

***APPROVED MINUTES*** of the Regular Meeting of the City Council of the City of Rye held in City Hall on October 20, 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

The Council convened at 7:05 P.M. The full Council was present. Councilman Seitz made a motion, seconded by Councilman Chu and unanimously carried, to adjourn to executive session at 7:06 P.M. to discuss a personnel matter and a real estate matter. Councilman Seitz made a motion, seconded by Councilman Fahey and unanimously carried, to close the executive session at 8: 02 P.M. The regular meeting reconvened at 8:03 P.M.

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

Timothy Chittenden, 2 Hammond Road, read the following statement to the Mayor and City Council, requesting that it be included in its entirety:

“I come to you tonight to discuss an incident that occurred in 2002 and what I have been put through subsequent to that incident.

“Firstly I am a life long Rye resident, a 20 year veteran of the Rye Police Department and the President of the union representing all Rye Police Department Police Officers, Detectives, Sergeants and Lieutenants for the last eleven years.

“On December 27, 2002 I reported to duty 2 ½ hours early for my midnight to 8:00 a.m. shift. I had my Supervisor’s permission to come in at that time. Lt. Verille (not my supervisor) was working the desk that night and asked me to write a report as to why I was “late”. I explained to him that I was not “late” but was in fact 2 ½ hours “early.” I asked him to call my Supervisor, a very simple task which would confirm what I was telling him, and he refused. Instead he said he did not give a shit and ordered me to write a report anyway detailing why I was late. I wrote the report stating I reported for duty 2 1/2 hours early as per my Supervisor. As per the Rye Police Department rules & regulations section 120, I wrote another report to Commissioner Connors detailing this harassment of me by Lt. Verille. I believe Lt. Verille was harassing me for no legitimate reason, to show me in a bad light and to further damage my career. I further believe he was doing this, for amongst other reasons, in retaliation for me reporting him to the District Attorney’s office for allegedly filing a false instrument, a felony, with the NYS DCJS in regard to our Accreditation. I have not heard back from the D.A.’s office in this regard.

“Getting back to the December 27, 2002 incident, in response to my complaint, the City of Rye Police Department said they would look into my complaint that I was harassed. Rather than investigate it themselves, they once again and needlessly hired an independent investigator with taxpayer money. We were told that the independent investigator was hired to look into my complaint of harassment by Verille against me. One would think that a Commissioner who claims to have gone to law school who is making in excess of \$110,000 a year in addition to the City of Rye subsidizing his housing costs, could handle a Police Officer’s complaint against a Lieutenant. Apparently the investigation was not done to look into any impropriety by Verille because based on my complaint of harassment against **me**, Commissioner Connors decided in March of 2003 to bring **me** up on departmental charges.

“I asked for an open public hearing on the charges as I am entitled to. I hired Jonathan Lovett and we have been demanding a public hearing for well over a year. Our requests have fallen on deaf ears. However, the City of Rye has spent tens if not hundreds of thousands of dollars on motions to dismiss my Attorney, sue me and to deny me documents needed in my defense.

“I have sought the report and any documents submitted by the person hired with City of Rye taxpayer money to investigate my complaint of harassment against me by Verille. His name is Robert Kearon. Incidentally, a person with the same last name appears on Vince Toomey’s letterhead. I need these reports and documents as the very core of my defense, yet the Commissioner and the Rye City Council have denied me access to them. Even though Kearon was hired as an investigator and his invoices state for investigative services, the City Council, in my opinion, incorrectly denied me access based on what they say is attorney/client privilege. I need to see how my complaint of harassment by Verille led to charges against me. We filed a lawsuit seeking these reports and documents. As of this writing, the City of Rye and Rye City Council have not provided any of the reports, documents or any parts thereof to me or my Attorney.

“In addition to being brought up on charges in March 2003 and being denied records to assist in my defense, I was sued last month by the City of Rye.

They sued me without a City Council resolution authorizing the lawsuit against me. The lawsuit demands that I be directed to fire Mr. Lovett who I hired to defend me in the disciplinary case. Since I am now being sued in my capacity and as Police Officer Timothy Chittenden, I am entitled to an Attorney paid for by the City of Rye. This is very clear in the City of Rye Charter as well as in our Collective Bargaining Agreement and other laws. I requested an Attorney and of course Connors denied me. In my opinion, Connors has unfairly and without legal standing denied me an Attorney in this matter. The City of Rye paid their labor Attorney, Vincent Toomey, thousands of dollars in taxpayer money, in addition to his other legal fees, to file and to prosecute this lawsuit against me. The Rye Police Association has filed a Grievance to recoup any legal fees and expenses associated with defending this lawsuit and any other matters arising from this lawsuit. We feel very confident we will win. If we do, the City of Rye would have spent taxpayer's money to sue me and taxpayer's money to defend me. I thought this City Council was looking to save money, not waste money.

"I have been an exemplary City of Rye employee for over 20 years. During this time I have been injured numerous times subduing dangerous suspects and performing dangerous duties. I have received numerous citations for lifesaving, excellent Police Duty, Meritorious Duty and numerous other awards associated with good police work and community service. It seems strange that after questioning Novak's, Connor's, and Verille's credibility, abilities and competence in addition to reporting numerous other serious allegations over the years, that I suddenly became a bad employee. In my opinion, I was needlessly, unfairly and without any merit brought up on charges in 2003. I find it ironic that with all the serious allegations I have brought forward in the past where little or nothing was done, that it is me standing before you tonight on something that probably could have been resolved if done correctly and fairly. The fact that the City of Rye and Rye City Council have already spent tens and possibly hundreds of thousands of dollars already on an investigation into me for coming to work 2 ½ hours early, is in my opinion, irresponsible, malicious, harassment and bias.

"I am trying to defend these charges brought against me last year, defend the lawsuit brought against me as Police Officer Timothy Chittenden by the City of Rye last month, trying to obtain reports and documents used to bring charges against me in addition to trying to rehab from two major surgeries that I had for injuries sustained in the line of duty. I can assure you that all of the actions and inactions taken by the City of Rye, the Rye City Council, the Rye Police Department, Commissioner Connors and others now, and in the past, have weighed heavily on my mind and body. It has affected my family life, my personal life, my health, my fence business and my relationships with co-workers and friends.

I close by asking you the following:

1. Order that these charges against me be dropped immediately.
2. Release to my Attorney the investigators reports and documents from the Kearon investigation.
3. Withdraw the lawsuit that the City of Rye filed against me or afford me an Attorney to defend myself.

4. I further request that Commissioner Connors be investigated for what, in my opinion, is his harassment of me and his bias towards me and the Rye Police Association. I ask that the investigation be done by a third party who is chosen mutually by the City of Rye and the Rye Police Association. If it is determined that Commissioner Connors or anyone else did harass me and or show bias towards me or the Rye Police Association, or that any other improprieties were committed by him, any one in his administration with his knowledge or anyone else for that matter with his knowledge, that Connors be fired immediately and any other party or parties be disciplined appropriately. I ask that this report be made public as well.

5. I ask that you investigate the exorbitant amount of taxpayer money paid to Vince Toomey and to determine if most, if not all of litigation that he advises you to proceed with, is avoidable.”

Mayor Otis remarked that Mr. Chittenden had raised a number of issues, many of which are involved in litigation and the Council was not in a position to comment. He said they would take the remarks under advisement.

4. Authorization to withdraw lawsuit against Arthur J. Gallagher and Co. Inc of New York, Gallagher Bassett Services Inc. and Gulf Insurance Company

Mayor Otis reported that in 2002 an action had commenced against our insurance brokers and the excess carrier after the excess carrier reserved the right to disclaim excess liability coverage in connection with the Home Depot case. The recent Court of Appeals decision ending the Home Depot litigation has made the suit no longer necessary. Corporation Counsel, Kevin Plunkett reported Coregis, another insurance company, had paid the City’s legal expenses so there were no out-of-pocket costs to the City. Councilman Cypher complimented Mr. Plunkett for having the foresight to recommend the lawsuit as a protective and prudent measure.

Councilman Seitz made a motion, seconded by Councilman Fahey and unanimously carried, to adopt the following motion:

**RESOLVED**, that the City Council of the City of Rye authorizes the Corporation Counsel to withdraw with lawsuit against Arthur J. Gallagher and Co., Inc. of New York, Gallagher Bassett Services Inc. and Gulf Insurance Company.

5. Discussion of New York State Thruway Property

The Mayor yielded the floor to Councilman Seitz who reviewed his actions regarding the use of the New York State Thruway Property located on the Boston Post Road at the entrance to Rye from Port Chester and owned by the Thruway Authority (TA). He said, in the interest of

finding more parking spaces for merchants and commuters, he had personally (rather than speaking for the City Council) contacted the TA to see if they would be interested in selling the property. The TA is not interested in selling but indicated they might be interested in an arrangement with the City to use the space for parking. Councilman Seitz proposed setting up a committee (consisting of himself, City Manager Shew and one other Council Member) to discuss this idea and examine other options. Councilman Seitz recommends that neither the Mayor nor Councilman Cypher be invited to serve on the committee as they have indicated they think his conversation with the TA was improper. He said the Mayor's suggestion of using the property for playing fields could also be considered, but this does not help the parking problem. He recognizes there are many issues to look at including public safety and that maybe nothing works and it stays the way it is, but the important thing is to be proactive and see what the TA might be considering.

Mayor Otis responded by saying the idea of playing fields is not new, but one that had been proposed and rejected by the TA when Ted Dunn was Mayor. The TA was, more recently, asked to let the City of Rye know if they ever wished to sell the property. The City has been consistent in opposing plans that would adversely affect Rye (a salt dome, for example). He said the Council had discussed the possibility of a lease concept, but had agreed no contact would be made with the TA before a cohesive plan was developed. He said Councilman Seitz's personal overture to the TA was one of the most dangerous things done on behalf of Rye he had seen and has opened up Pandora's Box – a box which needs to be slammed shut quickly before the TA, believing Rye would like a parking lot, proceeds with a plan to build one. He said even more astounding to him was the fact that Councilman Seitz has not shared with the Council who was at the meeting he had with the TA. The Mayor said parking at that location is a horrendous idea; he put the idea of an athletic field forward again as there is still a need for more playing fields, but he recognizes this use would also produce safety and traffic issues.

Councilman Hennes concurred that parking on this site was a bad idea and would attract even more cars from outside of Rye. He said he would prefer leaving it the way it is rather than having a parking lot. He too is worried the City has now sent a signal that we would consider parking and urged a unanimous decision from the Council rejecting parking as an option and stating that anything other than parkland is unacceptable. Councilman Cypher said the parking concept is awful for a multitude of reasons, most importantly in his view the safety of children, but would also invite more crime and more traffic problems. He said using the land for a field would create parkland that would be permanent unless rescinded by the governor, making it more difficult for the TA to create a transit hub for any proposed light rail system in that area. Councilman Chu agreed Councilman Seitz's conversation had put the City in a delicate situation. Councilman Fahey said there should be no further conversation with State Officials.

The Mayor said he had had a lot of experience with the TA finding that once they feel empowered to pursue an idea they will take it over. He said he hoped it was not too late and that wheels had already been set in motion, thinking Rye would like a parking lot. He said State agencies (including the Metropolitan Transit Authority [MTA]) can do whatever they want. *George Pratt*, Clark Lane, reiterated the idea that parking would create many challenges; that the TA needs to know there will be strong opposition to the idea; that involvement with State agencies does not give much chance of local control. *Catherine Parker*, local merchant, thanked Councilman Seitz for trying to find more parking, but agreed this site was not a good one. *Sis*

*D'Angelo*, Wappanocca Avenue, said it wasn't a place for fields and certainly not a place to build more parking to make it better for non-residents to commute from Rye. *Craig Antico*, 23 Rosemere Street, questioned if anyone would use the space if it were just a park.

The idea of forming a committee was greeted more positively. Councilman Hennes said that he would entertain the concept of a committee that would look at the options that would provide Rye with the maximum amount of control over the property. Councilman Fahey said don't ignore the problem; form a study group to prepare what we like and don't like. Councilman Chu said having taken the first step we should form a group to look at the issue in a low-key, prudent way. He said, being a Rye Country Day School parent, it would be hard to envision either parking or playing fields, but the Council needs to take all appropriate steps to avoid disaster. Councilwoman Larr questioned how much revenue the City would get if the land were owned by the TA. She likes the way it looks now although it is land lying fallow and the City has needs. *George Pratt* said setting up an explorative, investigative committee is positive, but it should encompass many more than three members. He said it should be charged with looking into all recreational possibilities including a park.

At the end of all the discussion, Mayor Otis reaffirmed his belief that, whether or not a committee is formed at some later date, it is important to send an immediate, firm message back to the Thruway Authority that parking was not considered favorably by the Council.

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

**RESOLVED**, that the Council of the City of Rye reaffirms its past opposition to any high volume parking or other uses incompatible with Rye's traffic safety, planning, and residential community needs on the parcel of land located on the Boston Post Road opposite Rye Country Day School, owned by The New York State Thruway Authority.

ROLL CALL:

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

The resolution passed by a vote of 5 to 2.

6. Athletic field proposal for Boston Post Road parcel

This agenda item was discussed as part of the previous agenda item.

7. Authorization for City Manager to enter into an Inter-Municipal Agreement with the County of Westchester for access to the County's online public viewer system

Acting City Manager Michael Genito reported Westchester County is offering cities and towns free access to its "online public viewer" system, which will provide access to various land and legal records. Having access to the system will be positive for Rye's homeowners, but it is necessary to enter into an Inter-Municipal Agreement before we can be granted the access.

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

**RESOLVED**, that the City Council of the City of Rye hereby authorizes the City Manager to enter into an Inter-Municipal Agreement (IMA) with the County of Westchester for access to the County's online public viewer system.

ROLL CALL:

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

NAYS: None

ABSENT None

8. Resolution to accept donations for a September 11, 2001 memorial

Acting City Manager Genito said that several residents of the City of Rye wish to make donations to the City to be used to establish a memorial to those who perished in the terrorist attack on the World Trade Center on September 11, 2001 and it would facilitate matters if the donations could be accepted as part of a blanket resolution.

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

**WHEREAS**, the residents of the City of Rye desire a memorial to honor those who perished in the terrorist attacks of September 11, 2001 ("Memorial"); and

**WHEREAS**, the adopted budget for fiscal 2004 did not anticipate the donations to be received, nor the costs associated with said Memorial; now, therefore, be it

**RESOLVED**, that the City Comptroller is authorized to accept donations and process claims associated with said Memorial; and be it further

**RESOLVED**, that the City Comptroller is authorized to amend the 2004 General Fund Community Beautification budget, increasing estimated revenues and appropriations by the total amount of donations received for said Memorial.

ROLL CALL:

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

9. Authorization to change existing race layout for Rye Recreation Turkey Run

Acting City Manager Genito said the Recreation Department had proposed a different race layout for the annual Rye Recreation Turkey Run to be held from 9:30 A.M. – 11:00 A.M. on November 27, 2004 making it more exciting for participants.

Councilman Hennes made a motion seconded by Councilman Cypher and unanimously carried, to approve the change to the existing race layout for the Rye Recreation Turkey Run.

10. Approval of bid for roof replacement for Police Headquarters and Department of Public Works

Acting City Manager Genito said that both the roof at the Police Department and the roof at the DPW Garage needed to be replaced and both jobs were bid at the same time. The City Engineer reviewed the four bids received and recommends the bid be awarded to the low bidder who has done quality work for the City in the past. The amount is within the budget.

The Bid tabulation is on the following page:

**ROOFING AND WATERPROOFING PROJECTS  
RYE POLICE DEPARTMENT BUILDING  
DPW GARAGE BUILDING  
CONTRACT #2004-04**

**BIDS OPENED OCTOBER 12, 2004**

Contractor	Fourmen Construction	Hudson Valley Roofing & Sheetmetal	H-Tech Contracting/ Lead Industries	Precision Roofing
<b>Police Dept. Roof and Rear Wall Replacement and Skylight Abandonment</b>	\$117,000.00	\$115,490.00	\$124,000.00	\$130,500.00
<b>DPW Garage Roof Replacement, Coping Cap, and Skylight Abandonment</b>	\$79,200.00	\$88,490.00	\$102,100.00	\$167,500.00
<b>Total Price Bid</b>	\$196,200.00	\$203,980.00	\$226,100.00	\$298,000.00
<b>% Above Low Bidder</b>	0.00%	3.97%	15.24%	51.89%

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

**RESOLVED**, that the Bid for Contract 2004-04 – Roofing and Waterproofing Projects: Rye Police Department Building; DPW Garage Building is hereby awarded to Fourmen Construction, Inc., being the lowest bidder meeting specifications, in the amount of \$196,200.

ROLL CALL:

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

10A. Request of Rye School District for use of Rye Recreation field for bonfire

Mayor Otis said there had been a last minute request from the Rye School District to be able to use the Rye Recreation field for a bonfire traditionally held on the football field prior to the Rye-Harrison game. Not only is there no Harrison game, but the football field is now flammable and the second site was just sodded so they need to find another place in order to maintain this tradition. Relocating to the Recreation Department field will require moving about 1000 people from the High School to the Recreation Department. This will require controlled use of Milton Road and extra police officers on overtime duty. The Police Commissioner has expressed reservations about the plan and has recommended the request not be granted. Councilman Cypher pointed out the request from the school appears to hope the City Council will deny the request as the idea is something of a hot potato and no one wants to be the person to say no.

John Shaughnessy, 4 Graham Court, said he and his wife, Barbara, were co-presidents of the Football Boosters group and they felt strongly that holding the bonfire will hold on to a great tradition, provide wholesome entertainment which will keep the children out of trouble; and be good for the community. The Shaughnessys said they had only recently found out the bonfire was to be cancelled and they are trying to salvage it. George Pratt, 2 Platt Lane and member of the School Board, said the school would absorb the extra costs and asked the Council to approve the request assuming it was a one-time only request.

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

**RESOLVED**, that once the requirements of the Police Commissioner and the City Manager can be met, the Council of the City of Rye grants the request of the Rye School District to use the Rye Recreation field for a bonfire, and to use Milton Road for a parade to and from the bonfire, subject to the following conditions:

1. It is understood that this is a school, not a City, event.
2. It is understood that this is a one-time approval for this year only.
3. The proper insurance certificate from the school is on file with the City.
4. The school agrees to reimburse the City for any costs over and above those normally associated with this event (such as additional police)
5. The event is arranged so that the anticipated crowd walks to, and from, the event as a group along a route designated by the Police Commissioner

6. The parents involved in the event will provide as many as 50 other parents to help create a safer event.

ROLL CALL:

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

11. Miscellaneous communications and reports

Councilwoman Larr warned the Council that the budget requested by Emergency Medical Services (EMS) this year will be at least 50% more than last year as they have raised their salaries in order to stay competitive.

Councilman Chu asked if the budget workshop schedule could be altered, as he is not free on November 10. The Manager's Office will poll the Council to see if another date is possible.

Mayor Otis said the City Manager is aware of the issues which have arisen over the placement of large, ugly boxes by Verizon, Inc. in the City's right-of-way, saying legal advice is needed, but he is anxious to make sure the City is maximizing any additional revenue it deserves as a result.

Mayor Otis reported that he had attended three focus groups and the general information session held by the consulting firm hired by the County to create a master plan for Playland. He said a hearing would be held in Rye on the matter and more details would follow. He reported that Bill Walsh, head of the Rye Playland Advisory Committee, had been part of the group that selected the consultants.

Councilman Fahey reported that the Fire Department Building Committee would be meeting on October 21 to go over plans for the Locust Avenue Firehouse renovation.

Councilman Fahey said the Osborn Parents are anxious to have a concrete plan from the Traffic and Transportation Committee about increasing child safety on the Post Road by the school. He also reported the Osborn School Fair was a great success.

City Clerk Susan Morison advised that voter turnout for the Presidential Election will be heavy and said residents should expect longer than usual lines. She also announced that those voting at The Osborn (in Polling Districts #2 and #14) will be voting in the auditorium for this election rather than the smaller room usually used.

12. Old Business

Councilman Chu inquired about the status of the Recreation Building and was informed by Councilman Hennes, who had spoken with Recreation Commission Chair Doug French, that

the plans look good and will be presented at a City Council meeting soon. He said it appear that the costs, including use of some of the donated funds, will come in on target.

In response to a question about the status of the parking consultant's next report, Acting City Manager Genito said it was too early for a new report, but he would check the status.

Councilwoman Larr asked about the status of the new "chipping" law, and suggested that a proviso be added which requires individuals who will be chipping to notify their neighbors in advance.

Councilman Fahey asked if the City of Rye had made a formal request from Rye to increase the size of our representation on the Rye Town Park Commission. Mayor Otis referred him to his proposal outlined in the January 21, 2004 Council meeting, reminding him that the proposal had been rejected by the Commission, and the Mayor has asked the Corporation Counsel to see if there was any way to force this matter legally.

Councilman Seitz discussed the deer problem saying the meeting with Kirby Lane North residents had been good. He urged due haste in making decisions as the deer hunting season is October-November. Acting City Manager Genito said the staff was working on the issue, documenting incidents and complaints and collecting data, and would update the Council at the next meeting.

13. New Business

Councilwoman Larr reported on the political signs which have been placed around town and reminded citizens our law prohibits any signs in the City's right-of-way or on any City property.

14. Draft unapproved minutes of the regular meeting of the City Council held October 6, 2004

Councilman Hennes made a motion, seconded by Councilman Fahey and unanimously carried, to approve the minutes of the regular meeting of the City Council held October 6, 2004 as amended.

15. Adjournment

There being no further business to discuss, Councilman Hennes made a motion, seconded by Councilman Cypher and unanimously carried, to adjourn the meeting at 10:50 P.M.

Respectfully submitted,

Susan A. Morison  
City Clerk