

APPROVED MINUTES of the Special
Meeting of the City Council of the City of Rye held in
City Hall on March 29, 2006 at 8:00 P.M.

PRESENT:

STEVEN OTIS, Mayor
ANDREW C. BALL
MACK CUNNINGHAM
MATTHEW FAHEY
DUNCAN HENNES
GEORGE S. PRATT
Councilmen

ABSENT:

HOWARD G. SEITZ

The Council convened at 7:30 P.M. Councilman Hennes made a motion, seconded by Councilman Pratt and unanimously carried, to adjourn to executive session at 7:31 P.M. to discuss a potential real estate purchase. Councilman Cunningham made a motion, seconded by Councilman Hennes and unanimously carried, to close the executive session at 8:37 P.M. No decisions were made. The regular meeting reconvened at 8:40 P.M.

1. Pledge of Allegiance

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

2. Roll Call

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

3. Authorization for the City Manager to enter into a contract for sale, acceptable to the Corporation Counsel, for the purchase of 1037 Boston Post Road

Mayor Otis prefaced the meeting by reviewing events which transpired at the previous meeting: that the Council had authorized the City Manager to negotiate with the owners of 1037 Boston Post Road to reach an agreement whereby the City could purchase the property. He said this had been a possibility fourteen years ago and now, luckily, there is another opportunity. He said the Council plans to purchase the property on an installment basis for four years, leaving the voters ample chance to consider the best uses for the building and be able to voice a vote on the matter at a referendum. City Manager Paul Shew thanked the owner of the building, Al Maiolo and his attorney James Kilsheimer, III, the Council's negotiating team (the Mayor and

Councilmen Pratt and Hennes) for their candid and productive discussion which have led to tonight's decision to enter into an agreement to purchase the building, subject to Corporation Counsel approval. The terms of the agreement call for four installments of \$300,000 each (\$25,000 per month) and a final payment of \$5 million. The building will be rented out during the four-year period and voters will be asked to approve the final payment prior to the end of that period. Councilman Hennes said he is pleased with the structure of the purchase which will have little or no impact on the voters for the first years. Councilman Pratt said the decision had, out of necessity, been made quickly, but with due deliberation as they tried to provide options and give the voters a voice. The other members of the Council echoed the positive sentiments saying they were pleased to have this opportunity to move forward into the future. Mayor Otis thanked Mr. Maiolo for working with the City and added his appreciation to the Corporation Counsel and his staff, to former City Manager Frank Culross, and to City Manager Paul Shew and his staff.

The Council passed a series of resolutions related to the purchase of the building, allowing the process to move forward.

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

ENVIRONMENTAL RESOLUTION

WHEREAS, at the request of the City Council of the City of Rye, New York (the "City Council" and the "City", respectively), the City Manager and City Corporation Counsel have negotiated the purchase of a parcel of land within its borders more particularly described as 1037 Boston Post Road a/k/a Section 146-11, Block 1 Lot 4 (f/k/a Section 3, Block 42 Lots 25A and 25B) (the "Property"); and

WHEREAS, the City Manager and the Corporation Counsel have negotiated with the current owner of the Property, Aero Hardware & Parts Co, Inc. (the "Seller"), for the purchase of the Property in the amount of \$6.2 million to be paid over a four year period with no interest and with no encumbrances; and

WHEREAS, the City Council has determined that upon the examination of an environmental assessment form ("EAF") and review of the applicable laws, the purchase of the Property (the "Project") is an "unlisted action", as that term is defined in 6 NYCRR § 617.2(ak), and therefore the City has caused the EAF to be prepared and promptly filed with the City Clerk; and

WHEREAS, the purchase of the Property will be reimbursed with the proceeds of bonds as defined by Section 150 of the Internal Revenue Code (see accompanying bonding resolution); and

WHEREAS, by the accompanying bonding resolution, the City declares its official intent for reimbursement of expenditures from bonds/notes as required by the US Treasury Regulations and the Internal Revenue Code; and

WHEREAS, it is proposed that the maximum amount estimated to be expended for the Project is not to exceed \$6.3 million and that the cost of the Project is to be financed by the issuance of serial bonds of the City in the aggregate principal amount not to exceed \$6.3 million pursuant to the Local Finance Law of New York (the "LFL") and, if deemed advisable, by the issuance of bond anticipation notes in anticipation of the issuance of said serial bonds; and

WHEREAS, it is proposed that the cost of the Project is to be paid from a tax levied upon all the taxable property in the City in annual installments determined by the City Council in amounts sufficient to pay the principal of and interest on said bonds to be authorized in a bond resolution to be adopted by the City Council; and

WHEREAS, the evidence demonstrates with respect to the Project the City Council to make the determinations hereinafter in connection with actions to be made for the purpose of authorizing the financing of the Project;

NOW THEREFORE, pursuant to proceedings prescribed in 6 NYCRR § 617 of the State Environmental Quality Review Act ("SEQRA") regulations, **BE IT RESOLVED**, BY THE CITY COUNCIL OF THE CITY OF RYE, NEW YORK, as follows:

Section 1. The City, by and through its City Council, hereby declares and designates itself to be the "lead agency", as that term is defined in 6 NYCRR §617.2(u), with respect to the environmental review of the Project.

Section 2. Upon receipt and examination of the EAF it is hereby determined that the Project is an unlisted action, as that term is defined in 6 NYCRR §617.2(ak).

Section 3. No other agency other than the City is involved in said environmental review and no coordinated review or segmentation of such review is necessary or required with respect to the Project.

Section 4. No hearing as set forth in 6 NYCRR §617.9(a)(4) is required in making the determinations contained herein with respect to the costs of the Project.

Section 5. Taking into account the criteria set forth in 6 NYCRR §617.5(c), upon review of all pertinent information, including taking a hard look at all the facts and circumstances, it is determined that the Project will not have a significant effect on the environment and no unidentified adverse effects are anticipated with respect thereto and is precluded from further review under the Environmental Conservation Law.

Section 6. It is hereby determined that for purposes of the SEQRA regulations the serial bond resolution to be adopted under the LFL to finance the Project shall not be or be deemed to be an "action", as that term is defined in 6 NYCRR §617.2(b), until such bond resolution is approved by the City Council of the City.

Section 7. The City shall include a true copy of this resolution in the file maintained, readily accessible to the public, in the office of the City Clerk, containing the EAF.

Section 8. This resolution shall take effect immediately upon its adoption.

ROLL CALL:

AYES: Mayor Otis, Councilmen Ball, Cunningham, Fahey,
Hennes and Pratt

NAYS: None

ABSENT: Councilman Seitz

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

PURCHASE RESOLUTION

WHEREAS, the City of Rye (the "City") has identified a parcel of land within its borders more particularly described as 1037 Boston Post Road a/k/a Section 146-11, Block 1 Lot 4 (f/k/a Section 3, Block 42 Lots 25A and 25B) (the "Property"); and

WHEREAS, the City has identified the Property for possible purchase; and

WHEREAS, the City Council, on March 22, 2006 authorized the City Manager and the City Corporation Counsel to enter into negotiations with the current owner of the Property, Aero Hardware & Parts Co, Inc. (the "Seller"), for the purchase of the Property and improvements thereon; and

WHEREAS, the City Manager and the Corporation Counsel have negotiated with the Seller for the purchase of the Property in the amount of \$6.2 million to be paid for over a four year period with no interest and with no encumbrances; and

WHEREAS, the purchase of the Property will be reimbursed with the proceeds of bonds as defined by Section 150 of the Internal Revenue Code (see accompanying bonding resolution); and

WHEREAS, by the accompanying bonding resolution, the City declares its official intent for reimbursement of expenditures from bonds/notes as required by the US Treasury Regulations and the Internal Revenue Code; and

WHEREAS, the City Council has caused an environmental review of the purchase of the Property to be conducted, caused a "short form" environmental assessment form dated March 27, 2006 ("EAF") to be filed with the City Clerk's office as per the New York State Environmental Quality Review Act and its

implementing regulations (“SEQRA”) and issued a Negative Declaration by the accompanying resolution;

NOW THEREFORE, BE IT RESOLVED that the City Council authorizes the City Manager, subject to the approval of the Corporation Counsel, to enter into a contract with the Seller for the purchase of the Property for \$6.2 million by the following terms: (i) \$1.2 million over a four year period (\$300,000 per year to be paid by the City to the Seller in equal monthly installments totaling \$1.2 million), (ii) a \$5 million payment after the aforesaid four year period, and (iii) no encumbrances or leases impacting the Property; and

BE IT FURTHER RESOLVED, that the use of the Property is for a public use; and

BE IT FURTHER RESOLVED, that this resolution shall take effect immediately upon its adoption.

ROLL CALL:

AYES: Mayor Otis, Councilmen Ball, Cunningham, Fahey,
Hennes and Pratt

NAYS: None

ABSENT: Councilman Seitz

Councilman Fahey made a motion, seconded by Councilman Pratt to adopt the following resolution indicating an official intent to bond in the future:

BONDING RESOLUTION

WHEREAS, the City of Rye (the “City”) has identified a parcel of land within its borders more particularly described as 1037 Boston Post Road a/k/a Section 146-11, Block 1 Lot 4 (f/k/a Section 3, Block 42 Lots 25A and 25B) (the “Property”); and

WHEREAS, the City has identified the Property for possible purchase; and

WHEREAS, the City Council, on March 22, 2006 authorized the City Manager and the City Corporation Counsel to enter into negotiations with the current owner of the Property Aero Hardware & Parts Co, Inc. (the “Seller”) for the purchase of the Property and improvements thereon; and

WHEREAS, the City Manager and the Corporation Counsel have negotiated with the Seller for the purchase of the Property in the amount of \$6.2 million to be paid for over a four year period with no interest and with no encumbrances; and

WHEREAS, the City Council has authorized the City Manager to enter into a contract with the Seller, subject to approval of the Corporation Counsel to purchase the Property on the terms set forth therein; and

WHEREAS, United States Treasury Regulations §1.150-2 (the "Reimbursement Regulations") prescribe conditions under which proceeds of bonds, notes or other obligations ("Bonds") used to reimburse advances made for capital and certain other expenditures ("Original Expenditures") paid before the issuance of such Bonds will be deemed to be expended (or properly allocated to expenditures) for purposes of Sections 103 and 141-150 of the Internal Revenue Code of 1986, as amended (the "Code"), upon such reimbursement so that the proceeds so used will no longer be subject to requirements or restrictions under those sections of the Code; and

WHEREAS, certain provisions of the Reimbursement Regulations require that there be a Declaration of Official Intent not later than 60 days following payment of the Original Expenditures expected to be reimbursed from proceeds of Bonds, and that the reimbursement occur within certain prescribed time periods after an Original Expenditure is paid or after the property resulting from that Original Expenditure is placed in service; and

WHEREAS, the City Council wishes to take steps to comply with the Reimbursement Regulations;

NOW, THEREFORE, be it resolved by the City Council of the City of Rye, New York (the "Issuer") as follows:

Section 1. Definitions. The following definitions apply to the terms used herein:

 "Authorized Officer" means the City Comptroller of the Issuer or any person designated for the purpose by the City Council of the Issuer.

 "Declaration of Official Intent" means a declaration of intent, in the form, manner and time contemplated in the Reimbursement Regulations, that the advances for expenditures referred to therein are reasonably expected to be reimbursed from the proceeds of Bonds to be issued after those expenditures are paid.

 "Reimbursement" or "reimburse" means the restoration to the Issuer of money temporarily advanced from its own funds and spent for Original Expenditures before the issuance of the Bonds, evidenced in writing by an allocation on the books and records of the Issuer that shows the use of the proceeds of the Bonds to restore the money advanced for the Original Expenditures. "Reimbursement" or "reimburse" generally does not include the refunding or retiring of Bonds previously issued and sold to, or borrowings from, unrelated entities.

Section 2. Authorization and Requirement of Declarations of Official Intent. The Authorized Officer is authorized to prepare and sign Declarations of Official Intent in substantially the form attached with respect to Original Expenditures to which the Reimbursement Regulations apply, to be made

from money temporarily advanced and that is reasonably expected to be reimbursed (in accordance with applicable authorizations, policies and practices) from the proceeds of Bonds, to make appropriate reimbursement and timely allocations from the proceeds of the Bonds to reimburse such Original Expenditures, and to take any other actions as may be appropriate, all at the times and in the manner required under the Reimbursement Regulations in order for the reimbursement to be treated as an expenditure of such proceeds for purposes of Sections 103 and 141 to 150 of the Code. No advance from any fund or account or order for payment may be made for Original Expenditures (other than expenditures excepted from such requirement under the Reimbursement Regulations) that are to be reimbursed subsequently from proceeds of Bonds unless a Declaration of Official Intent with respect thereto is made within the time required by the Reimbursement Regulations.

ROLL CALL:

AYES: Mayor Otis, Councilmen Ball, Cunningham, Fahey,
Hennes and Pratt

NAYS: None

ABSENT: Councilman Seitz

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

RESOLVED: that the City Council of the City of Rye hereby authorizes the City Manager to enter into a contract to purchase the property located at 1037 Boston Post Road, subject to approval of the Corporation Counsel.

ROLL CALL:

AYES: Mayor Otis, Councilmen Ball, Cunningham, Fahey,
Hennes and Pratt

NAYS: None

ABSENT: Councilman Seitz

Dennis Spillane, Thorne Place was allowed to address the Council and questioned if the security at the commuter parking area would remain as safe if the Police Department moved to the new property. Mayor Otis announced he had now become the first person to participate in the planning process and reiterated that the beauty of the arrangement is that there will be lots of opportunity for many voices to be heard.

4. Adoption of NIMS (National Incident Management System) Resolution

This agenda item was deferred to the next meeting.

5. 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 9:02 P.M.

Respectfully submitted,

Susan A. Morison
City Clerk