

APPROVED MINUTES of the Regular Meeting of the City Council of the City of Rye held in City Hall on July 20, 2005 at 8:00 P.M.

PRESENT:

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

ABSENT:

FRANKLIN J. CHU

The Council convened at 7:30 P.M. Councilman Chu was absent. Councilwoman Larr made a motion, seconded by Councilman Fahey and unanimously carried, to adjourn to executive session at 7:37 P.M. to discuss a public safety issue. Councilman Hennes made a motion, seconded by Councilwoman Larr and unanimously carried, to close the executive session at 8:02 P.M. No decisions were made. 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.

Announcements

Mayor Otis thanked former Mayor John Carey and Ann Cochran, League of Women Voters for organizing the recent 4th of July ceremony and expressed hope that it will once again become a tradition in Rye.

The Mayor announced that George Mottarella, Director of Public Works and City Engineer, along with the Department of Public Works and Engineering had been honored in the Superintendent's Profile and Product Service Directory (New York statewide publication). He asked for it to be placed on the City website and extended congratulations to both departments.

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

Sis D'Angelo, Wappanocca Ave., addressed the Council, once again, about the condition of the gas station property on the corner of Purchase St. and Wappanocca Ave. It is once again overrun with weeds that are blocking the corner. Corporation Counsel, Kevin Plunkett said that the Law Department is focused on taking care of the nuisances of a legal nature, but said he would work with the City Manager about these complaints that are more of a maintenance issue. She also reported that there is a vacant piece of property on the corner of Natoma St. and Wappanocca Ave. (house has been removed) that is not well maintained. Sidewalks are not shoveled in the winter and debris from a recent cleanup has been left blocking the sidewalks. City Manager Shew said there are legal thresholds that must be met before the City can step in and cleanup property. Mayor Otis said the City would send enforcement staff out to look over these properties and Corporation Counsel said he would bring the gas station complaint to the attorney so that he could report it to the public administrators. Mrs. D'Angelo also reported that there are cars parked illegally in this area and Councilman Seitz requested that enforcement be sent to ticket cars that are illegally parked.

4. Public Hearing on 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

Mayor Otis opened the public hearing on proposed local law to amend Chapter 197 (Zoning) of the City of Rye with respect to bank regulations in the B-1 and B-2 Business Districts. City Planner, Christian Miller said there is a great deal of concern about the proliferation of banks on Purchase St, specifically in the core area of the Central Business District (CBD). The planning rationale is to continue to impose limitations similar to what the Council has done in the past with respect to first floor office uses on Purchase St. Banks will no longer be permitted in the "A" parking districts (CBD area). The proposed text amendment would allow banks to be located in the B-1 District on Boston Post Road between Peck Avenue and Purchase Street. Currently, banks are only permitted in the B-2 District and B-1 District between Central Avenue and Purchase St. There are presently nine banks opened or about to open in the Business District. Mayor Otis asked if the prohibition area should be further expanded. The City Planner explained that the intent of the Planning Commission and the CBD Subcommittee is not to zone them outright, but to redirect this use outside the pedestrian retail core of the CBD (i.e. Boston Post Road, Smith Street, School Street, Elm Place, and Purdy Avenue, etc.). Councilman Hennes asked if the current banks were grandfathered and if sold, could they be reused again for banks. Mr. Miller stated that they could, but Corporation Counsel clarified that if the use was discontinued for a period of time, this use could change. Mr. Miller stated that if the bank use were discontinued for six months the property would be rendered non-conforming. Councilman Seitz stated that the Planning Commission seemed to have found a reasonable balance by preserving opportunity for banks to have a place to go and limiting the amount of banks in the CBD.

Patrick McCarthy, 60 Summit Ave., said that it is apparent that there are too many banks in the business area of Rye, just like at one time the City had too many coffee shops and dry

cleaners. He said he was adamantly opposed to this amendment of the zoning code. Mr. McCarthy said that market forces are more efficient in allocating resources than central planning and expressed concerned about what would come next.

Sis D'Angelo, Wappanocca Ave., asked if this amendment had anything to do with "eminent domain" and whether home businesses were allowed in the City of Rye. She wondered whether home-based businesses located in residential areas could, after time, become business property. Corporation Counsel stated that use of property is controlled by the zoning code. An individual cannot use property in a way that is not in compliance with the zoning regulations unless it has been a non-conforming use for years prior. The City Planner said that home businesses are permitted, but are limited to professional occupations which are specifically listed in the City code.

The City Planner stated that the Planning Commission and subcommittee had reservations about restricting banks in the business district when they began their study, but realized that this trend may be more sustainable than originally thought and could last up to fifteen to twenty years that would have an impact on retail business. Also, they realized that the banking industry has changed and deregulation allows it to do business in areas where it previously could not, such as provide professional services which the City currently prohibits in this area; sell insurance; sell equities; and provide real estate brokerage. Councilman Hennes stated that he also believed that the market forces do the best job in allocating resources, but after listening to comments by the community and to the presentation of the Planning Commission he sees that zoning is designed to balance market forces with how residents would like the community to be. Councilman Fahey urged Mr. McCarthy to read the report by the Planning Commission because it is very convincing. Mayor Otis stated that he supports the proposed amendment because it is important that the City help with the future survival of the CBD. Councilman Cypher noted that we have lost a diversity of business over the years. Mr. Miller responded that the retail business is complex and there are many reasons why businesses leave. Many are sustainable, but leave due to corporate decisions. Councilman Seitz said that some businesses leave because they are not supported by the community and he would like to see an effort by the community to buy in Rye. Mayor Otis stated that the City is addressing the issue of regulation of banks now because the businesses that are left feel that the increase of the lack of diversity of stores will eventually force them out. The City Planner added that the City has a vibrant and healthy downtown due to decades of planning and management.

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

A 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

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 to amend subsection (2) to read as follows:

- (2) Banks on properties fronting on Boston Post Road between Central Avenue and Peck Avenue ~~Purchase St.~~

Section 2. Section 197-86, Table of Regulations: Table B, Business Districts-Use Regulations, Column 1, Permitted Main Uses, B-2 Central Business Districts, of the Code of the City of Rye, New York is hereby amended to amend subsection (1) to read as follows:

- (1) Nonresidence main uses permitted in B-1 Districts without restrictions as to location and conversions of existing buildings, except that offices for clerical, administrative, professional and agency uses and banks shall not be located on the first floor of a building within the A Parking District in the B-2 Central Business District.

Section 3. 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 4. 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 Cypher, Fahey, Hennes,
Larr and Seitz
NAYS: None
ABSENT: Councilman Chu

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

RESOLVED, that the Rye City Council finds the proposed determination will have no significant adverse effect on the environment and issues a negative declaration under SEQRA regarding the amendment of Chapter 197 (Zoning) of the City of Rye, New York with respect to bank regulations in the B-1 and B-2 Business Districts.

ROLL CALL:

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

5. Resolution to amend 2005 budget for Rye Youth Council State Aid

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

WHEREAS, the Rye Youth Council by letter dated July 1, 2005 to the City of Rye stated it will be applying for State Aid in the amount of \$4,224; and,

WHEREAS, the City of Rye acts as a sponsor agency for the Rye Youth Council allowing them to apply for such aid; and,

WHEREAS, the adopted budget for fiscal 2005 did not provide for these estimated revenues and related appropriations, now, therefore, be it

RESOLVED, that the 2005 budget be amended as follows:

Increase General Fund Rye Youth Council - State Aid \$4,224;
Increase General Fund Rye Youth Council Appropriations -
Contract Agency \$4,224.

ROLL CALL:

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

5A. Resolution to amend 2005 budget for award of State grant for confined space (Fire Department).

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

WHEREAS, the City of Rye has been awarded a New York State grant in the amount of \$8,500 to reimburse the City for materials and supplies related to training for, and response to, emergency situations involving confined spaces; and,

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

RESOLVED, that the 2005 Budget be amended as follows:

Increase General Fund State Aid confined Space \$8,500;

Increase General Fund Fire Department Appropriations – Small Tools and Supplies \$8,500

ROLL CALL:

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

6. Resolution to amend 2005 budget to provide funds for legal costs

Corporation Counsel said there is an on going litigation involving *The Osborn* tax exempt status and assessment. The City is not paying for legal costs, but is paying for a percentage of the cost of the expert accountant that the Rye City School District has hired to defend the position of the school district and the City. This payment is being made from the Law Department budget and is really a request for a budget adjustment to pay for accounting costs related to The Osborn and a few miscellaneous matters in which the City is involved that require the hiring of outside counsel.

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

WHEREAS, the City is involved in several areas of litigation that require an additional \$100,000 in appropriations for legal fees in the adopted 2005 budget; and,

WHEREAS, the General Fund Contingent Account currently has a balance of \$216,000 available for transfer to other accounts; now, therefore, be it

RESOLVED, that the 2005 General Fund budget be amended, transferring \$100,000 from the Contingent Account to Law Appropriations Legal Services.

ROLL CALL:

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

7. Resolution to authorize expenditure of police donation funds for police exercise equipment

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

WHEREAS, the City Manager and Police Commissioner have approved a request of the Rye Police Association (“RPA”) dated July 8, 2005 to purchase exercise equipment in the amount of \$1,847 for the Rye Police Department with funds available in the police donations account; and,

WHEREAS, sufficient funds exist in the police donations account to comply with the aforementioned request of the RPA; now, therefore, be it

RESOLVED, that \$1,847 be appropriated from the police donations account to increase 2005 General Fund appropriations for Police Patrol – Non-office Equipment.

ROLL CALL:

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

8. Authorization for Corporation Counsel and Thacher Proffitt & Wood to defend the City in *New Cingular Wireless PCS, LLC v. City of Rye and City Council of the City of Rye* lawsuit

Corporation Counsel Kevin Plunkett stated that the Council at the June 15, 2005 meeting denied the request of Cingular Wireless for permission to place an antenna on the roof of 150 Purchase St. As a result of this decision a lawsuit has been filed. He asked for authorization to defend the City and added that he had forwarded the complaint to the insurance company with the thought that there might be some indemnification or minimum coverage for the defense of the lawsuit. However, it is in Federal Court and the City must be prepared to defend itself when called. Mr. Plunkett also stated that there is a per case deductible.

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

RESOLVED, that Corporation Counsel and Thacher Proffitt & Wood be authorized to defend the City in the *New Cingular Wireless PCS, LLC v. City of Rye and City Council of the City of Rye* lawsuit.

ROLL CALL:

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

8A. Appeal of denial of FOIL request dated May 17, 2005

Corporation Counsel, Kevin Plunkett, said that this is an appeal of a denial of a request made by the Rye Police Association for purchase orders on purchases of video equipment, surveillance equipment, listening devices, recording devices etc. He stated that the law permits denial of a request for documents when it involves information that would be sensitive to security. This matter has been addressed by outside labor counsel, as well as himself, and that it is clear that the information requested in this FOIL is exempt from the FOIL law. He recommended that the request for the appeal be denied.

Councilman Fahey 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 denies the request of an appeal by the Rye Police Association for purchase orders of all purchases of video equipment, surveillance equipment, listening devices, recording devices and anything else used by the Police Department for the purpose of recording from 2002 to the present, on the basis that this information would be sensitive to security.

9. Draft unapproved minutes of the regular meeting of the City Council held June 15, 2005

Councilman Hennes made a motion, seconded by Councilman Fahey and unanimously carried, to approve the minutes of the City Council meeting held on June 15, 2005 as amended.

10. Miscellaneous communications and reports

Councilwoman Larr reported that the EMS (volunteer ambulance service) had a special meeting with TWIG Inc. (TWIG organization no longer exists). TWIG Incorporated is presently in the process of being formed with their own tax exempt status. Since there is no longer a hospital (United Hospital closed), they are looking to keep the organization viable and looking for different proposals from organizations that are charitable or have their own 501C-3. She said they are anticipating huge support due to the need of EMS services and said that monetary donations will be needed.

Councilman Fahey requested that Corporation Counsel review the existing City law regarding eminent domain. He also reported that he had a taping of Eye on Rye with Tony Spaeth and Peggy Peters who raised over \$50, 000 for a slate roof for the Locust Ave. Firehouse. Councilman Seitz suggested, and the Council agreed, that a resolution be written to acknowledge and thank them for their efforts.

Councilwoman Larr, reported that, along with Mayor Otis, Councilmen Hennes and Seitz, she went to Beaver Swamp Brook for an "Eye on Rye" taping of the area which has been cleaned up. Various plant materials have been introduced and the program should be educational as well as beautiful.

Councilman Seitz informed the Council that the Planning Commission does not object to the proposed zoning change requested by the American Yacht Club at the June 15, 2005 meeting to rezone two parcels of land on Stuyvesant Ave from R-1 to MC, (Membership club). This matter will probably be on the next meeting agenda. Mayor Otis said that the City may want to use this opportunity to provide local zoning protection regarding marine properties; especially County-owned Playland and Rye Town Park, against any changes which may occur as a result of this amendment.

11. Old Business

Councilwoman Larr inquired about the status of the affordable housing site and its cleanup. Mayor Otis said that a meeting is being organized with State, County and City of Rye officials in order to ascertain whether the cleanup can be conducted faster; if not, why; and to dispel any ideas that the County may have to use the site for something other than affordable housing.

Councilman Seitz reported that the State Assembly had passed the "Hotel Occupancy Tax" bill. Mayor Otis said that there may be a special Senate session within the next few weeks where this will be a priority.

Councilman Seitz also inquired about the power failures in Martin Rd/Forest Avenue area. City Manager Shew stated that Con Edison reported that there were some power surges, but no power failures or anything abnormal occurring in this area.

Councilman Cypher stated that the County has approved the \$100,000 grant for the skateboard park and that it will be added into the \$37,000 Challenge Grant and the \$40,000 raised by the families. He thanked all those who participated.

12. New Business

Councilman Fahey said he could not attend the Rye Town Park meeting scheduled for July 21, 2005 and ask that someone attend the meeting in his place. Councilwoman Larr agreed to attend and to be deputized.

Councilman Hennes made a motion, seconded by Councilman Fahey and unanimously carried, to deputize Councilman Larr.

Councilman Seitz mentioned that he had heard that there is a new dormitory at SUNY Purchase and questioned whether it will have an impact on flooding of Blind Brook, particularly in Indian Village. He asked that someone look into this matter.

13. Adjournment

There being no further business to discuss, Councilman Hennes made a motion, seconded by Councilman Fahey and unanimously carried, to adjourn the meeting at 9:45 P.M.

Respectfully submitted,

Diane C. Moore
Deputy City Clerk