

APPROVED MINUTES of the Special Meeting of the City Council of the City of Rye held in City Hall on February 25, 2006 at noon.

PRESENT:

STEVEN OTIS, Mayor
ANDREW C. BALL
MACK CUNNINGHAM
DUNCAN HENNES
GEORGE S. PRATT
HOWARD G. SEITZ
Councilmen

ABSENT:

MATTHEW FAHEY

1. Pledge of Allegiance

Mayor Otis called the meeting to order and invited the Council to join in the Pledge of Allegiance.

2. Roll Call

Mayor Otis asked the City Clerk to call the roll; a quorum was present to conduct official city business.

3. Continuation of public hearing to adopt the Emergency Tenant Protection Act (ETPA) in the City of Rye as codified by New York State Unconsolidated Laws Sections 8621-8634

Mayor Otis announced the continuation of the public hearing to adopt the Emergency Tenant Protection Act (ETPA) in the City of Rye for the Highland Hall apartment complex. He welcomed former City Manager Frank Culross, sitting in for City Manager O. Paul Shew who is out of town. He said the issue before the Council is to decide whether the adoption of ETPA or the enforcement of procedures in the existing Memorandum of Understanding (“agreement”) would best protect the right of lease renewal and tenant protection.

Mr. Michael Kornblum, Managing Member of Rye Acquisitions Partners (RAP), whose company is in contract for the Highland Hall properties said Rye has every right to protect itself and its senior citizens but should comply with proper fire and safety codes so all current uses are legal. He said there are 17 apartments in the building, specifically in the basement, which are both illegal and unsafe and have been for 26 years. He said 8 senior citizens and one handicapped tenant currently live in these apartments. After discovering a letter in the City’s files dated May 2, 1980 (from Rye’s Building Inspector to Rye’s Corporation Counsel) saying four apartments in the basement were not legal then, he asked City’s current Building Inspector and Fire Inspector to inspect the building at 131 Purchase Street on Friday, February 24, 2006

and found the violations were still in place; that legal storage spaces are now illegally occupied by tenants; and there have been no Zoning decisions to permit any use variances. He said it is his right to buy a building free and clear of such violations and wants the rest of the buildings inspected as well by the City's building inspector and his own. He suggested that RAP offers the best solution to correcting the violations, as they have plans to remodel the building and make it a proud landmark for the City. He said this would not happen under ETPA; that those protected under the existing agreement will receive professional management and be provided a personal touch not available from ETPA; that RAP will provide additional benefits and it will be a safe and beautiful building. He agreed to accept each and every term of the existing agreement for all apartments but only after the violations have been corrected.

Mayor Otis said the City had received a letter of general commitment late Friday, February 24th (rather than by the requested deadline of Thursday, February 23rd) and he had some questions. Will RAP's agreement extend beyond June 2007 (the expiration date of the current agreement)? Will RAP sign an agreement extending it beyond June 2007? Mr. Kornblum said his inclination was "yes." Will he renew leases for those that have expired since November 2005? He said his contract with Mr. Jackson, Managing Partner of Highland Hall, prohibits leases, but he will instruct Mr. Jackson to extend leases for those with leases having expired in Nov-February for 1 or 2 years, depending on the length of the prior lease. If the basement apartments have to be vacated will RAP relocate the tenants to a legal apartment? Yes, if they have been compliant with the rent, but it is a conundrum because the rents will be higher on higher floors and in some cases they will not be able to afford the higher rent. He will work with Houlihan Lawrence and Jack Heffernan to relocate them, but his plan for vacant apartments was to use them to relocate families whose apartments were being renovated. He reiterated the rents for these apartments are on the average of \$1100 for a one bedroom and \$1400 for a two bedroom. If the formality of the lease renewal procedure has not been followed (no formal lease has been signed, it is not signed by both people, etc) what will he do about those tenants because everyone should have been offered a new lease? Mr. Kornblum said he couldn't answer that, but said he would need to see some records.

Councilman Pratt suggested, in light of the new information just received it might be reasonable to extend the public hearing until March 22nd (another 25 days). Would Mr. Kornblum have all the current month-to-month leases converted to 1 or 2 year leases by that time? Would the City have time to report back concerning the code violation and would RAP attorneys be able to have a firm position for the future? Yes, the leases can be reissued within 48 hours, if they were legally in effect when they expired, but he would have to wait for the report from the City before completing any new leases for the basement tenants. Mr. Culross said the City could have the code violation report within 25 days, even if it was necessary to include the other Highland Hall buildings on the inspection list. Mr. Kornblum encouraged cooperation of all tenants to allow inspectors in to inspect their apartments, as he needs to know exact conditions. The letter from RAP's lawyers already states their firm position, but Mr. Plunkett suggested Mr. Kornblum needed to confer with his lawyers. Councilman Cunningham requested a copy of all lease agreements be submitted to Corporation Counsel, Kevin Plunkett for his review. Mr. Kornblum said rather than use the current lease agreement (which dates from 1941) he would get a copy of the current standard lease agreement now used in Westchester County. Councilman Seitz asked about the tenants who don't have leases and said he would like a list showing the number of tenants without leases. Mr. Kornblum said he had been working closely

with Mr. Jerry Ploss, accountant for Highland Hall, who has been handling the leases. The Mayor reminded everyone some of the tenants were unaware that the agreement existed.

Councilman Ball said concern for safety is laudable, but safety is not the only issue. His concern is the long term, after June, 2007. He questioned what the Council had learned in the past 10 days, stating that a lot of energy has been spent on the “influence campaign” rather than addressing the needs of the tenants and suggested it would be better to decide the issue today. He acknowledged the agreement, which had worked for 23 years, had been enacted to dodge ETPA years ago. Councilman Hennes asked Mr. Kornblum if he would guarantee he will sign a new future agreement by March 7, 2006, the scheduled date of the closing. Mr. Kornblum said that he would, but allowed that he would probably not go through with the contract if ETPA were adopted. Councilman Ball asked how Mr. Kornblum expected to make a profit if he agrees to extend the existing agreement way into the future. Mr. Kornblum said it was just a matter of time – that as tenants leave new tenants will only be offered the option to buy an apartment so the protection disappears. He said the turnover rate is about 50% so in 12 months about 27 apartments would be available. He said the only people to whom he had sent eviction notices were those who had not paid rent for 6-8 months, and that two of those tenants were in basement apartments. Councilman Cunningham asked about the commercial tenants and was informed that no decision had been made about what to do with the approximately 3000 square feet involved. Mayor Otis said he needs to see a new agreement indicating protection beyond 2007 and giving the same guarantees that ETPA would give. He agreed that the current agreement is a “social contract” which, if properly enforced can be stronger than ETPA. He suggested that the decision not be postponed beyond the next regular Council meeting scheduled for March 1.

Councilman Seitz took the position that the City of Rye should not be part of abrogating this contract. He said we, as a society have an obligation to protect the older and infirm and the City has sloughed this responsibility off to Mr. Jackson. He said it is the responsibility of the City to provide affordable units – not the responsibility of Mr. Jackson. He said in 2007 ETPA will still be available and the City can/should make the decision then. The Mayor said most tenants want certainty now. Mr. Pratt recapped his position: 1) new leases for those expired since November; 2) the answer to the questionable leases; 3) plans to honor an agreement beyond June 2007; and 4) specific plans for the future.

Members of the audience were offered the opportunity to speak. *Peter Sinnott, Rye resident and manager of many buildings not in Rye and with no RAP affiliation*, spoke in favor of keeping the agreement rather than adopting ETPA. He said ETPA entitles owners to increase rents in several ways so it is not necessarily as protective to Rye tenants as it might appear. He urged the Council not to make light of the environmental and safety issues that might be better taken care of without ETPA. Free market forces are always better and it is wise to “keep Rye Rye.” *Jerry Houlinan, Vice President of the Westchester County Apartment Advisory Council* said ETPA is bad for maintenance and building values and it is better to keep it out of Rye. *Bob Callaghy, a 30 year resident of Rye, who was involved in drafting the original agreement*, said the agreement was thought to be better then; that it has worked for 23 years and it should be kept. He said under the agreement tenants are entitled to the same lease, that co-ops are allowed; that non-purchasers can stay and the City Manager’s decision is binding. What the Council needs to do is make sure it will be binding under RAP. Frank Culross stated that the few times he had had to arbitrate all involved the size of the rent increase; that there had been a hearing and the

decision was upheld by the landlord. He said there had not been a time when the landlord had refused to renew the lease. (The Mayor, and others on the Council, reiterated that the key lies in RAP's willingness to make guarantees well into the future.) *Greg Faughman, Highland Hall resident*, spoke in favor of having the chance to buy a condominium. He pointed out that the building needs work and rents will go up anyway; that it is not Mr. Jackson's duty to provide affordable housing; and he hopes the City will stay with the agreement approach. *Jeanne Sinnott, also a Highland Hall resident*, thanked the Council for their patience and graciousness; that the matter is confusing at best; she wonders why anyone would even want to buy the building now; that it is sad that former friends no longer speak to her because she is not in favor of ETPA. She urged the Council to make the decision today to retain and enforce the agreement rather than adopt ETPA.

The vast majority of the speakers urged adoption of ETPA. *Anthony Piscionere, head of the Rye Republican Party*, said ETPA will have to be adopted either now or in 2007 so do it now to insure those living in the building can stay. *Tim Kelly, Highland Hall resident* for over 20 years, said Mr. Kornblum has not appeared so willing to help over the last 10 days; that he offered \$40,000 only to some tenants; that the offer to pay moving costs only applies to those moving to a vacant apartment so theirs can be renovated; that to qualify for the "bribe" you had to remove your name from the petition; support Mr. Kornblum at this meeting; that 80% of those offered the money would have to accept the terms; that the money would be paid into a charity fund and, if ETPA is adopted the deal is off. Please adopt ETPA. *Doug Carey, head of the tenants group*, said the problem is with transparency. He said the tenants need to be involved and that any agreement should be ratified by them. ETPA will give clear rights and will include the tenants; that they are on pins and needles; that additional time will just give the new owner more time to drive a wedge between the tenants who are now still strong and have integrity which can't be bought. They are not asking for a handout, they just need an end to the uncertainty. He said he had signed his new lease, but had not had the copy signed by management returned. He asked two tenants to submit examples of "leases." *Debbi Pearlman* showed hers with a penciled in increase of \$100 per month (above the cost of living rate) and *Terrence Caffrey* submitted a hand-written letter indicating his \$200/month increase when he moved from a one to two bedroom apartment. Mr. Caffrey said Mr. Jackson had told him "they won't let me give you a year-to-year lease now." *Edythe Neuhoff, Highland Hall resident* since 1972, said she resents the accusations that the state of the building is deplorable. It is not. *Judge John Carey, former Mayor*, said he didn't know why any violations weren't fixed, but it was not the job of the Council to see that they were; it was the job of City Staff. *Bob DiMaggio* spoke again urging resolution and a vote today because who knows what will happen after the contract is signed on March 7th. He recapped his impressions of the meetings which have been held by RAP over the past 10 days saying he is sure RAP is disappointed they didn't get as much support as they would have liked; that it is particularly tragic that some people moved out right away; and if ETPA is adopted we can keep "affordable housing in Rye from becoming an endangered species." *Joe Fallon, Highland Hall resident*, urged the Council to take the vote today, saying Mr. Kornblum did know about the agreement and has stated he is not legally bound by it because it does not go with the land. (The Mayor said it is the City's position that he is legally bound, and Mr. Kornblum's lawyer has agreed that they are.)

Tom Butler, former Councilman, former Highland Hall resident whose aunt still resides there and was one of those offered the \$40,000, said Mr. Kornblum is only agreeing to what he

has to under the law. Mr. Kornblum knew exactly what he was getting into so why, all of a sudden, is he so interested in safety? He said the Council should not place confidence in the likes of RAP; that the \$40,000 bribe is a disgrace; and that RAP is certainly not a “concerned Citizen” of Rye. Mr. Butler said Mr. Kornblum would have to scale back his plans as the current plan cannot be viable with the agreement in place. He said the only answer is ETPA which will allow Rye to continue bearing the burden to support the elderly (taxes are already lower); will give tenants deserved security and keep Rye Rye. *Dennis Hanratti, Director of Mt. Vernon United Tenants Inc.*, reported Croton-on-Hudson has had no complaints since adopting ETPA, that there are many means for a landlord to increase rent if deserved (19% for a new tenant, 40% of the cost of improvements, a percentage of capital improvements) so the building does not have to sink into disrepair. There is a great procedure for both administrative and harassment complaints. The State is very sensitive to these complaints and he is convinced RAP’s policy is to vacate the building completely as quickly as possible. He said Rye does have a housing emergency and it will continue unless the Council takes the correct action. *Joe Murphy, Franklin Ave.*, asked if the March closing could be postponed (Mr. Plunkett is not sure) and also questioned how uncomfortable it would be for those seeking arbitration to have to go to court. He said the procedure under ETPA is better. If the leases were not signed between February 15th and now, why would we expect they would be signed by Monday? He also said he thought due diligence of the building was Mr. Kornblum’s job rather than the City’s.

Judy Studebaker, 8 Ann Lane and a lawyer involved in tenants’ rights explained why ETPA is better and maintains diversity and stability which Rye needs. Under ETPA tenants can renew on the same terms and conditions as they had; that succession rights are provided for anyone living in the apartment for the past two years (i.e. in the case of the death of a spouse); and that any eviction must have grounds that must be proven in court. She said tenants prefer an established arbiter, such as the department in White Plains (DHCR) that deals specifically with such matters, rather than the City Manager. She urged adoption today so people can get on with their lives.

A lengthy discussion ensued about various procedures when a building is converted. If a building is converted new tenants are not protected, that once a tenant moves out the apartment can be converted. Most conversions take place these days with a “non-eviction plan” that says the tenants have the right to buy, but if they choose not to they can stay for as long as they want. Under an “eviction plan”, the new owners have to file a plan with the State and tenants not wishing to buy have three years to move. Under ETPA tenants definitely have the right to stay in their apartments. The agreement doesn’t state that and provides no succession rights. Under the agreement, the City enforces the law; under ETPA the State enforces the law.

Corporation Counsel Kevin Plunkett said for the buyer, it is the time factor and the conversion will be accomplished quicker under the agreement than if ETPA is adopted. He stated that the City has already started the arbitration process and outlined the procedure to be followed if the outcome is unsatisfactory (City Court and then the appellate process at the County level). Councilman Seitz, returning to the lease issue, again asked the number not protected by leases and what is the definition of “bona fide” tenant; how many might want to convert and if any would be in favor of an eviction versus non-eviction plan. Ms. Studebaker said an oral lease agreement is permissible and even a lost lease is protected under ETPA. Councilman Hennes said he is just trying to ascertain if the City Manager route might be better,

keeping things friendlier and more local, but he questioned a buyer who would enter into a contract and then tell the former owner not to abide by an existing agreement.

Doug McKean, former City Council member, said code violations occur all the time and are correctible, but that the City should not be inspecting the buildings to help lower the purchase price for the purchaser. He questioned how RAP can be held legally responsible for a building they do not yet own and whether, after the conversion if enough of the apartments will remain to meet the ETPA threshold?

The Mayor pointed out that by this time over 8 hours had been spent discussing this matter and he was going to throw out a couple of choices and see what the Council would like to do. 1) Adopt ETPA today leaving the door open for RAP to meet demands by Wednesday, March 1 so that it can be rescinded, noting that the City has been well served by the agreement approach for over 20 years. 2) Defer the adoption vote until the next Council Meeting on Wed., March 1 and see if an agreement can be reached, leases signed, etc. He assured tenants that under any plan, they would be receiving new executed leases. Councilman Hennes said he would defer to March 1 if they have the signed leases between Nov and Feb; if the existing agreement is signed by RAP and if there is an agreement going forward. Councilman Seitz prefers the Councilman Pratt's original approach and said he would not vote for any agreement to change the agreement as he is against this and any document that suggests Rye will not honor the existing contract as antithetical to Rye. He is also concerned that those who left will be hurt and left with no contract. Councilman Cunningham said the Council is "concerned" too and the garbage in the ads has created a loss of credibility. Corporation Counsel Plunkett said there is little downside to extending the decision for four more days but wondered if Mr. Kornblum might use the extra four days to go to court to prevent the Council from voting. Mr. Kornblum assured everyone he would not go to court; that he will have the signed documents ready by Wednesday; and that he does not breach contracts.

After some additional discussion about when to take action, Corporation Counsel proposed a compromise position as follows: vote today to adopt ETPA with a stipulation that the resolution not be filed with the State until Thursday, pending actions by Mr. Kornblum to be completed by the Wednesday, March 1 Council Meeting. The appropriate amendments to the resolution will be made to reflect this position and an agenda item will be added to Wednesday's meeting.

Mayor Otis closed the public hearing.

Councilman Pratt made a motion, seconded by Councilman Cunningham to adopt the following resolution adopting ETPA in Rye, as amended during this meeting:

RESOLUTION

WHEREAS, in 1974 the New York State Legislature found an "acute shortage of housing" in this State and further declared a "public emergency" justifying the imposition of rent regulation authorizing local governments under the Emergency Tenant Protection Act (the "ETPA"), codified as N.Y. Unconsolidated Law § 8621 *et seq.*, to impose such rent regulations; and

WHEREAS, the ETPA requires a finding that the vacancy rate for any class, or all classes of housing, is less than 5% and local conditions warrant declaration of a housing emergency before its adoption by a local government; and

WHEREAS, in 1982 and 1983 the City Council considered adoption of the ETPA based on a potential public rental housing emergency in the City requiring the regulation of housing rents; and

WHEREAS, in 1983, the potential housing emergency was resolved to the satisfaction of the City Council not requiring the adoption of the ETPA; and

WHEREAS, the owners of four properties in the City (131-151 Purchase Street, 150 Theodore Fremd Ave, 160 Theodore Fremd Ave and 125 Central Ave) have agreed to certain rental conditions and lease renewals to ensure that housing rent rates do not increase in such a manner (the “Agreement”) causing a housing shortage in the City; and

WHEREAS, the Agreement is still in effect; and

WHEREAS, it has come to the City Council’s attention that the properties located at 131-151 Purchase Street, a/k/a Highland Hall (the “Highland Hall Property”), which contains approximately 104 residential rental units in the City that are subject to the Agreement, may be sold; and

WHEREAS, it has come to the City Council’s attention that the current owners (Highland Apartments LLC) and the prospective new owners (Rye Acquisition Partners) of the Highland Hall Property are not honoring the Agreement and creating an emergency with respect to residential housing accommodations in the City; and

WHEREAS, on February 1, 2006, the City Council discussed the issues, and numerous City residents addressed the City Council, related to the passage of the ETPA and the potential housing emergency, specifically, the shortage of rental housing units in the City; and

WHEREAS, on February 1, 2006, the City Council adopted a resolution authorizing the City staff and/or its agents to conduct a survey of rental housing units in the City to determine the vacancy rate in such buildings; and

WHEREAS, on February 1, 2006, the City Council passed a resolution authorizing the noticing of a public hearing to adopt the ETPA for rental housing units in the City; and

WHEREAS, pursuant to Notice of Public Hearing published in the Journal News (the official newspaper of the City of Rye) that on February 6, 2006

a public hearing would be held on February 15, 2006 at which time the City Council would consider adopting the ETPA; and

WHEREAS, the City Corporation Counsel retained an expert, Professor Andrew A. Beveridge, Professor of Sociology, Queens College, Graduate Center CUNY, to conduct the survey to determine whether the vacancy rate is less than 5% in any class of rental housing in the City; and

WHEREAS, the City Council held a public hearing on February 15, 2006 to consider whether an emergency exists as to classes of housing accommodations in the City as authorized by the ETPA; and

WHEREAS, the public hearing of February 15, 2006 was held to consider whether the provisions of the ETPA should be invoked as to classes of housing accommodations in the City; and

WHEREAS, Professor Beveridge appeared at the public hearing on February 15, 2006 and submitted an expert report analyzing the vacancy rate of classes of rental housing units in the City in a survey (the “Survey”); and

WHEREAS, on two separate occasions in February, Professor Beveridge also attempted to ascertain whether there were any rental vacancies at the Highland Hall Property; and

WHEREAS, on both occasions, Professor Beveridge indicated that there were no signs announcing available rental units and there was no one to contact to rent an apartment; and

WHEREAS, the Survey conducted by Professor Beveridge demonstrates that a vacancy rate of less than 5% exists in the rental housing units in the City containing more than 25 units and more than 50 units; and

WHEREAS, the Highland Hall Tenants Organization submitted a survey of Tenant Occupancy as of December 1, 2005 (the “Highland Survey”) demonstrating the occupancy rate at the Highland Hall Property; and

WHEREAS, the Highland Survey demonstrates that the vacancy rate at the Highland Hall Property was below 5%; and

WHEREAS, neither the current owners of the Highland Hall Property nor the contract vendees spoke at the February 15, 2006 public hearing although they were invited to do so; and

WHEREAS, the public hearing was adjourned on February 15, 2006 until Saturday February 25, 2006; and

WHEREAS, the public hearing was continued on February 25, 2006; and

WHEREAS, at the continued public hearing numerous members of the public spoke on the issue of the adoption of the ETPA; and

WHEREAS, the owner(s) of the properties containing greater than 25 units, but less than 50 units are complying with the Agreement;

NOW, THEREFORE, BE IT RESOLVED, on the basis of the supply of housing accommodations for residential properties in the City containing 50 or more units as set forth in a Survey conducted by Professor Beveridge and the Highland Survey, the need for regulating and controlling rent increases for housing units within the City, the City Council declares that vacancy rate for rental housing units in buildings with 50 or more units in the City is less than 5% and that an emergency exists as set forth by NY Unconsolidated Laws § 8623; and be it

FURTHER RESOLVED, that effective upon adoption of this resolution and filing of same, the provisions of the ETPA, as amended, shall apply to rental housing units in the City in buildings containing 50 or more dwelling units known as Highland Hall 131-151 Purchase Street; and be it

FURTHER RESOLVED, that the provisions of this resolution shall continue in full force and effect until the City Council shall determine that the conditions of an emergency as defined by the ETPA shall no longer exist; and be it

FURTHER RESOLVED, that the State Division of Housing and Community Renewal is the sole administrator of the regulation of rents for housing units in such buildings known as Highland Hall 131-151 Purchase Street as provided in the ETPA, as amended, and be it

FURTHER RESOLVED, that a certified copy of this resolution shall be forwarded to the State Division of Housing and Community Renewal indicating that the effective date of this resolution is March 2, 2006; and be it

FURTHER RESOLVED, that the City Council directs the City Manager and his staff to take all other steps necessary to secure enforcement of this resolution.

IN WITNESS WHEREOF and of the adoption of the foregoing Resolution at a Public Meeting of the City Council on February 15 and 25, 2006, the undersigned, constituting 6 members of the City Council present at such meeting and a legal quorum of the City Council, do hereby affix their signatures.

Dated: Rye, New York,

February 25, 2006

ROLL CALL:

AYES Mayor Otis, Councilmen Ball, Cunningham, Hennes, and Pratt
NAYS Councilman Seitz
ABSENT Councilman Fahey

4. Adjournment

There being no further business to discuss, Councilman Hennes made a motion, seconded by Councilman Cunningham and unanimously carried, to adjourn the meeting at 4:35 P.M.

Respectfully submitted,

Susan A. Morison
City Clerk