> throughout the day from 9 AM – 4 PM. He also mentioned the Osborn School Fair on October 16<sup>th</sup>.

Councilman Fahey mentioned there had been some medical waste washed up on shore, probably because of recent storms and urged everyone to be careful. He also mentioned that after a purse-snatching many witnesses turned into a posse and successfully apprehended the robber, but he cautioned these helpers to use caution and let the Police do their job so that no civilian is unnecessarily harmed.

Councilwoman Larr invited everyone to attend a Landmarks Advisory Committee presentation of plaques and certificates to owners of historic homes in the Mill Town area at the Knapp House on Friday, October 1 from 6-8 P.M. She said there will be an exhibit opening as well.

Councilwoman Larr said she enjoyed welcoming the Brazilian firefighters to Rye for a visit and reported they were “moved to tears” by the wonderful welcome extended by the City.

Mayor Otis congratulated Doug Carey on “Summerfest 1904”, the historic field day celebrating the City’s centennial. He said it was a wonderful day and a phenomenal event. Mr. Carey thanked the more than 70 volunteers that helped to make it such a success and reported that William Ball, long-time Rye Firefighter and instrumental in the acquisition of the Rye Golf Club, had been presented a plaque in honor of all his achievements.

Councilman Seitz reported that the Zoning Board would be having a special meeting to consider the latest proposal by Beechwind Properties to obtain a zoning use variance on the Brailsford property on Milton Road. He said another possible change in the zoning ordinance might be considered by the Planning Commission to allow residential apartments over a commercial property in a B-1 district, as proposed for the Mobile Station at the end of Purchase Street, perhaps providing low income housing.

18. Old Business

Councilman Seitz said he had four items to bring up:



Where do we stand on the deer issue? The City Manager has met with the State and will be issuing a report at a later date.

What is happening with the four parcels of County land offered for sale? The City Manager has received the initial Phase 1 study. It has been reviewed by a second source and there appears to be no substantive environmental issues. The next step is to develop a plan on how to maintain the parcels. Once developed it will be delivered to the Council.

What is the status of the Occupancy Tax Legislation? Mayor Otis said it does not have to be reintroduced and will hopefully be considered in special session. We have not, however, received word (yes or no) from the key technical reviewers.

What about the T-Mobile request to address the Council? Manager Shew said all such requests receive the same verbal response: there is a protocol and no one comes before the Council until a formal request is made. The Mayor said the City's goal is to keep cell towers out of residential neighborhoods and if we grant one, our law could be questioned. It is good to get revenue, but be careful.

19. New Business

Councilman Seitz said he had taken it upon himself as a private citizen to talk to the New York State Thruway authority about the possibility of using the property opposite Rye Country Day School for parking. He said they had no interest in selling it, but might be interested in leasing it for parking. Mayor Otis said this property is a gateway to Rye; there is a high sensitivity for traffic safety; parking had not been considered a good idea by the Council; and the idea of playing fields (as mentioned in the Master Plan) has also been considered. He said he was surprised that this conversation took place without further Council discussion. Councilman Cypher said he was disturbed that Councilman Seitz appeared to be speaking for the Council on a freelance basis and he feels parking on this site is totally inappropriate. The Mayor urged that no further overtures to the State be made by anyone until the subject has been further discussed by the Council. Councilman Hennes agreed, but suggested having the conversation before the next Council Meeting. Councilman Seitz agreed he wouldn't discuss it further with the Thruway Authority until he had made a specific proposal to the Council.

20. Adjournment

There being no further business to discuss, Councilman Hennes made a motion, seconded by Councilman Chu and unanimously carried, to adjourn the meeting at 10:55 P.M.

Respectfully submitted,

Susan A. Morison  
City Clerk