

APPROVED MINUTES of the Regular Meeting of the City Council of the City of Rye held in City Hall on May 17, 2006 at 8:00 P.M.

PRESENT:

STEVEN OTIS, Mayor
ANDREW C. BALL
MACK CUNNINGHAM
MATTHEW FAHEY
DUNCAN HENNES
HOWARD G. SEITZ
Councilmen

ABSENT:

GEORGE S. PRATT

The Council convened at 7:00 P.M. Councilman Hennes made a motion, seconded by Councilman Cunningham and unanimously carried, to adjourn to executive session at 7:01 P.M. to discuss pending litigation. Councilman Ball made a motion, seconded by Councilman Fahey and unanimously carried, to close the executive session at 7:55 P.M. The regular meeting reconvened at 8:00 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. Residents may be heard who have matters to discuss that do not appear on the agenda

Carolyn Cunningham, Soundview Avenue, said she was concerned about the number of trees removed from the golf course, but happy to see there had been some new plantings. She said she hoped a new layer of review for removal of big, non-diseased trees could be instituted because trees are important to aesthetics, the quality of life and to our environment. She said some cities even landmark their trees, and because trees are an important part of Rye she urged serious consideration of an environmental review process.

Henry King, 76 Coolidge Avenue presented pictures of the Beaver Swamp Brook area comparing early April, when the rainfall was 37% below normal, with the status after the serious rain we have experienced. He said before the “improvements” to Beaver Swamp Brook it took at least 5 inches of rain to create the flooding situation they have just experienced. He said the Harrison side is sinking, pushing the water onto the Rye side; that the Department of Conservation (DEC) is not talking; and he continues to believe the whole project is an infringement on the wetlands. He said he doesn’t understand how anyone could take away wetlands when everyone knows Beaver Swamp Brook plugs up in Mamaroneck. *Gwen Hughes, 8 Woods Lane*, concurred with Mr. King saying 3 7/8” of rain had produced a lake; that there is no water flow which leads to stagnation which will lead to mosquitoes; that there was no absorbing vegetation left; and that many in the neighborhood are equally concerned. Councilman Ball expressed empathy, agreeing that the increased water appears to be real. Mayor Otis said he knows many parts of the City are at risk as serious recent rain events have led to lots of complaints. He said he too has questioned the water flow; there are many unanswered questions from Harrison; and they are trying to arrange a meeting. He said the ball field plan is of great concern as this was supposed to be wetlands, and the City of Rye is opposed to having the fields in operation until we can see better water flow.

4. Formal turn over of Explorer Scout to the Rye Fire Department

Coordinator Joseph Banahan, creator of the Explorer’s Club at the High School which introduces students to the possibilities of a firefighting career, announced that Ryan Melahn, a graduate of the program, had been elected to membership in the Fire Department. The 17 year old will be eligible for training prior to becoming a full-fledged firefighter when he turns 18. He will attend the State Fire Training Academy this summer and has already assisted in many fires on a strictly auxiliary basis, outside any fire line. Chief John Wickham said the Explorers Club is a great program and the participants are a great help. He welcomed Ryan to the Department and thanked all the other members of the Rye Explorers who were present. Mr. Banahan thanked the others responsible for the Explorer program: Steve Radaluski, Joe Mazzella, Mike Mancuso and Louise Armstrong. Mayor Otis thanked Ryan and all the Explorers for their service to Rye, noting that they were learning skills to last a lifetime.

Mayor Otis made a motion, seconded by Councilman Hennes and unanimously carried, to approve the election of Ryan Melahn to the Poningo Engine & Hose Company, as voted by the Board of Fire Wardens at their May 3, 2006 meeting.

5. Continuation of public hearing to amend Chapter 197 (Zoning) of the City of Rye, New York with respect to restaurants in the B-1 Neighborhood Business District

Mayor Otis announced that the applicant requesting to amend Chapter 197 (Zoning) of the City of Rye, New York with respect to restaurants in the B-1 Neighborhood Business District (more specifically involving the extension of the open hours for On The Way Café) had requested that the continuation of the public hearing be postponed to the June Meeting. The Mayor said that anyone who wished to speak on the subject this evening was welcome to do so.

Armand Puglia, #27 Ridgeland Terrace, expressed his concern again about extending hours. He said most people are not affected by the change so it is no wonder so many signed the petition for increased hours. However, the nearby neighbors will have to suffer the consequences of increased traffic, increased wear and tear on the road, increased hazards to their children, invasion of their privacy, and the continued erosion of the residential character of the neighborhood. He said his chief concerns were the ramifications for the future. Would this be a one-time extension of hours? Will all businesses now be allowed to extend theirs? Will they be asking for a liquor license next? Will the new zoning allow properties to be combined so even larger business enterprises can be accommodated? He likened the proposal to the camel getting his nose in the tent and urged the Council not to approve the change. Other residents of Ridgeland Terrace spoke in opposition. *Kathy Telfer (#33)*, said she is not asking the business to close, but it is a tight neighborhood already; it will mean more traffic, more garbage and more noise, and no one is helping with the already existing Playland issues. *Joel Derelius (#31)* complained about the delay in coming to a conclusion saying it is hard to get people to keep coming out. *Janet Suarino (#32)* said the change in zoning will change the whole scope of the corner and the whole flavor of Ridgeland Terrace; that their property values will be affected; and not having quiet at night will be too much to put up with. *Martha Thompson (#26)* also asked if there were any proposals to remedy existing unacceptable situations. Other residents (*Cary Rosenfield, 66 Milton Road; Craig Smith, 8 Woods Lane; and Mark Parsons, from Harrison but formerly at 422 Midland Avenue*) spoke in favor of the change saying it would be sad to see a small business fail, and it is a wonderful little restaurant to be able to go to.

Councilman Hennes said, having heard many complaints about existing conditions in the area, he thought it would be important to address those conditions by having a staff person go to a meeting with the neighbors. As to the change in zoning, he questioned if there was a way to narrow the proposal by limiting it to extending the business hours of On The Way Café. Councilman Fahey said he would like to see the parking issues solved first rather than accept the zoning change and deal with parking later. He said, however, that no one was trying to force the café to go out of business. Councilman Ball reiterated his question as to whether extending the hours would increase the parking problems. Councilman Seitz said he wanted to be sure everyone received the proper notification of the hearing and change, and asked for a confirmation that the proper notices were sent out. Councilman Cunningham (who has recused himself from any vote) suggested the problem lies with Vargus Realty which abuses the parking by letting Playland Market employees and cars from the gas station to be parked all day. He said these infringements are already affecting the neighborhood and the café.

There being no further discussion this evening, Mayor Otis announced the continuation of the public hearing at the June 14, 2006 meeting.

5A. Presentation of the City of Rye Stormwater Management Program 2005 Annual Report

Anthony Conetta with the firm of Dvirka & Bartilucci Consulting Engineers, presented the 2005 Annual Report for Rye's Stormwater Management Program, due June 1, 2006 as required by the NYS Department of Environment Conservation (NYSDEC). It outlines the status of the third year of Rye's program as of March 9, 2006. He reviewed that as of 2003 all municipalities with their own sewers needed to have a permit and advance a storm water plan.

The plan requires that the City carry out a 6 part minimum measure program (Public Education and Outreach in Storm Water Impacts; Public Involvement/Participation; Illicit Discharge Detection and Elimination; Construction Site Storm Water Runoff Control; Implementation of Best Management Practices; and Post-Construction Storm Water Management). He reported that Rye has continued to advance their program satisfactorily. Highlights of 2005 include informational flyers and brochures on all aspects of water quality to builders and residents; sponsoring clean-up events; maintaining outfalls in terms of mapping and data; evaluating how laws need to be amended; continuing education; continuing past practices such as cleaning catch basins and streets; and increasing enforcement of sediment control. He said the report is consistent with the City's five-year plan and Rye continues to move forward to the satisfaction of the Department of Environmental Conservation (DEC). He mentioned that the code will need to be revised by January, 2008, but suggested not adopting the changes too soon as the DEC continues to amend their preferred models as they too learn more. He said Rye is on target with respect to other communities, but our proximity to Long Island Sound makes progress really important, even though much needs to be done upstream as well as to the estuaries which drain into the Sound. Mayor Otis said our participation in a FEMA project with tracked outfalls gave the City a good leg up in getting started with the project. In response to an inquiry from Councilman Seitz, Mr. Canetta said at the end of five years Rye will need to obtain another permit and continue to increment the program as required by the Environmental Protection Agency (EPA). He said all municipalities throughout the USA (including Puerto Rico and the Virgin Islands) are required to participate in this program. Joe Murphy, Chair of the Conservation Commission/Advisory Committee asked if there is anything in the report on trees. Mr. Canetta said there is some discussion about green roofs which have proven to save up to a third of energy costs and extend the life of the roof by over 14%. The report (Phase II SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems) will be filed with the NYSDEC.

6. Consideration of setting a public hearing to amend Chapter 81, Electrical Standards, Section 81-2, Permit required, of the Code of the City of Rye

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

WHEREAS, the Council wishes to amend Article 81, Electrical Standards Section 81-2, Permit required, of the Code of the City of Rye; 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 June 14, 2006 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 to amend Chapter 81, Electrical Standards, Section 81-2, Permit required of the Code of the City of Rye

Notice is hereby given that a public hearing will be held by the City Council of the City of Rye on the 14th day of June, 2006 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 to amend Chapter 81, Electrical Standards, Section 81-2, Permit required of the Code of the City of Rye.

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

Dated: June 5, 2006

Susan A. Morison
City Clerk

7. Consideration of setting a public hearing to amend Chapter 68, Building Construction, Article 1, Section 68-8, Plumbing and drainage and Section 68-9, Oil and Gas heating equipment; electrical wiring of the Code of the City of Rye

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

WHEREAS, the Council wishes to amend Chapter 68, Building Construction, Article 1, Section 68-8, Plumbing and drainage and Section 68-9, Oil and Gas heating equipment; electrical wiring of the Code of the City of Rye of the Code of the City of Rye; 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 June 14, 2006 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 to amend Chapter 68, Building Construction, of the Code of the City of Rye, Article I, Section 68-8, Plumbing and drainage and Section 68-9, Oil and Gas heating equipment; electrical wiring

Notice is hereby given that a public hearing will be held by the City Council of the City of Rye on the 14th day of June, 2006 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 to amend Chapter 68, Building Construction, of the code of the City of Rye, Article I, Section 68-8, Plumbing and drainage and Section 68-9, Oil and Gas heading equipment; electrical wiring.

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

Susan A. Morison
City Clerk

Dated: June 5, 2006

8. Consideration of setting a public hearing to amend Chapter A201, Rules Adopted by the Building Inspector with the consent of Council, A201-4, Plumbing and drainage, and Section A201-5, Oil or gas heating equipment; electrical wiring Electrical Standards, of the Code of the City of Rye

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

WHEREAS, the Council wishes to amend Chapter A201, Rules Adopted by the Building Inspector with the consent of Council, A201-4, Plumbing and drainage, and Section A201-5, Oil or gas heating equipment, electrical wiring Electrical Standards, of the Code of the City of Rye; 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 June 14, 2006 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 to amend Chapter A201, rules Adopted by the Building Inspector with the consent of Council, A201-4, Plumbing and drainage, and Section A201-5, Oil or gas heating equipment, electrical wiring, of the Code of the City of Rye

Notice is hereby given that a public hearing will be held by the City Council of the City of Rye on the 14th day of June, 2006 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 to amend Chapter A201, rules Adopted by the Building Inspector with the consent of Council, A201.4, Plumbing and drainage, and Section A201-5, Oil or gas heating equipment, electrical wiring Electrical Standards, of the Code of the City of Rye.

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

Susan A. Morison
City Clerk

Dated: June 5, 2006

8A. Approval of settlement of tax certiorari case involving property at 350 Theodore Fremd Avenue

City Manager Paul Shew reported that a tax certiorari case involving an office building at 350 Theodore Fremd Avenue which had been sold in 2005 had been settled, calling for a reduction ranging from 15% in 2001 to 35% in 2005. City Assessor Noreen Whitty feels that with the precipitous decline in the equalization rate and the rapid appreciation in the residential market, which increase the City's exposure in commercial tax certiorari proceeding, this is a reasonable settlement.

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

RESOLVED, that the Tax Certiorari Settlement involving property at 350 Theodore Fremd Avenue (tax lot 146-10-1-62-2) be accepted as recommended by the City Assessor.

ROLL CALL

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

NAYS: None

ABSENT: Councilman Pratt

8B. Authorization to hire outside Counsel to pursue legal appeal relating to Xavier Contracting

Mayor Otis added an additional agenda item to report that the City had received an adverse ruling from the Appellate Division concerning a case involving Xavier Contracting Company. The Council has decided to appeal the decision.

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

RESOLVED, that the City Council authorizes Special Council Joseph Maria, P.C. to seek leave to appeal and/or reargue issues related to litigation with Xavier Contracting Company related to Contract 2003-13, Damiano Center - General Contracting.

ROLL CALL

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

NAYS: None

ABSENT: Councilman Pratt

9. Authorization for City to enter into Croton Point Landfill Municipal Joint Defense Group Agreement

City Manager Paul Shew explained that the owner of the Croton Point Landfill had been sued over waste deposited during the 1960's and he in turn had commenced a suit against all municipalities who had deposited anything to the landfill.

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

WHEREAS, the Croton Point Landfill Joint Defense Group, which is comprised of industrial parties who entered a Consent Decree with the New York State Attorney General for the Croton Point Sanitary Landfill, is seeking a payment from numerous Westchester County municipalities under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”); and

WHEREAS, the industrial plaintiffs seek contribution under CERCLA from numerous municipalities in the County of Westchester seeking \$3.5 million as reimbursement for costs that the various industrial plaintiffs paid in settlement of the cleanup of the Croton Point Landfill; and

WHEREAS, representatives from these Westchester County Municipalities have met a number of times to determine if it would be in their best interests to form a Municipal Defense Group and to be provided with a common defense in the Croton Point Action; and

WHEREAS, after meeting with a number of attorneys, the representatives have determined that Periconi, LLC, is qualified to defend the group; and

WHEREAS, James Periconi, Esq. of Periconi, LLC has prepared a Joint Defense Agreement with Counsel for the defense of the Croton Point Action; and

WHEREAS, the amount to be paid to the Joint Defense Group for the initial work, which includes a Motion to Dismiss, will be \$2,500 and any further requests for funds will be authorized subsequent to this resolution and that there be an opt out clause if the City was not satisfied with the legal defense;

NOW, THEREFORE, BE IT RESOLVED: that the City Manager is authorized to sign the Joint Defense Agreement on behalf of the City; and

BE FURTHER RESOLVED, that the amount of \$2,500 as stated in the Joint Defense Agreement be paid to Periconi, LLC.

ROLL CALL

AYES: Mayor Otis, Councilmen Ball, Cunningham, Fahey, Hennes and Seitz
NAYS: None
ABSENT: Councilman Pratt

10. Acceptance of grant from Save America’s Treasures Program for rehabilitation of Friends Meeting House.

City Manager Shew reported that the City had received a \$49,000 grant from Save America’s Treasures Program for rehabilitation of the Friends Meeting House. He said the City had been working on the grant for some time and the matching funds have been accomplished by the in-kind services of Lisa Easton, Preservation Architect and the expertise of others in the

Friends of the Meeting House organization who will be able to assist the City in properly administering the grant.

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

RESOLVED, that the City Manager is hereby authorized to accept a grant in the amount of \$49,000 from Save America's Treasures Program for rehabilitation of the Friends Meeting House.

ROLL CALL

AYES: Mayor Otis, Councilmen Ball, Cunningham, Fahey, Hennes and Seitz
NAYS: None
ABSENT: Councilman Pratt

11. Additional appointments to Retail Strategy Task Force

Mayor Otis made a motion, unanimously approved, to add the following additional members to the Retail Strategy Task Force: Fred Cummings, Bruce Macleod, Lisa McKiernan and Peggy Peters. He thanked everyone and said the first meeting was scheduled for Wednesday, May 24, 2006.

12. One Appointment to Board of Architectural Review

Mayor Otis made a motion, unanimously approved, to appoint David Cutner to the Board of Architectural Review for a one-year term ending January 1, 2007.

13. Consideration of request of Rye Youth Council to hold its Annual Block Party on Saturday June 10, 2006, at the multi-purpose area of Recreation Park

Councilman Hennes made a motion, seconded by Councilman Cunningham and unanimously carried, to grant the request of the Rye Youth Council to hold its Annual Block Party on Saturday, June 10, 2006 at the multi-purpose area of Recreation Park.

14. Miscellaneous communications and reports

Councilman Fahey was informed that the liquid in the barrel behind the gas station at the corner of Wappanocca Avenue and Purchase Street, referenced at the last meeting, was water.

Councilman Ball thanked the Department of Public Works for removing the stump of the tree in the Fireman's Monument circle and wondered if there was a plan to restore some kind of symmetry to the circle. The City Manager will check on this.

15. Old Business

Councilman Cunningham inquired about striping Wappanocca Avenue. City Manager Shew said all striping is done at the same time and at night.

Councilman Seitz referred to a letter from one of the Highland Hall tenants expressing concerns there will be no on-going maintenance and the building will deteriorate as Mr. Kornblum, the prospective purchaser, will expend less on the building. He said the tenants who have been relocated out of the illegal basement apartments may end up paying more of an increase than ETPA allows because they will be living in improved apartments. There is also concern that there will be less services at more cost because there will be less people living in the complex. It is rumored that Mr. Kornblum will close on the property next month. Councilman Hennes asked if the previous agreement with the City of Rye transfers to the new owner. The Mayor said it was his understanding that the State of New York would say ETPA supersedes the old agreement but we should check whether the old agreement would supersede ETPA if it is more stringent. The Mayor believes that the tenants are less vulnerable with ETPA than they would have been.

16. New Business

There was no new business to be discussed.

17. Draft unapproved minutes of the regular meeting of the City Council held May 3, 2006

Councilman Seitz made a motion, seconded by Councilman Hennes and unanimously carried, to adopt the minutes of the regular meeting of the City Council held May 3, 2006 as amended.

18. 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 9:58 P.M.

Respectfully submitted,

Susan A. Morison
City Clerk

