

APPROVED MINUTES of the Regular
Meeting of the City Council of the City of Rye held in
City Hall on February 16, 2005 at 8:00 P.M.

PRESENT:

STEVEN OTIS, Mayor
FRANKLIN J. CHU (departed at 9:00 P.M.)
ROBERT S. CYPHER
MATTHEW FAHEY
DUNCAN HENNES
ROSAMOND LARR
HOWARD G. SEITZ
Councilmen

ABSENT: None

The Council convened at 7:30 P.M. Councilwoman Larr made a motion, seconded by Councilman Fahey and unanimously carried, to adjourn to executive session at 7:31 P.M. to discuss possible litigation. Councilman Seitz made a motion, seconded by Councilman Cypher and unanimously carried, to close the executive session at 8:05 P.M. No decisions were made. The regular meeting reconvened at 8:07 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.

Announcements

Mayor Otis congratulated Police Officer Michael Anfuso for the arrest of a person found to be concealing weapons in his car and with a record of 19 violations. It is proof that dangerous persons do pass through our community and comforting to know our Police are on the job.

The Mayor mentioned that several citizens who had given great volunteer service to Rye were stepping down from various committees and he expressed appreciation for all their contributions. Jonathan Kraut, one of the most knowledgeable members of the Board of Appeals, has resigned after 10 years of being on the board; Pat McGunagle, a member of the Planning Commission and also head of the Commission on Human Rights, is moving away; Mary Ann Ilse, former mayor and member of the Ethics Committee, and George Ilse, member of the Rye Town Park Commission, have moved to Greenwich.

Councilman Cypher announced that both the girls' and boys' basketball teams would be playing in the Section I playoffs on February 17th beginning at 5 P.M. He said the games promised to be both well played and exciting and urged everyone to come cheer them on.

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

Adrienne and Keith Watkins, Wainwright Street, addressed an on-going problem with seven summer bungalows in their neighborhood that are owned by an absentee landlord and rented out during the summer to transients who are crowded into the space and are consistently noisy and rowdy. They said there was illegal building (decks, windows) being added to the bungalows and the discarded appliances are unsightly. *Sean Kennelly, 13 Wainwright Street*, echoed the concerns, saying the situation, complete with consistent late-hour parties, continuous loitering and double or triple parked cars, causes unrest and concern for the young children in the neighborhood. They asked the City to continue to be vigilant inspecting as they are concerned about next summer when the situation will worsen again. They said the police are good about showing up, but it is hard to have to wake up late every night to call them. City Manager Paul Shew said the properties were grandfathered and there is only so much that can be done, but they will continue to monitor the situation. Council members expressed concern not only about the overcrowding and nuisance factor, but also over the potential for fire. The Mayor suggested if there were no legal occupancy limit, perhaps a local law should be enacted. Councilman Hennes suggested City staff meet with the owner to lay down the rules prior to enacting a new law.

4. Public hearing on an application of AT&T Wireless for a special permit to locate a wireless telecommunications facility at 150 Purchase Street

The Mayor opened the public hearing on an application (TC011) of AT&T Wireless for a special permit to locate a wireless telecommunications facility at 150 Purchase Street and said, at the outset, that he had some concerns about the location of the equipment. City Planner Christian Miller said the City's consultant, CompComm, had evaluated the application and the height of the location relative to the neighborhood, but had found that the RF exposure meets FCC guidelines. Chris Fisher, Cuddy and Feder LLP, representing AT&T, along with Don Leffert, an engineer, made a presentation to the Council. He said his figures relating to the RF exposure have been corroborated by the consultant, but conceded that the roof is typically commercial and not particularly attractive. To address aesthetic concerns he said his client would construct a wall around the installation, but not around the whole roof; that the installation (about 12' x 25') will be located in the middle of the room to make it less of an eyesore to the neighbors; and agreed that there would be room for two more similar installations in the future. He said his client has other installations (on top of Blind Brook Lodge and on top of an office building on Theodore Fremd) and this proposal was to be able to serve I-95 and Purchase Street where current service is poor. *Nick Scezerba, High Street*, said his main concern, over and above it being an eyesore, was health and property values. *Anne O'Neill, 36 Highland Road*, agreed, as did *Doug Carey, 131 Purchase Street*, who also stated that the site is visible from the fourth floor of Highland Hall. Councilwoman Larr asked why the facility had not been located on Highland Hall (it was the applicant's understanding Rye prefers non-residential sites) and suggested

sending it back to the Board of Architectural Review. Councilman Hennes suggested this might really be an inappropriate location.

Mayor Otis suggested keeping the hearing open until some of the questions and concerns can be further examined. Mr. Fisher said they would take additional pictures and have them available. The hearing will be continued at the March 30, 2005 Council Meeting.

5. Public hearing for the establishment of the Kirby Lane North Sanitary Sewer Special Assessment District

Mayor Otis opened the public hearing for the establishment of the Kirby Lane North Sanitary Sewer Special Assessment District and turned the floor over to City Manager Paul Shew who reported a team of City Staff (including Engineer George Mottarella, Comptroller Mike Genito and City Planner Christian Miller) and the Consulting firm of Chas. H. Sells had been working hard to get the district established, as requested by at least 66% of the residents of the proposed district. He said the City's interest is to get the sewer built as quickly as possible and it has no jurisdiction over other services, such as water and gas, but will provide the citizens with the contact person at each company and a place for them to meet.

Steve Smith from Chas. H. Sells presented an overview of the process. He said the design phase had been completed and it is time for the City to give its approval to establish the sewer district. Next steps will be additional design phases, followed the bidding process which will lead to the construction phase. He reviewed the timeline, as outlined in the following resolution and outlined the changes since October 5, 2004 that have resulted in an increase in the cost estimate from approximately \$1.5 million to \$1.7 million. He outlined the projected schedule for completion of the project as follows:

Final resolution by the City Council	Feb. 16, 2005
Planning Commission Wetland Permit	Feb. 22, 2005
Complete final Design	June/July 2005
Health Department Approval	Summer 2005
Advertise for construction	September 2005
Bid Opening/Award	Oct./Nov. 2005
Start construction	Nov. 2005 or March 2006
Substantial completion	June 2007

Various members of the audience posed questions for Mr. Smith about the process. *Karen Shanes, 25 Kirby Lane North*, asked what "substantial completion" meant (the system will be operational, approved, and ready to start up); *Richard Slack, 365 Grace Church Street*, asked about expectation on property values and about the health benefits from such a project (usually very positive on property values and septic can fail so the benefits of a sewer system are also positive from a health point of view); *Nicholas Oustannikoff, 25 Kirby Lane North*, asked why the construction should take so long (it is all in the timing and when they can start, as it is hard to work in the winter and they have to keep the street open). Councilman Hennes was concerned that all 22 residents who had petitioned for the district were comfortable with the higher costs and wanted to know if the current estimate is realistic. Mr. Smith said there is a 17.5%

contingency cost and they have done a lot of testing to check for rock, etc. so he is comfortable with the estimate. He pointed out that should be bids come in too high, there was always the option to reject them.

There being no further questions or comments from the Council or members of the public, Mayor Otis closed the public meeting.

City Planner Christian Miller asked the Council to review the resolution (including a list of properties and a map of the district) before them authorizing the sewer district.

Councilman Seitz made a motion, seconded by Councilwoman Larr, to adopt the following resolution establish the Kirby Lane North Sanitary Sewer Special Assessment District:

WHEREAS, on November 3, 2004 the Rye City Clerk received a petition (hereinafter the "Petition") requesting that the City undertake a local improvement pursuant to Chapter 128 of the Rye City Code to extend sanitary sewer service to 30 properties located on Kirby Lane North and a portion of Grace Church Street; and

WHEREAS, said Petition was duly signed and authenticated by more than 66 2/3% of the 30 property owners within a district known as the "Kirby Lane North Sanitary Sewer Special Assessment District" (hereinafter the "District"); and

WHEREAS, the Rye City Council received and considered the Full Environmental Assessment Form with attachments and Local Waterfront Revitalization Program (LWRP) Coastal Consistency Form dated December 10, 2004; and

WHEREAS, on December 15, 2004 the Rye City Council declared its intent to be Lead Agency with respect to the proposed action and referred to the Rye City Planning Commission for Advisory LWRP Coastal Consistency and Wetland Permit consideration in connection with the Kirby Lane North Sanitary Sewer Special Assessment District.

WHEREAS, the Full EAF with attachments and Notice of Intent to be Lead Agency was circulated to all involved agencies and no objection was submitted to the City Council assuming Lead Agency status; and

WHEREAS, the Rye City Planning Commission provided its advisory LWRP Coastal Consistency recommendation to the City Council in Planning Commission memorandum No. 02-2005 dated February 9, 2005; and

WHEREAS, said Planning Commission Memorandum stated that the proposed action is consistent with the 44 policies of the City's LWRP;

NOW, THEREFORE, BE IT RESOLVED, that the City Council designates itself as Lead Agency and based on its review of the Environmental Assessment Form (EAF), the criteria listed in Section 617.7(c) of SEQRA and the complete record, the City Council finds that the proposed action will not have a significant adverse environmental impact and adopts a Negative Declaration; and

BE IT FURTHER RESOLVED, that the City Council finds that the proposed action is consistent with the City's Local Waterfront Revitalization Program (LWRP) policies, standards and conditions identified in §73-5.D, *Coastal Zone Management Waterfront Consistency Review*, of the City Code; and

BE IT FURTHER RESOLVED, that the City Council hereby establishes the Kirby Lane North Sanitary Sewer Special Assessment District consisting of the following 30 properties, having the following property addresses and City Tax Assessor Parcel ID numbers and as shown on the map attached hereto:

280 Grace Church Street (146-8-2-19)	350 Grace Church Street (146-8-2-33)	7 Kirby Lane North (146-8-1-20)
286 Grace Church Street (146-8-29-2)	355 Grace Church Street (146-8-1-11)	9 Kirby Lane North (146-8-1-19)
289 Grace Church Street (146-8-1-24)	360 Grace Church Street (146-8-2-32)	11 Kirby Lane North (146-8-1-18)
290 Grace Church Street (146-8-2-29-1)	365 Grace Church Street (146-8-1-10)	12 Kirby Lane North (146-8-1-17)
300 Grace Church Street (146-8-2-29-3)	370 Grace Church Street (147-5-1-8)	14 Kirby Lane North (146-8-1-16)
309 Grace Church Street (146-8-1-23)	385 Grace Church Street (146-8-1-9)	15 Kirby Lane North (146-8-1-4)
320 Grace Church Street (146-8-2-31)	3 Kirby Lane North (146-8-1-22)	16 Kirby Lane North (146-8-1-15)
330 Grace Church Street (146-8-2-34)	4 Kirby Lane North (146-8-1-14)	18 Kirby Lane North (146-8-1-7)
331 Grace Church Street (146-8-1-13)	5 Kirby Lane North (146-8-1-21)	25 Kirby Lane North (146-8-1-5)
345 Grace Church Street (146-8-1-12)	6 Kirby Lane North (146-8-1-8)	27 Kirby Lane North (146-8-1-6)

BE IT FURTHER RESOLVED, that pursuant to Section 128-5 of the Rye City Code the City Council directs the undertaking of the local improvement based on an estimated project cost of \$1,680,800 and that the proportionate share of all costs shall be divided equally by each property in the District as permitted by Section 128-5.B(4) of the Rye City Code.

A copy of the District Map is attached on the following page.

ROLL CALL:

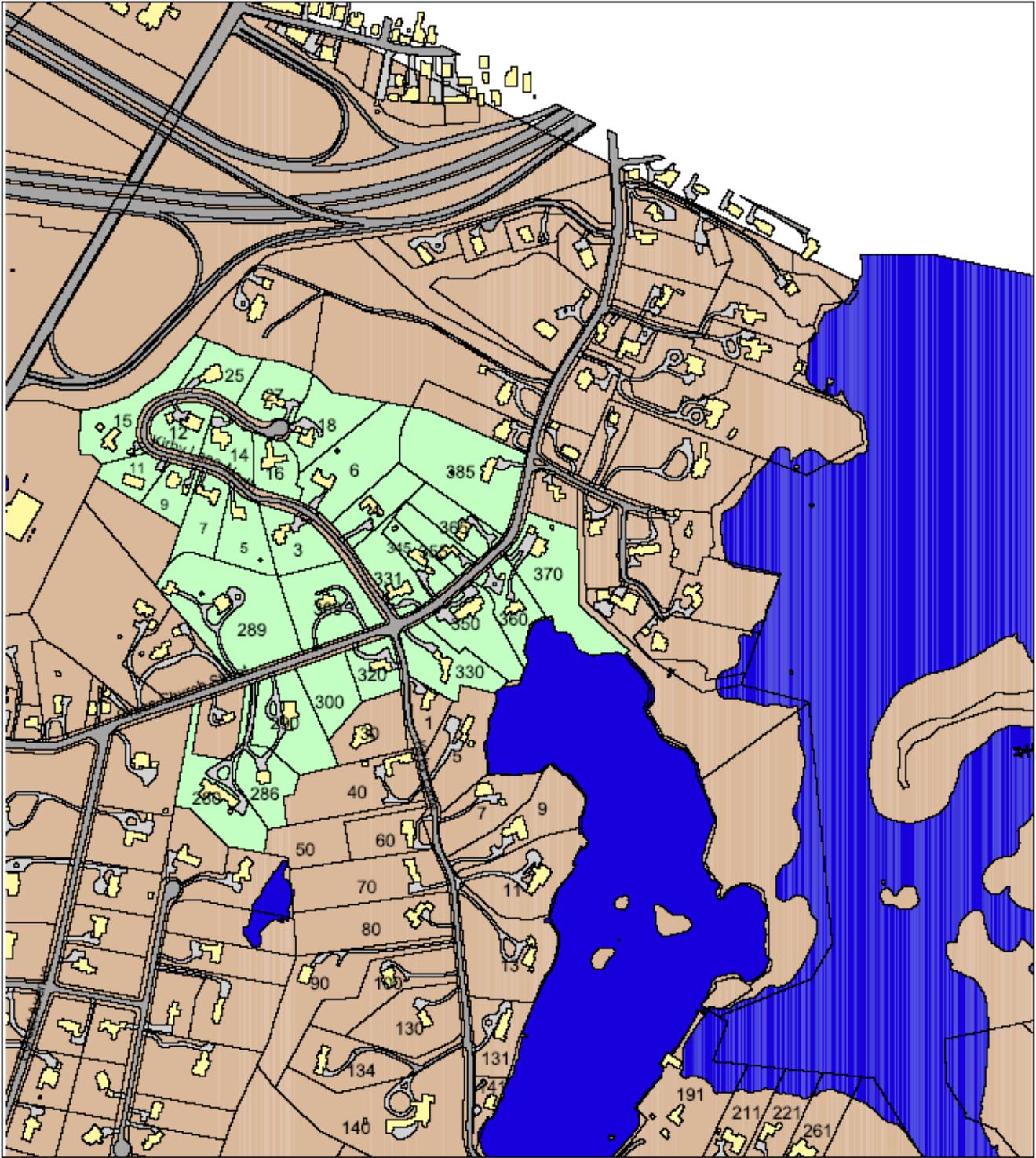
AYES: Mayor Otis, Councilmen Cypher, Fahey, Hennes, Larr and Seitz

NAYS: None

ABSENT: Councilman Chu

Tony Spaeth, Kirby Lane North, thanked the Council, City Staff and the consultant for all their hard work in getting the district established.

Kirby Lane Sewer Project



Proposed Sewer Service District

- Buildings
- Property Boundary (Approx.)
- Driveway
- Roads
- Properties Within Proposed Sewer District
- Water

200 0 200 400 600 800 1000 Feet

Last Revised: July 2004



Note: This map is intended for general planning purposes only.

6. Resolution to support Commercial Assessment Ratio for use in tax certiorari proceedings

City Assessor Noreen Whitty addressed the Council seeking support for a resolution supporting a Commercial Assessment Ratio (CAR) for use in tax certiorari proceedings, saying adoption of a “CAR” will reduce the City, County & School’s tax liability in successful tax certiorari proceedings as well as lessen the tax burden on homeowners. She read the following statement outlining the importance of adopting such a resolution into the record.

“The purpose of using a “CAR” is to reduce our tax exposure in tax certiorari proceedings and stop the shift of taxes from commercial properties onto homeowners.

“The Westchester Municipal Officials Association is asking Westchester municipalities to indicate their support for a commercial assessment ratio by adoption of a resolution. Once we have the support of these municipalities, we will ask members of our local State delegation to sponsor a bill permitting the use of a “CAR” in tax certiorari proceedings.

“Under the current system, commercial property owners seeking review of their assessment file an Article 7 tax certiorari proceeding in State Supreme Court. The Court uses the municipality’s equalization rate to determine the validity of an assessment and the amount of over-assessment, if any, which in turn determines the City’s, School’s and County’s tax liability. An equalization rate is a ratio which purports to measure the level of assessment to full value of all real property within a given community and has a variety of purposes including determining the City’s share of the County tax burden as well as the City’s share of the Rye Neck school levy and for tax certiorari proceedings. It measures the value of all property types. However, because Rye is predominantly a residential community, changes in residential values impact the rate significantly more than other property types. From 1996 to 2004, the City’s equalization rate has plummeted 60%. The larger the drop in the rate, the greater is the City’s tax exposure in certiorari proceedings. In addition, the tax burden gets shifted from the commercial properties onto the homeowner. The reason the rate has plummeted over the past decade is primarily due to the significant appreciation in residential property values. At the same time, commercial property values, which are valued based on their income stream, have remained relatively constant.

“The Westchester Assessors Association is recommending that for purposes of tax certiorari proceedings only, the Court be permitted to use a “CAR.” Because the “CAR” looks at the level of assessment of only commercial properties, it is not skewed by residential values and would offer some assistance to homeowners who are increasingly burdened by property taxes.”

She concluded by saying the City has funds budgeted for settlements, but anything that can be done to insure the settlements will be more favorable would be helpful, as the situation is not going to get better. She said while passage of the legislation is not automatic, support from a broad number of municipalities will help. Mayor Otis indicated that the WMOA executive committee was supportive of the proposal and had requested responses from municipalities before March 10th.

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

RESOLVED that the Council of the City of Rye hereby supports the adoption of Commercial Assessment Ratio (“CAR”) for use in tax certiorari proceedings and will support such legislation when it is introduced.

7. One appointment to the Board of Appeals to fill a term expiring on January 1, 2006

Mayor Otis made a motion, unanimously approved, to appoint Susan Brown to the Board of Appeals to fill a term expiring January 1, 2006.

8. One appointment to the Rye Town Park Commission to fill a term expiring on January 1, 2006

Clinton Phy, 325 Rye Beach Avenue, Treasurer of the Friends of Rye Town Park (Friends) and speaking on behalf of the Friends nominated Brian Daly, a member of the Friends of Rye Town Park, to fill George Ilse’s spot on the Rye Town Park Commission. His name had been suggested in the past and he is still interested in serving. Councilman Cypher, while having great respect for Mr. Daly, whom he has known for a long time, said he is concerned that the park is not well managed; that it is really a parking lot during the summer rather than a park; that the security force is unprofessional; and it is not clear where the revenues are going and he suggested not rushing to fill the position, but rather, seeing who else might be interested in applying who might address some of these issues. Mr. Phy said he concurred with Councilman Cypher’s concerns but said the Friends has little impact or jurisdiction over most of them as it was not in their purview. The Mayor said he felt it was important to fill the position now, at least on a temporary basis, so that Rye would have its full quota of two members at the next meeting (Tuesday, February 22, 2005). Councilman Hennes agreed it would be good to look around for a candidate and reiterated his major concern about the park was the financial aspect. Councilman Seitz, who had proposed Councilman Hennes for the position, said he had reviewed the figures and they appear to be out of control with lowered revenue and increased costs and he thinks a person with financial acumen, such as Mr. Hennes, would make a better addition to the Commission than a member of the Friends of Rye Town Park. The Mayor pointed out that members of the Rye City Council using specific figures, which, in the case of the duck pond project were not accurate, had created hard feelings and we need to build back a relationship with the Commission, as we need their cooperation. He said the new auditor should help the situation, but the real problem lies in capital planning. Councilman Hennes said he needs to see the details, regardless of whether or not feelings are hurt. He also asked to see financial statements from the Friends. Councilman Fahey pointed out that the figures in 2002 show little change in detailed information from 2003.

After further discussion Councilman Hennes made a motion, seconded by Councilwoman Larr and unanimously carried, to nominate Councilman Fahey as a temporary member of the Rye Town Park Commission and to agree to Councilman Cypher's suggestion to look for additional candidates for consideration as a permanent member.

Councilman Seitz made a motion that the Rye representatives on the Commission not vote for a budget that projects a loss. It was pointed out that Rye is obligated to make a contribution and that what is budgeted seems to have little effect on the final figures. There was no second and no vote on the motion.

9. One appointment to the Traffic and Transportation Committee to fill a term expiring January 1, 2006.

Mayor Otis made a motion, unanimously approved, to appoint John Wickham to the Traffic and Transportation Committee to fill a term expiring January 1, 2006.

10. Resolution to approve Corporation Counsel Retainer Agreement

City Manager Paul Shew asked the Council to approve a revised retainer agreement for the Corporation Counsel outlining more specifically responsibilities covered under the agreement and excluding certain specific matters.

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

RESOLVED, that the Council of the City of Rye hereby approves a revised Corporation Counsel Retainer Agreement dated February 16, 2005 to be in effect until the next annual organizational meeting of the City Council unless sooner terminated by either party.

ROLL CALL:

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

11. Resolution to amend 2005 City Council Meeting Schedule

Councilman Seitz requested that the August meetings on Monday August 15 (Capital Improvement Plan presentation) and Wednesday, August 17 (regular meeting) be moved to the week before. The City Comptroller said moving up the schedule even 7 days would present a

problem for the Finance Department. Councilman Cypher said there are always some times when a particular Councilman cannot attend and items of specific interest to the absent member can be deferred, but he thinks it is important to adhere to the schedule as set in January. Councilman Seitz withdrew his request.

12. Resolution to amend 2005 budget for forfeiture of street-opening deposit

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

WHEREAS, the City Engineer has requested that funds from the forfeiture of a street-opening deposit be allocated to the work in 2005 necessary to restore the affected street; and

WHEREAS, the adopted budget for fiscal 2005 did not anticipate the receipt of these funds nor the costs associated with the aforementioned street restoration; now, therefore, be it

RESOLVED, that the 2005 General Fund Street Maintenance budget be amended, increasing Estimated Revenues and appropriations, each in the amount of \$2,333.

ROLL CALL:

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

13. Resolution to amend 2005 budget for forfeiture of street-opening deposit for sidewalk work

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

WHEREAS, the City Engineer has requested that funds from the forfeiture of a street-opening deposit for sidewalk work be allocated to the work in 2005 necessary to restore the affected sidewalk; and

WHEREAS, the adopted budget for fiscal 2005 did not anticipate the receipt of these funds nor the costs associated with the aforementioned sidewalk restoration; now, therefore, be it

RESOLVED, that the 2005 budget be amended as follows:

Increase General Fund Street Maintenance Estimated Revenues \$3,000

Increase General Fund Appropriations – Transfers to Capital Projects Fund \$3000

Increase Capital Projects Fund 2005 Annual Sidewalk Project Estimated Revenues – Transfers from General Fund \$3,000

Increase Capital Projects Fund 2005 Annual sidewalk Project Appropriations \$3000

ROLL CALL:

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

NAYS: None

ABSENT: Councilman Chu

14. Miscellaneous communications and reports

The Council thanked the City Manager for the Annual Reports distributed at the meeting.

15. Old Business

City Manager Shew reported that the City was continuing to work with Scott Smith from the Department of Environmental Conservation on the problem of controlling Rye's deer population. He said it appears residents, within certain guidelines, may be able to conduct their own hunts and there would be a meeting on February 23rd to discuss the matter further.

Councilman Seitz asked what the City was doing about the loitering issue and whether there should be a task force. City Manager Shew said the City was working on many fronts (with the police, youth advisory teens, recreation), and Councilman Cypher finding ways to interact so should something unfortunate happen no one is a stranger. He said the loitering bill had not been enacted but everyone is working hard to coordinate efforts and find solutions to the loitering issue.

In response to a question from Councilman Seitz, Mayor Otis said there had been no further action of the occupancy tax bill in Albany.

16. New Business

There was no new business to come before the Council.

17. Draft unapproved minutes of the regular meeting of the City Council held February 2, 2005

Councilman Hennes made a motion, seconded by Councilwoman Larr and unanimously carried, to approve the minutes of the regular meeting of the City Council held February 2, 2005 as amended.

18. Adjournment

There is no further business to discuss, Councilman Hennes made a motion, seconded by Councilman Cypher and unanimously carried, to adjourn the meeting at 11:02 P.M.

Respectfully submitted,

Susan A. Morison
City Clerk