

**APPROVED MINUTES** of the Regular Meeting of the City Council of the City of Rye held in City Hall on June 15, 2005 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

Financial Reporting Honored. City Manager, Paul Shew informed the Council that Comptroller Michael Genito and his department had once again been awarded a Certificate of Achievement for Excellence in Financial Reporting. He said many municipalities never win such an award and to be selected on repeated occasions is both unusual and impressive. Mayor Otis made a motion, seconded by Councilman Hennes and unanimously carried, to approve the following proclamation congratulating and honoring Mr. Genito and his entire staff.

**PROCLAMATION**

*WHEREAS, the Certificate of Achievement for Excellence in Financial Reporting is the highest form of recognition in government accounting and financial reporting, and its attainment represents a significant accomplishment by a government and its management; and*

*WHEREAS, the City of Rye has qualified for this recognition for the 2004 fiscal year; and*

*WHEREAS, when a Certificate of Achievement is awarded to a government, an Award of Financial Reporting Achievement is also presented to the individual designated by the government as primarily responsible for having earned the certificate; and*

*WHEREAS, City Comptroller Michael A. Genito has made a significant contribution toward achieving this recognition, and*

*WHEREAS, his dedicated staff, Joseph Fazzino, Brenda Jeselnik, Carolyn Ottly, Angela Runco, and Ann Terenzi, have worked diligently as a team to reach this goal;*

*NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Rye hereby recognizes and commends Mr. Genito and his staff for their efforts in obtaining this recognition on behalf of the City and for bringing distinction to the City of Rye for the highest recognition granted by their peers in Government Finance, and*

*BE IT FURTHER RESOLVED, that this resolution be presented to Mr. Genito as an expression of the City of Rye's appreciation on behalf of the entire City for this accomplishment.*

*Signed and sealed this 15th day of June, 2005.*

*Steven Otis, Mayor*

Rye Athletic Prowess Honored. Mayor Otis remarked on the exceptional athletic achievements of all the schools in our community. He reported that both the girls' and boys' Rye High School lacrosse teams had extraordinary records, ending their seasons deep into the playoffs; that the High School Girls' Soccer team was undefeated and Sectional Champions; and that Brian Cook (varsity football, basketball and lacrosse) had been named athlete of the year by the Rye Lion's Club.

James Kenny, Cable Television Coordinator, Honored. Mayor Otis announced that Mr. Kenny, who has been head of Rye Cable Television for almost 18 years would be leaving his position to assume greater responsibilities as head of Cable Television in White Plains. He recalled that Mr. Kenny started with a desk and one camera and had built the department into something truly special. Councilman Cypher assured Mr. Kenny he would receive no complaints from White Plains performers; Councilwoman Larr recalled with fondness some of their trips together on the EMS ambulance; other Council members joined in wishing Mr. Kenny all the best. Mayor Otis made a motion, seconded by Councilman Fahey and unanimously carried, to approve the following proclamation:

**PROCLAMATION**

**WHEREAS**, James Kenny has served the City of Rye as Cable Television Coordinator for 18 years, and

**WHEREAS**, Jim, with his Masters Degree in both Television Production and Education, brings special expertise to Rye Cable Television as it developed to today's level, providing community access for local government, the school districts and the community at large, and

**WHEREAS**, Jim's duties and responsibilities have increased as demand for programming has grown, the studio equipment and space have increased, the volunteer numbers have expanded, and staff has been hired to help him as the industry continues to grow and evolve, and

**WHEREAS**, Jim has, as professional advisor to the Rye Cable Committee, served with chairs including Roger Bumstead, John Gregg, Steven White, and Doris Blank to help the Committee oversee a successful revenue center providing increased value to the City of Rye, and

**WHEREAS**, he can be found on many a night manning the camera so that the community can share in numerous meetings and events, including the popular City Council meetings, police and ambulance ride-alongs, and horror video camp (to name a few); and

**WHEREAS**, Jim is dedicated, loyal, hardworking, down to earth, and insightful and has grown with the demands of a demanding job in an ever changing and consistently evolving area of technology, and

**WHEREAS**, Jim's leadership has brought Rye Cable Television from it's infancy to it's current standing as among the top public access operations in the region; and

**WHEREAS**, the residents of the City of Rye appreciate the quality and quantity of Rye's cable access and know that special access would not exist today without Jim's tireless dedication and commitment over the past fifteen years;

**THEREFORE, BE IT RESOLVED**, that on behalf of the people of the City of Rye, the Rye City Council pauses in its deliberations to thank and commend James Kenny for his extraordinary service to the City of Rye; to congratulate him on his lasting contributions to our community; and to wish him all the best for many happy and successful years as he moves on to other challenges and opportunities.

Signed and sealed this 15<sup>th</sup> day of June, 2005.

Steven Otis, Mayor and Councilmen Chu, Cypher, Fahey, Hennes, Larr and Seitz.

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City Manager Shew said Mr. Kenny had been voted 2004 Employee of the Year and he once again presented him with a magician's hat, remarking that Mr. Kenny is indeed the "Merlin of the Industry." Mr. Kenny, saying he was a man of few words, said "thank you."

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

*Former Mayor John Carey, Forest Avenue*, referring to a NY Times article concerning locations suggested for loading liquid gas, pointed out that most of the locations were in the ocean. He said off-loading could be done, even in the midst of Atlantic Ocean swells, especially as one port is stable, and he urged any loading station, should it have to be in our area, be in the ocean rather than in Long Island Sound.

*Henry King, 76 Coolidge Avenue*, commented on the special Beaver Swamp Brook Meeting set up by the City to answer questions about the project. He said many people spoke, but what he best recalled was an engineer who said, "Beaver Swamp Brook is a big bathtub and Mamaroneck is the plug, so whatever you do will not do any good." He said we were 24% below normal rainfall level; Rye's side is wet while Harrison's side is so dry they are watering, so something is wrong. He said he just doesn't understand what is going on and there was not enough time for questions at this meeting. Mayor Otis responded that the formal meeting was ended because people wanted individual conversations with the contractors, but that the meeting was good; that 56 cubic yards of dirt had been removed while only 30 cubic yards had been brought in; and City Staff will continue to meet on a regular basis on the project to make sure our interests are represented.

4. Youth Advisory Committee report on proposed loitering law

Alexandra Piscionere, City Council liaison from the Youth Advisory Committee (YAC), reported to the Council on a proposed loitering law. She said YAC feels the law, as proposed, appears to be targeted against youth, rather than the public in general, and asked what offenses the kids of Rye have actually committed to generate this proposal. She said there is no law that defines what is a "large" number of people? Is a "large gathering" defined by a police officer? She pointed out that there are state laws on the books which would deal with Loitering and Disorderly Conduct so YAC questions the necessity of a local law, unless the real purpose is to target the youth of Rye. She said the guidelines don't explain what are permissible acts as opposed to illegal acts. YAC feels it is positive that Rye's youth are out in the open where everyone can keep an eye on them rather than driving them away to potentially dangerous environments.

Mayor Otis thanked Ms. Piscionere and expressed his concern about using a loitering law to restrict youth. Councilman Fahey said the law was not intended to "get kids off the street" but to encourage more mutual respect. He urged all concerned to refer to the recently distributed RESPECT manual.

5. Public hearing on a proposed local law to amend chapter 197 (Zoning) of the City of Rye, New York with respect to dwelling units on the second floor over nonresidential main uses in the B-1 Neighborhood Business District

Mayor Otis opened the public hearing on a proposed local law to amend Chapter 197 (Zoning) of the City of Rye, New York with respect to dwelling units on the second floor over nonresidential main uses in the B-1 Neighborhood Business District. City Planner, Christian Miller provided an overview, stating that the text amendment had been requested by an individual, that it was consistent with the recently completed Neighborhood Business District Business Study, and supported by the Planning Commission and by Westchester County. He said the suggested change in the law is viewed as positive and in keeping with the spirit of the community, and already there are two projects (1000 Boston Post Road and 259 Purchase Street) that are ready to take advantage of this new ordinance. Councilman Larr asked about parking requirements. Mr. Miller said there is a small amount of relief for parking requirements because there is an anticipation of shared use, but all parking will be off-street. Councilman Chu asked what would not be positive about this law? Mr. Miller said it might be perceived as producing more intensity of use or being incompatible with present use, but it really isn't; it is more of a return to the past, reuniting business and residences. Councilman Cypher said he thought it would bring more people into the area and provide a good mix. Councilman Seitz concurred, saying it was very positive. *Tony Spaeth, Kirby Lane North*, said it was a great idea as long as any extra fire safety issues had been addressed. *Nancy Richards, Rye resident*, questioned additional litter. It was pointed out that residents tend to take more pride in their street than businesses and residences would not be approved over restaurants (there are none in B-1 Districts except those which are non-conforming).

There being no further comments, Mayor Otis closed the public hearing. Councilman Seitz made a motion, seconded by Mayor Otis, to adopt the following local law:

**A local law to amend chapter 197 (zoning) of the  
code of the City of Rye, New York  
with respect to dwelling units on the second floor  
over nonresidential main uses in the  
B-1 Neighborhood Business District**

Be it enacted by the City Council of the City of Rye as follows:

**Section 1.** Section 197-86, Table of Regulations: Table B, Business Districts-Use Regulations, Column 1, Permitted Main Uses, B-1 Neighborhood Business Districts, of the Code of the City of Rye, New York is hereby amended by adding thereto a new subsection (9) to read as follows:

- (9) **Second Floor Dwellings.** Dwelling units on the second floor of a building where the first floor contains a nonresidential main use, subject to the following requirements and limitations:

- (a) The residentially used portion of the building shall have an entrance or entrances which do not require access through any nonresidentially used area, other than a lobby or other common area.
  
- (b) Parking for the underlying permitted nonresidential main use shall comply with the off-street parking requirements specified in Section 197-28. If the underlying nonresidential main use complies with the parking requirements of Section 197-28, and if two (2) or fewer dwelling units are provided on the second floor, then no additional parking shall be required, but if more than two (2) dwelling units are provided on the second floor, then one (1) parking space shall be provided for each dwelling unit in excess of two (2) dwelling units.
  
- (c) The buildings and structures housing a mixed use pursuant to this subsection (9) shall follow the regulations for “All other main building” in Table of Regulations: Table B, Business Districts, Area, Yard, Height and Miscellaneous Regulations.

**Section 2.** Severability

The invalidity of any word, section, clause, paragraph, sentence, part or provision of this Local Law shall not affect the validity of any other part of this Local Law that can be given effect without such invalid part or parts.

**Section 3.** Effective Date

This Local Law shall take effect immediately upon its adoption and filing with the Secretary of State.

ROLL CALL:

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

NAYS: None

ABSENT: None

6. Consideration of setting a public hearing on a local law to amend Chapter 197 (Zoning) of the City of Rye, New York, with respect to bank regulations in the B-1 and B-2 Business Districts

Barbara Cummings, Chair of the Planning Commission, accompanied by Planning Commission Member Nick Everett, reviewed the evolution of the decision by the Planning Commission to propose a local law to amend Chapter 197 (Zoning) of the City of Rye, New

York with respect to bank regulations in the B-1 and B-2 Business Districts. She said a committee consisting of herself, Nick Everett, Joe Sack, Peter Larr, Martha Monserrate, and Brian Dempsey, had worked with City Planner Christian Miller to look at global issues. This process had evolved into a study of Neighborhood Business Districts which led to a study of the Central Business District which led to a study of the proliferation of banks which are replacing retail space, have increased in number from five to nine with no end in sight, and produce no pedestrian passage. She said Rye has lost 30% of its retail space (both in number and square footage – mostly to restaurants); that this is not unique to Rye, but has more effect because Rye's business district is so small. She said the proliferation of bank applications is not likely to stop as Rye's "net worth" could support as many as 30 banks. Rye already has a local law prohibiting administrative space on the first floor and she feels it is appropriate to add another law at this time prohibiting banks in the Central Business District, but allowing additional banks outside the Central Business District. She hopes the Council will move quickly.

Mayor Otis said the increased number of bank branches, similar to the Starbuck's philosophy, is not unique to Rye, as other communities, such as Bronxville, have experienced the same phenomenon. Councilman Cypher congratulated the Planning Commission for being so proactive, especially as there is a worry that banks can pay high rent and drive out smaller retail establishments. Councilman Fahey confirmed that there would be a 60 day moratorium on accepting more bank applications once a public hearing is set. Councilman Hennes said he thought the applications would stop, but realized this is not going to be the case. Mr. Everett said the committee thought the same thing and came to the same conclusion.

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

**WHEREAS**, the Council wishes to amend Chapter 197, Zoning, of the Code of the City of Rye with respect to bank regulations in the B-1 and B-2 Business Districts; and

**WHEREAS**, it is now desired to call a public hearing on such proposed amendment to the law, now, therefore, be it

**RESOLVED**, by the Council of the City of Rye as follows:

Section 1. Pursuant to Section 20 of the Municipal Home Rule Law and the Charter of the City of Rye, New York, a public hearing will be held by the Council of said City on July 20, 2005 at 8:00 P.M. at City Hall, Boston Post Road, in said City, for the purpose of affording interested persons an opportunity to be heard concerning such proposed local law.

Section 2. Such notice of public hearing shall be in substantially the following form:

**PUBLIC NOTICE  
CITY OF RYE**

**Notice of Public Hearing on a proposed local law amending  
Chapter 197, Zoning, of the Code of the City of Rye with  
respect to bank regulations in the B-1 and B-2 Business  
Districts**

Notice is hereby given that a Public Hearing will be held by the City Council of the City of Rye on the 20<sup>th</sup> day of July, 2005 at 8:00 P.M. at City Hall, Boston Post Road, in said City, at which interested persons will be afforded an opportunity to be heard concerning a proposed local law amending Chapter 197, Zoning, of the Code of the City of Rye with respect to bank regulations in the B-1 and B-2 Business Districts.

Copies of said local law may be obtained from the office of the City Clerk.

Susan A. Morison  
City Clerk

Dated: June 27, 2005

7. Discussion of application of AT&T Wireless for a special use permit to locate a wireless telecommunications facility at 150 Purchase Street

City Manager Paul Shew noted that a decision based on the previously discussed application of AT&T Wireless for a special use permit to locate a wireless telecommunications facility at 150 Purchase Street needs to be made. Corporation Counsel Kevin Plunkett said that the Center for Municipal Solutions had been hired to provide a review of the application, filling in for the City's consultant Comp Comm, Inc. which was unavailable to comment during the prior week. Their report, dated June 14, 2005, states that they had reviewed all the material and recommended that the permit be denied for the following reasons: 1) that the application was not complete; 2) that the applicant had not proven the need for the facility at the site; and 3) the site is not in a priority location as required by the City law.

Chris Fisher, Esq, Cuddy & Feder, Counsel for the applicant, made an objection to the Consultant's recommendation, saying the public hearing is closed and AT&T had not seen or been able to read the new evidence. He told the Council there was no time for AT&T to rebut this new information and they should make their decision based on information presented during the public hearing. Corporation Counsel Plunkett maintained the report is not new evidence, but an evaluation of the application, the law, the comments at the public hearing and the evidence contained in the application. Councilman Seitz said he was bothered by the lack of time to review the consultant's report and would prefer not to adopt the resolution to deny the application until AT&T had time to respond. Councilman Chu questioned whether AT&T would grant an extension of time to the Council to render a final decision if in fact AT&T wished to respond. Mr. Fisher declined to extend the time for the Council's decision. The Mayor, after commenting that the Council had an opportunity to review the Consultant's report, pointed out

that State Statute requires that a decision on the application be made at this meeting; and, if the application is denied, AT&T can, if it wishes, make an application in the future. Councilman Cypher concurred with the Mayor that a decision should be made and asserted that the application had been problematic from the start. Councilman Hennes said he found the consultant's report on the application troubling and that he was concerned about the application.

Mayor Otis made a motion, seconded by Councilwoman Larr, to adopt the following resolution:

**WHEREAS**, the City Council of the City of Rye (the "City Council") received an application together with Exhibits A through J annexed thereto ("Special Use Permit Application") from New Cingular Wireless PCS, LLC f/k/a AT&T Wireless PCS, LLC and Cellular Telephone d/b/a AT&T Wireless ("Applicant") on or about October 29, 2004 (and supplemented on March 23, 2005) for Special Permit approval pursuant to Chapter 196 of the Code of the City of Rye, entitled "Wireless Telecommunications Facilities" in connection with the proposed location of a public utility wireless telecommunications service facility together with related equipment ("Facility") on the existing roof of 150 Purchase Street, Rye, New York which is located in an RA-3 Zoning District and is depicted on Sheet 139, Block 003 and Lot 069 on the Tax Assessment Map of the City of Rye (the "Site"); and

**WHEREAS**, the City Council has reviewed the Special Use Permit Application dated October 29, 2004, together with Exhibits A-J annexed thereto, and all materials submitted and prepared in connection with it, including:

1. Letter dated December 8, 2004 to Comp Comm, Inc. from City Planner Christian Miller;
2. Planning Commission referral dated December 8, 2004 to Board of Architectural Review from City Planner Christian Miller;
3. Board of Architectural Review Comments on the Special Use Permit Application – not dated;
4. Letter dated January 10, 2005 to Westchester Rockland Newspapers from City Planner Christian Miller, together with Notice of Public Hearing dated January 10, 2005;
5. Radio Frequency Radiation Analysis prepared by Comp Comm, Inc., dated January 14, 2005 and entitled "Report to the City of Rye, New York relative to Telecommunication Application # TC011 by AT&T Wireless at 150 Purchase Street;"
6. Affidavit of Publication from Journal News, sworn to January 19, 2005;

7. Letter dated February 3, 2005 to the City Planner Christian Miller from Jeanene Chambliss of Cuddy & Feder LLP, together with Affidavit of Service of Mailing of Notice of Public Hearing to all property owners within 750 feet of the Site, sworn to January 26, 2005;
8. E-mail dated February 15, 2005 to City Planner Christian Miller from Comp Comm, Inc.;
9. Letter dated February 16, 2005 to the City Planner Christian Miller from Christine Smith of Cuddy & Feder LLP, together with an Affidavit of Posting, sworn to February 9, 2005;
10. Letter dated March 10, 2005 to City Planner Christian Miller from Jeanene Chambliss of Cuddy & Feder LLP, together with: (i) Affidavit of Service of Mailing of Public Hearing to all property owners within 750 feet of the Site, sworn to March 7, 2005; and (ii) Affidavit of Posting and Personal Service of Notice of Public Hearing to all apartment buildings within 750 feet of the Site (except 184 Purchase Street and 147 Purchase Street), sworn to March 7, 2005;
11. Letter dated March 23, 2005 to Mayor Otis and Members of the City Council from Christopher B. Fisher, Esq. of Cuddy & Feder LLP, together with Exhibits A and B annexed thereto;
12. Letter dated March 28, 2005 to Mayor Otis and Members of the City Council from members of the Hansa Condominium Association;
13. Letter dated May 18, 2005 to Mayor Otis and Members of the City Council from Christopher B. Fisher, Esq. of Cuddy & Feder LLP;
14. Drawings Prepared By Tectonic Engineering & Surveying, Consultants, P.C., numbered T-1, C-1, A-1, A-2, A-3, A-4, A-5, CP-1 and CP-2 and respectively entitled, "Title Sheet;" "Plot Plan;" "Detail Site Plan;" "West Building Elevation;" "East Building Elevation;" "North Building Elevation;" "Details;" "Co-Location Concept Roof Plan;" and "Co-Location Concept Elevation."

**WHEREAS**, the Applicant is licensed public utility by the Federal Communications Commission; and

**WHEREAS**, the Applicant asserts that the Facility is necessary to remedy a gap in its coverage within the City of Rye along Purchase Street, and the surrounding area along US-1 and I-95; and

**WHEREAS**, the Applicant asserts that the Site is the highest priority location under Chapter 196 of the Code of the City of Rye for location of the

Facility because the building on Site allegedly constitutes an “existing tall structure;” and

**WHEREAS**, the Special Use Permit Application was referred to the Board of Architectural Review of the City of Rye by the City Council on December 8, 2004 to comment upon the Special Use Permit Application; and

**WHEREAS**, the Board of Architectural Review prepared a comment sheet regarding the Special Use Permit Application;

**WHEREAS**, the City of Rye retained Comp Comm, Inc. to review the Special Use Permit Application; and

**WHEREAS**, the Applicant appeared before the City Council on January 5, 2005 for scheduling of the Public Hearing on the Special Use Permit Application; and

**WHEREAS**, Comp Comm, Inc. submitted a written radio frequency radiation analysis report to the City Council dated January 14, 2005; and

**WHEREAS**, the City Council scheduled a public hearing (“Public Hearing”) for February 16, 2005 in connection with the Special Use Permit Application in accordance with Section 196-15 of the Code; and

**WHEREAS**, notice of the Public Hearing and the substance of the Special Use Permit Application was published in The Journal News, the official newspaper of the City of Rye on January 12, 2005; and

**WHEREAS**, the Applicant notified all affected property owners by certified mail regarding the Public Hearing on January 26, 2005 in accordance with the City Assessor’s Records, and filed an Affidavit of Service with the Planning Department that such property owners were so notified; and

**WHEREAS**, the Applicant posted a sign at the Site on February 9, 2005 noticing the public of the City Council’s Public Hearing and filed an Affidavit of Posting with the Planning Department that such sign was posted; and

**WHEREAS**, the City Council conducted a Public Hearing on February 16, 2005; and

**WHEREAS**, the City Council continued the Public Hearing until March 30, 2005; and

**WHEREAS**, the City Council listened to comments from the public at the Public Hearing; and

**WHEREAS**, the Public Hearing was closed on March 30, 2005; and

**WHEREAS**, at the Public Hearing it was not established that the Applicant has a significant gap in coverage due to topographic and manmade factors in the environment which interfere with signal propagation; and

**WHEREAS**, at the Public Hearing it was not established that the building situated upon the Site constitutes the highest priority location for the Facility as set forth in Chapter 196 of the Code of the City of Rye; and

**WHEREAS**, the City of Rye retained the Center of Municipal Solutions (“CMS”) to review the Special Use Permit Application; and

**WHEREAS**, CMS submitted a written report to the City Council on June 14, 2005 which found that the Applicant has not established a need for coverage as the Applicant describes and which further found that the building situated on the Site is not a tall structure; and

**WHEREAS**, the City Council has taken into consideration the health, safety and welfare of the City of Rye and its inhabitants and the objectives set forth in Chapter 196 of the Code of the City of Rye;

**NOW, THEREFORE, BE IT RESOLVED** that the City Council hereby makes the following findings of fact in connection with the Special Use Permit Application:

1. Findings Pursuant to Chapter 196 of the Code of the City of Rye: In accordance with Chapter 196 of the Code of the City of Rye, entitled “Wireless Telecommunications Facilities,” the City Council makes the following findings in connection with the Special Use Permit Application:

A. Need for Facility: The City Council finds that the Applicant has failed to demonstrate a need for the Facility at the proposed Site.

The Applicant states that the need for the Facility is due to a gap in coverage within the City of Rye along Purchase Street, and the surrounding area along US-1 and I-95. The alleged area where a gap in coverage exists is depicted on the Coverage Map annexed to the Special Use Permit Application as Exhibit C-2.

Specifically, the City Council finds that the Applicant has not shown a need for the Facility because: (i) pursuant to the analysis performed by CMS and its written report, there is reliable signal strength within the City of Rye along Purchase Street, and the surrounding area along US-1 and I-95; (ii) the Applicant failed to set forth existing signal strengths for in-building or in-vehicle coverage in its Special Use Permit Application and, particularly, on the Coverage Maps; (iii) the Applicant failed to submit data or input parameters on the Coverage Maps to establish that the information depicted

thereon was obtained using the proper power levels; (iv) the Applicant failed to submit a Coverage Map of the Site to indicate what area the Site will cover; and (v) Exhibit C to the Special Use Permit Application, a letter dated October 4, 2004 to the City of Rye which annexes the discussed Coverage Map, is unsigned.

Accordingly, the Applicant has failed to demonstrate a need for the Facility.

- B. Location of the Facility (§196-6(A)): The City Council finds that the Facility does not comply with the Priority of location under this Section of the Code.

The Special Use Permit Application states that building situated on the Site (the “Building”) constitutes an “existing tall structure” and is, therefore, the highest priority under Section 196-6(A)(1)(a) of the Code because the existing roof of the building is 35’ above grade level.

The Special Use Permit Application incorrectly states the grade level of the Building. Based upon the drawings numbered A-3 and A-4 prepared by Tectonic Engineering & Surveying Consultants, P.C. on behalf of the Applicant, the height above grade level for the east side of the Building near the south end is 23’4” above grade level — not 35’ as set forth by the Applicant.

Pursuant to the report prepared by CMS, 23’4’ above grade level is less than the height of a roof of a two-story home.

In addition, due to topographic conditions of the Site and its surrounding area it was established at the Public Hearing that those living in single-family residences located immediately behind the Building on New Street and those living in an apartment building opposite the Site on Purchase Street look down on the roof of the Building. The elevation of the roof of the Building should be higher not lower than the surrounding development in order to be considered an “existing tall structure” under Section 196-6(A)(1)(a) of the Code.

The City Council, therefore, finds that the Facility does not comply with the Priority of location under Section 196-6(A)(1)(a) of the Code.

- C. Shared Use Of Towers (§196-5(F) and §196-7): The City Council finds that the Applicant has not submitted sufficient information with respect to the requirements of Section §196-5(f) and Section §196-7 of the Code.

There are existing telecommunications towers in the vicinity of the proposed Site on which it might be feasible for the Applicant to share use. In addition, the Applicant has not met its burden to demonstrate why its other existing telecommunication facilities within the City of Rye cannot close the purported gap in coverage.

The City Council, therefore, finds that the Applicant has failed to satisfy Section §196-5(f) and Section §196-7 of the Code.

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that in light of the foregoing findings, the City Council denies the Special Permit Application for the Facility.

ROLL CALL:

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

The application was denied by a vote of 6-1.

8. Discussion of mechanical rock removal, explosives, and construction noise issues

Mayor Otis reviewed that the Council had had concerns over many years concerning noise levels, including last summer's issue concerning rock chipping. He said he had done a lot of initial research last September and had followed up with more since that time, including consultations with NYCOM and other municipal officials in the County. The Mayor said he proposed to combine the City's local laws relating to explosives and noise into one law that would address explosives and mechanical rock removal (which includes chipping). He said such a combination would be, in his view, the cutting edge of how one should legislate on these issues, but he thought there needed to be more details than currently in the local laws. Referring to two memoranda (dated September 17, 2004 and June 10, 2005), the Mayor asked the Council and Staff to consider the following key questions:

How will we choose to limit mechanical rock removal activity?

Should the City be in a position to approve or deny applications, based on appropriateness?

Should construction noise generally be included as covered in our local noise ordinance (currently not the case)?

How many days should be allowed for mechanical rock removal activity?

What fines and notice should be required?

Should applications be denied if work is so lengthy as to be disruptive?

He said he would appreciate feedback from Staff and Council and he would like to incorporate the comments and proceed to draft an appropriate new local law.

Councilman Hennes thanked the Mayor for all his good work and urged everyone with concerns to review and comment on the key questions as more input is needed. He suggested the Council discuss the issues in a special workshop. The Council concurred and specifically urged getting input from the City Engineer. Councilman Seitz said this was a good example of "quality of life" issues in Rye, but said the Council also needed to consider an individual's rights

concerning their own property. *Nancy Richards, Rye resident* said the Council should give consideration to the fact that we might be blasting away the face of Rye.

The matter was referred to the City Manager for staff input, after which a workshop should be set up.

9. Referral to Planning Commission of American Yacht Club request for rezoning of two parcels

Jonathan Kraut, attorney for the American Yacht Club (AYC) reported that AYC has submitted a request that two parcels owned by the club and located on the west side of Stuyvesant Avenue, just south of property owned by Shenorock Shore Club (SSC) adjacent to Milton Harbor be rezoned from single family residential (R-1) to Membership club (MC). He reviewed his previous appearance before the Council in July 2004 saying that the matter had been referred to the Planning Commission; and that the Planning Commission had written a supportive memorandum requesting a broader discussion concerning conversion of R-1 lots to MC. Mr. Kraut said, while AYC was not opposed to the broader context, it would like to move ahead with the conversion of these two specific lots. Working with the City Planner, the Club had prepared a text amendment requesting the zone change; the LWRP Consistency Application; the Coastal Assessment Form and the Short Environmental Assessment Form; and they had been in contact with SSC. He asked the City Council to declare themselves Lead Agency and to refer the review of the text amendment to the Planning Commission. Mayor Otis said he thought it was a good opportunity to protect recreational facilities and space along Rye's shoreline and to protect Playland. Councilman Cypher agreed. Councilman Hennes said this could be a good first step in addressing this broader issue. City Planner, Christian Miller said if the idea of expanding the conversion of other parcels to MC were to be considered it would need more input from the Council and other owners, such as SSC. Councilwoman Larr noted she was a member of AYC and would have to be recused from any vote, other than this evening's.

Mayor Otis made a motion, seconded by Councilman Cypher, and unanimously carried, to adopt the following resolution:

**RESOLVED**, that the City Council declares itself to be Lead Agency in the proposal to rezone two parcels of land located on Stuyvesant Avenue (lot 159.06-1-3 and 153.18-1-8) from R-1 to MC.

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

**RESOLVED**, that the City Council hereby refers the proposal to rezone two parcels of land located on Stuyvesant Avenue (lot 159.06-1-3 and 153.18-1-8)

from R-1 to MC to the Planning  
Commission.

10. Acceptance of donation from Rye Ford/Subaru to the Rye Police Department of painting of the Ford Windstar recently acquired by the Department

With unanimous kind words to Mr. James M. Kingery, President of Rye Ford/Subaru, Inc. for making an in-kind donation of approximately \$2000, Councilman Hennes made a motion, seconded by Councilman Fahey to adopt the following resolution:

**RESOLVED**, that the Rye Police Department be authorized to accept the offer of Rye Ford/Subaru to paint the 2001 Ford Windstar recently acquired by the Department.

ROLL CALL:

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

NAYS: None

ABSENT: None

11. Locust Avenue Fire House slate roof authorization

City Manager Paul Shew reported that a fund-raising effort was underway to raise some of the funds required to have a slate roof on the Locust Avenue Firehouse rather than an asphalt roof. He proposed a prospective resolution using the Challenge Grant Program, instituted in 2003 to induce public participation in civic life, to resolve that funds raised privately be matched 1:1 by the City of Rye. He noted that the matter was time sensitive as the contractor's bid price has only been extended to June 22, 2005. *Tony Spaeth, Kirby Lane North*, said saving the slate is of import and he believes a vast number of Rye citizens wish to support this enhancement to the Locust Avenue Firehouse. He said slate is really a good value for the additional money, both aesthetically and economically. He noted that the roof is highly visible, particularly coming up Locust Avenue, and is a very defining and integral part of the building. Economically he believes it to be a wise investment. *Russell Watsky*, an executive in the National Slate Association, corroborated this concept saying public buildings, built to last for a long time, are the most logical candidates for slate, which does last way over a century, if installed with the right quality and properly. He said he had been working on slate roofs for forty years; that not all buildings deserve slate, but this firehouse, with its interesting details, certainly does. He said there are many contractors who deal with slate and work with it well so there should be no lack of eager, qualified bidders.

Councilman Hennes said he was sold on the aesthetics, but still believed the Council should not ask taxpayers to pay for the entire extra cost of slate. *Peggy Peters, Ridge Street* who, along with Mr. Spaeth, has been trying to collect donations toward the cost of slate, announced

that as of this evening \$38,598 has been collected. The Mayor expressed appreciation to Peggy and Tony for their impressive efforts, citing it as a continuation of philanthropy on the Village Green, (begun with the Parsons Family, continued by Mayor Morehead), as well as in other areas of Rye, such as the turf field and the stadium lights. He thanked everyone who has already pledged, saying he believes economically, as well as aesthetically, it makes sense to have a slate roof because it lasts longer. Councilman Chu said he heard some couldn't believe why the City didn't pay for the whole roof, but he believes that if people want enhancements the most passionate people should contribute. He said he found the outpouring for this compromise program impressive.

*David Parsons, 240 Boston Post Road*, and a descendant of the donor of the land for the Locust Avenue Firehouse, commended the Council for the care with which it has considered this matter, but pointed out that it was odd to him that the slate roof was included only as an alternate, especially as the bids came in lower than the full amount bonded. Secondly, he said he thought it was unfortunate that the Council did not accept the recommendations of both the Board of Architectural Review and the Landmarks Advisory Committee, which unanimously recommended that a slate roof be included. He said the members of these groups were deliberative and respected and having their recommendation overridden did not encourage future volunteerism. In conclusion, he asked the Council to reconsider their position and approved an appropriation for the entire cost of the slate roof.

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

**RESOLVED**, that the City Council authorize the City Manager to accept the addendum to the Locust Avenue Fire House bid regarding the slate roof; providing that the pledges and funds raised equal or exceed \$50,000.00; and that they be received by that office not later than the due date required to accept the lowest bid.

ROLL CALL:

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

NAYS: None

ABSENT: None

12. Designation of Nominating Committee for the Boat Basin elections and appointment of the Chairman of the Nominating Committee

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

**RESOLVED**, that the City Council of the City of Rye hereby designates Kenneth Dahlgren (resident permit holder elected to the Nominating Committee in August 2004); Robert Rispoli (Commission Member not running for re-election); and Jeffrey Garcia (permit holder appointed by the Commission) as the Rye Boat Basin Nominating Committee for the 2005 Rye Boat Basin Commission elections, and further designates Robert Rispoli as Chair of the Nominating Committee.

13. Designation of Nominating Committee for the Rye Golf Club elections and appointment of the Chairman of the Nominating Committee

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

**RESOLVED**, that the City Council of the City of Rye hereby designates Jim Vangarssee (Commission Member not running for re-election), William Harris (appointed by the Commission) and Jim Maione and Adrienne Belluscio (elected to the Nominating Committee in August 2004) as the Rye Golf Club Nominating Committee for the 2005 Rye Golf Club Commission elections, and further designates Jim Vangarssee as Chair of the Nominating Committee.

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

The Council noted approval at the number of new volunteer firemen and recognized that this was the result of improved marketing and training.

Mayor Otis made a motion, seconded by Councilman Cypher and unanimously carried, to approve the election of *Scott Barringer, 5 Martin Road*, to the Milton Point Engine & Hose Company at the June 13, 2005 meeting of the Board of Fire Wardens.

15. Request for use of Council Chambers on September 8, 2005 for the Rye-Q Program

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

**RESOLVED**, that the City Council of the City of Rye hereby authorizes the use of Council Chambers on Thursday, September 8, 2005 at 7:00 P.M. for a production of "What's Your Rye-Q" cable television show.

16. Miscellaneous communications and reports

Councilman Chu mentioned that the focus groups held to ascertain Rye Cable Television needs had revealed a high level of dissatisfaction from the Rye Neck School system with the access time available on either Channel 76 or 77 and that neither school system makes good use of Channel 77 so perhaps the agreement could be restructured to allow Rye Neck more time on Channel 77. He said the two school superintendents were now talking. Former Mayor John Carey said an easy solution would be to use the unused time on Channel 77 as Channel 76 should be reserved for public access. Mayor Otis said he was pleased the two schools were talking as it is certain that programming in all areas will grow and Rye should not give up on having Rye Neck have their own channel.

Councilman Chu said he had learned that, by State law, past due taxes need to be paid before current taxes can be applied to your account and Comptroller Michael Genito is working on providing more information on the tax bill so this is clearer. He urged input from anyone who has a suggestion on how to amend the message of the tax bill.

Councilman Seitz mentioned that there appears to be a power failure situation in the Martin Road/Heritage Road/Forest Avenue area and asked the City Manager to contact Con Edison so see what the problem might be (antiquated equipment? wires not thick enough? not enough power?).

Councilman Fahey said a pre-construction meeting would be held on June 16<sup>th</sup> concerning the Locust Avenue Firehouse project. City Manager Shew said the same project manager (Dominic Calgi) would be overseeing both the Locust Firehouse and Damiano projects.

17. Old Business

Councilman Seitz inquired about the summer rental situation near Playland. City Manager, Paul Shew said he had reviewed the ordinance in effect in Quogue, New York and it would appear their permitting process does not match Rye's needs. He mentioned that progress was being made and there were several cases now in court.

Councilman Seitz asked about the Occupancy Tax bill and was told the City would know next week whether or not it would be enacted into law. The Mayor reported that the hotel industry had begun lobbying against the tax.

Councilman Seitz mentioned that he thought there was agreement during a conversation that took place at the end of a special meeting (June 3) that the Council would be given financial information concerning the 2006 budget on or before September 15<sup>th</sup>. He said he is seeking numbers on items locked in (i.e. personnel costs) and other items to be addressed identified with some range of numbers. He said he is not looking for a proposed or theoretical tax number. Manager Paul Shew said he and Comptroller Mike Genito would prepare a memorandum for September 15 that will focus on current or anticipated significant variances in major categories of the revenues and expenditures of the City; will include anticipated substantive changes that might have a material impact on the forthcoming year's budget; and will be based on information "on hand". He said it would not be intended to be a limitation or constraint for budgeting purposes. The Council agreed with this approach.

Councilman Fahey inquired about the status of the meter parking project. City Manager Shew said a committee of City staff members was meeting weekly and visible signs of progress could already be seen. The installation work has begun; there is a delivery date for the meters; and it is anticipated that the system will be up and running by mid-July.

18. New Business

There was no new business to be discussed.

19. Draft unapproved minutes of the regular meeting of the City Council held May 18, 2005

Mayor Otis made a motion, seconded by Councilman Hennes and unanimously carried, to approve the minutes of the regular meeting of the City Council held May 18, 2005 and the special meeting of the City Council held May 25, 2005 as submitted, and to approve the minutes of the special meeting of the City Council held June 3, 2005 as amended.

20. Adjournment

There is no further business to discuss, Councilman Hennes made a motion, seconded by Councilman Fahey and unanimously carried, to adjourn the meeting at 11:13 P.M.

Respectfully submitted,

Susan A. Morison  
City Clerk