

**APPROVED MINUTES** of the Regular Meeting of the City Council of the City of Rye held in City Hall on April 25, 2007 at 8:00 P.M.

PRESENT:

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

3. Special report on flood status

Mayor Otis thanked everyone for coming and welcomed *Tony Sutton, the Westchester County Commissioner of Emergency Services* (former head of the Rye, Rye Brook, Port Chester EMS) who gave a flood update from the County. Mr. Sutton began by congratulating the City of Rye for its handling of the flood situation, saying City Manager Paul Shew is a consummate professional having lived through Hurricane Floyd in Ossining, and noting the professionalism of all safety, communications and organizational procedures.

Mr. Sutton said the Federal Emergency Management Agency (FEMA) (which sent an unprecedented ten teams to Rye alone), along with the State Emergency Management Office (SEMO) and Westchester County agencies, had been on site very early after the flooding to provide windshield assessments and there was no question from the beginning that the County would qualify for disaster status. They began by assessing individual damage (either “minor” or “total loss”) and then returned to assess Municipal damage (schools, bridges, roads, municipal structures). He said he was hopeful the Municipal portion would be granted disaster status soon. There are also Small Business Administration (SBA) loans, but he recognizes that a business owner, who probably already has loans, would prefer grants and he is hopeful these might be

forthcoming in the future. Small business outreach will be scheduled soon and the County will let everyone know. FEMA has already set up a disaster recovery center in Mamaroneck (open 7days/week from 8 A.M.-7 P.M.) and, if there is enough support, they will set up a center in Rye as well.

Mr. Sutton stressed outreach (getting the word out) as the #1 priority. He emphasized the importance of registering with FEMA as the first step by calling 1-800-621-3362 or going to [www.fema.gov](http://www.fema.gov) to get the essential information and getting a letter of denial (if necessary) from any insurance company denying coverage. Once registered, homeowners will be contacted by a FEMA representative to review the property. He cautioned homeowners to talk only to someone with an appointment and to pay attention to applications for SBA loans as this is the proper application. Once the property has been visited, a dollar amount will be determined and a check will be forthcoming. He said FEMA has been very supportive.

In conclusion, Mr. Sutton said the County Executive and everyone at all County levels has been very supportive. Going forward, there will be a seminar in June to discuss County-wide solutions and coordinate those solutions to make sure what helps one community doesn't adversely affect "downstream" communities.

Mayor Otis thanked Mr. Sutton for coming and for all his help, saying the floods (both in March and in April) were a huge blow to Rye, revealing our vulnerability. Luckily no one was killed and Rye residents are resilient, but the loss to personal property is a huge violation for everyone. He reported he had spoken personally with the Governor, our Federal and State representatives as well as the head of the Army Corps of Engineers and the head of FEMA to let them know Rye was hard hit and needs help. Rye damage is estimated at about \$80 million (much of which was to private homes, but also to Rye's buildings and roads as well as to the Bowman spillway). He also thanked the City Manager, the safety personnel, the inspectors and all the citizens who have helped themselves and are willing to help now to work toward a future solution.

The Mayor addressed the City's next steps:

- A \$230,000 grant has been received from Congresswoman Nita Lowey to help get answers as to how to go forward. There is agreement that more studies are not necessary or wanted.
- The City will develop a contingency plan for how it is going to fund mitigation plans (see agenda item 10).
- The City needs to examine the Bowman spillway to see if there is any way we can make it better. Will it solve all flooding problems? No, but maybe it can make it a little better.
- The City needs to stop the proposed Konigsberg development near Bowman Dam now being advocated by Rye Brook. The City is willing to buy the property, hopefully with the cooperation of the County and Rye Brook (there is a public hearing on May 8, 2007).
- The City needs to find a way to remove the sediment now virtually blocking the outflow of Blind Brook into Milton Harbor. Perhaps it can be deemed a public safety issue and the Army Corps of Engineers will once again dredge it. Perhaps developing aquaculture is an answer.

- The City needs to look at completed development projects that promised good water retention plans and make sure they were constructed and maintained as set forth on paper.
- The City needs to adopt the Hazard Mitigation Plan (see agenda item 9) to make sure we are eligible for more granting sources.
- The City is waiving some building department fees in order to facilitate rebuilding.
- The City has filed an official protest/attack with Harrison demanding no more fill be put in at the Beaver Swamp area/Harrison fields.
- The Storm Water Run-off Committee has already been established.
- The City was selected for Project Impact because we are vulnerable to flooding and has followed the recommendation to buy up land in flood zones. To date the Rye Nursery Property, the Friends Meeting House and the Anderson property have been purchased. It is harder to buy property (such as the Rye Brook development) when it is not in Rye and the City can't control what happens.

The Mayor concluded by saying we need to move on a fast track as we don't want this to happen again. We need to protect our community. City Manager Paul Shew said unfortunately there are more questions than answers and added his thanks to everyone for their help.

Council members also commented on the flooding situation. Councilman Seitz, a former resident of Indian Village, expressed his sympathy as well as empathy and added his thanks to the City Manager and staff saying we are lucky to have them. He also complimented the Mayor for meeting with so many elected officials and identifying the next steps. He said we have to recognize the flooding in Rye is never going to be completely curable. What can we do? Pass the Hazard Mitigation Plan; make sure Flood Insurance is available; take hard looks at the building codes; make sure everyone knows how they can protect their homes and their own personal safety (leave early rather than have to be rescued by boat or fire truck ladder). He said there is an issue as to who should pay – the City as a whole or the individual. He also said the Council welcomes new ideas. Councilman Hennes said the flood had been a wakeup call for him and he is ready to help in any way he can (eliminating hurdles by reducing bureaucracy and red tape, fighting upstream development, etc.) He said he sees the heightened need to dredge the harbor, update sewers, raise bridges and re-prioritize our capital improvement plan. He also suggested the City have some recourse if water-control plans were not followed. Councilman Pratt pledged the City's help as all of Rye has suffered, but said we need to look at our own development standards (such as examining steep slopes and flag lots) and ask people to act responsibly.

Members of the public were present to discuss the flood issues. *Andrew Goodenough, 25 Mohawk Street*, said the Rye Flood Action Committee has been created (as outlined at the previous Council Meeting on April 11, 2006 by *Carolina Johnson*) and as citizens they have the power and the need to work with the Council to do whatever is needed to help make the situation better. He said the series of floods have been heartbreaking and the Committee wants direction so they can help. Should they go as a group, to the May 8<sup>th</sup> Rye Brook meeting when the public hearing for the proposed *Konigsberg* development will take place? He presented a map outlining what the Committee sees as possible flood mitigation areas (West and East branches of Blind Brook, the West branch catch basin, the Bowman Avenue spillway, the retention pond below the spillway, the *Konigsberg* development in the middle of the retention pond, a potential secondary

dam at the end of the pond, just before the brook goes under Route 287, and the lake at the former General Foods Building). He acknowledged that all of these ideas would not have solved the flooding in April, but might have saved everyone during the March 2 flood. The key word is action. The Mayor added that there are other areas, from the airport (where the ponds could be expanded) on down which could, and should, be looked at. (*Henry King, 36 Coolidge Avenue*, said you need to know the volume of water potentially retained because making a deeper lake really won't help) *Carolina Johnson, 40 Mendota*, said the Committee has begun a letter writing campaign to the County Executive and to Congresswoman Lowey's office to stop the Konigsberg development and reach out to the East Branch neighborhood. They are also fighting against a 75,000 square foot proposed settlement in the Manhattanville Park. The Committee would like direction as to whom to write and how best to protest the development. (The Mayor said the Rye Brook Village offices at 938 King Street will have the plans and the meeting on May 8<sup>th</sup> begins at 8 P.M.) *Ms. Johnson* mentioned the National Flood Insurance Program (NFIP) which Rye is not a part of (but Scarsdale is). Mayor Otis said he will revisit this program in case this can lower insurance rates.

*Peter Sinnott, 60 Mendota Street*, said he had been through at least 10 storms and proposed some immediate solutions. He urged everyone visit the Bowman Spillway. It is 20' high and 8' wide. Can it be built up? What will that do? He feels the retention pond can be dammed to make it a reservoir, but the Mayor pointed out the water level during the flood raised the level of the retention pond significantly. Mr. Sinnott said the people want action, not more studies, and flooding has become a City-wide problem, rather than just an Indian Village problem. Councilman Ball thanked everyone for the focus and stamina; said the City should review the General Foods building to see if they are doing all the water control they promised; and said he had heard the loss in property damage could be as high as \$100 million. *Lisa Murphy, 36 Onondaga Street*, a real estate agent, said Rye is not Wayne, New Jersey, but will need to recover and this could take some time.

*Holly Kennedy, 105 Mendota St.*, thanked everyone for the renewed attention and questioned whether the bridges should not be built up higher so they don't act as a dam. This is already planned. *Cedric Raines, 32 Orchard Avenue*, agreed the bridges act as dams now and also voiced his complaints about the YMCA expansion and parking lot. He said everyone was suggesting less impervious surfaces for upstream but said we did the same thing with the Y's parking lot, right on the edge of the brook. He asserted that the flooding to his home came in a totally different and worse way during this flood as a direct result of the Y's expansion. He suggested at least converting it to gravel and urged the City to tend to its own backyard as well as worrying about upstream. *Bob Schubert, 980 Forest Avenue*, agreed that changes in the watercourse is important and urged everyone to read Chapter 195 "Wetlands and Watercourses" in the Code of the City of Rye which states clearly that flood control is the #1 intent. *Michele Martin, 950 Forest Avenue*, said construction such as 900 Forest Avenue has clearly affected the water patterns in the neighborhood. The Mayor expressed concern that the existing laws to prevent such shifting do not appear to be working. Councilman Hennes asked if Corporation Counsel could review the law relating to plans which could change the water flow downstream.

Other citizen comments, questions and suggestions were made. *Rich Filippi, 13 Loewen Court*, asked if there was any chance of opening up the Central Avenue Bridge temporarily. City Manager Shew said that was not possible as it is not safe; that it will have to be redesigned and

will be rebuilt as fast as possible, but it will take some time before it can be opened. He said the City was also looking at dismantling the old bridge a bit downstream opposite Resurrection Church. *Mr. Filippi* suggested installing a drywell in every home to slow the flow of the brook. *Carolina Johnson* said it should be mandatory. *Judy Polatsek, 43 Locust Avenue*, asked if the brook could be dredged? Not too deep because if the water can flow under the edge of the brook it further weakens the walls. *Peter Jovanovich, 647 Milton Road*, pointed out the walls are already in bad shape and asked who is responsible for fixing them? The City is hiring an outside engineer to assess the condition of all the walls. It is a mixed bag who owns what part of the wall as some properties don't go all the way to the stream. Those that do own the wall should take affirmative action to protect their own property. FEMA, which has a 5 year flood standard for private property walls, could perhaps help with the repair. Perhaps the City could share in the expense, as it does for sidewalks. One of the greatest areas of deterioration is to the right and left of City Hall. *James Dugan, 86 Mendota*, asked if we couldn't have earthen dams to channel the water. *Mr. Raines* referred him to a 1979 plan for just such walls which was rejected.

*Mrs. Polatsek* asked "what are we going to do tomorrow?" The Mayor said we are going to assess the damage so we can repair what we have before it gets worse; we are going to fix the Bowman Avenue spillway; pass the Hazard Mitigation Plan tonight; and look at changes to the building code which have been proposed by the Planning Commission. Councilman Pratt agreed, suggesting maybe property owners shouldn't have as many rights. He further said we can 1) dredge the West branch Catch Basin; 2) negotiate with the County Airport to correct the way the water runs off (Councilman Cunningham said the County was diverting runoff to the brook rather than the lake); 3) do everything we can to block the Konigsberg development on the retention pond and then dredge the pond (recognizing this is a Home Rule State and Rye Brook can do what it wants); and 4) review the study of the studies, but not have another study. Councilman Ball said achieving a lot of progress "tomorrow" was hard, but suggested again the creation of a new City position for a person to handle all flood matters.

There being no additional comments, the Council turned its attention to agenda items 9 and 10 (see below).

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

There were no residents who wished to be heard, except Henry King who deferred to the next meeting.

5. Proclamation Proclaiming April 27th as Arbor Day in the City of Rye

Councilman Hennes made a motion, seconded by Councilman Cunningham to approve the following proclamation proclaiming April 27<sup>th</sup> as Arbor Day in the City of Rye:

*WHEREAS, Arbor Day is now observed throughout the nation and the world; and*

*WHEREAS, trees can reduce soil erosion, moderate the temperature, clean the air, produce oxygen and provide habitat for wildlife; and*

*WHEREAS, trees in our City increase property values, enhance the economic vitality of business areas, and beautify our community; and*

*WHEREAS, trees are a source of joy and spiritual renewal; and*

*WHEREAS, the City of Rye has been recognized as a Tree City USA by The National Arbor Day Foundation and desires to continue its tree-planting ways;*

*NOW, THEREFORE, I, Steven Otis, Mayor of the City of Rye, do hereby proclaim April 27, 2007 as ARBOR DAY in the City of Rye, and I urge all citizens to support efforts to care for our trees and woodlands, and to support our City's community forestry program; and*

*FURTHER, I urge all citizens to plant trees to gladden the hearts and promote the well-being of present and future generations.*

*Signed and sealed this 27th day of April, 2007.*

SEAL

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Steven Otis  
Mayor

6. Authorization to fill vacant position in Finance Department

City Manager Paul Shew reported that the vacant position is an entry level one and the new hire will result in nominal savings to the City.

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

**RESOLVED**, that the City Manager is authorized to fill the vacant position of Intermediate Account Clerk in the Finance Department.

ROLL CALL:

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

NAYS: None

ABSENT: None

7. Authorization to fill vacant position in Public Works Department

City Manager Paul Shew said a vacancy in the position of Road Foreman had been created due to a retirement. The net effect will be a slight savings to the City

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

**RESOLVED**, that the City Manager is authorized to fill the vacant position of Road Foreman in the Department of Public Works.

ROLL CALL:

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

NAYS: None

ABSENT: None

8. Authorization for City Manager to enter into an Agreement with the County of Westchester for the disposal of Recyclable Material as well as a disposal of Solid Waste for Members of Refuse Disposal District #1.

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

**RESOLVED**, that the Council hereby authorizes the City Manager to enter into an Agreement with the County of Westchester for the disposal of Recyclable Material as well as the disposal of Solid Waster for Members of Refuse Disposal District #1, through 2009.

ROLL CALL:

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

NAYS: None

ABSENT: None

9. Hazard Mitigation Plan Discussion and Adoption

Mayor Otis said the Council had before them once again a Hazard Mitigation Plan saying its adoption will be a positive thing for Rye and its citizens. He said he appreciated all comments which will be included in the final document and urged approval. Adoption of the

plan will make the City eligible for Federal and State hazard mitigation funds and enhance the City's position to obtain Federal and State funds for reimbursement for damages caused by the April 15 flood. Councilman Hennes said his concerns had been ameliorated and noted that theory had become the new reality. Councilman Fahey noted the specific recommendations to explore modifications to the Bowman Avenue Dam property and urged that a paragraph concerning adding chemicals to swimming pools be included.

Mayor Otis thanked City Planner Christian Miller for his efforts and thanked all the member of the committee as follows: EMS Administrator (Ambulance); James P. O'Toole (Con Ed); Roseanne McSorley (Deutschebank), William Connors (Police Commissioner); Peter Mustich (Rye Neck School System); Liam Murphy (West. Co. Emergency Management); Scott Nelson (Rye Country Day School); Edward J. Shine (Rye City School District); Joseph Montalto (Playland Amusement Park); Robert Leviton (United Hospital Emergency Management); Peter Donahue (Mill Pond Marina); Nathaniel Levin (League of Women Voters); Francis Harrigan (Harrigan Insurance); Paul Weberg (FEMA); Don Wnorowsk (Emergency Management Coordinator); Gene Malkis (American Red Cross); Allen Clark (Rye Record); Sandford Goldman, Joseph Cox, Adrienne Mecca, Jeremiah McGuire, William Ball, Dotty Battel, Joseph Brendel, Thomas Cury, Jean Lomonaco, Virginia Cury, Kim Potter, Jennifer Ricketts, Warren Ross, Phillip Adler (Residents); Michael Klemens (Planning Commission); Nicholas Everett (Board of Architectural Review); Nicholas Hodnett (Conservation Commission); Harold Nielson (Resurrection Church); George Hogben (Fire Department); Chantal Detlefs (Nature Center); Ryan Coyne (Asst. City Engineer); Sally Wright (Rye Merchants Association); Steve Otis and Carolyn Cunningham, (City Council representatives). (Note: affiliations relate to position held at the time the plan was developed.)

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

**RESOLUTION ADOPTING THE RYE CITY HAZARD  
MITIGATION PLAN**

**WHEREAS**, the Rye City Council recognizes the value of mitigation planning to reduce or eliminate threats to life and property from natural and manmade hazards; and

**WHEREAS**, in the fall of 2002 the Rye City Council formally accepted a Pre-Disaster Mitigation Planning Grant from the New York State Emergency Management Office (NYSEMO) for the purpose of preparing a City Hazard Mitigation Plan; and

**WHEREAS**, the Rye City Council directed City Staff to develop a City Hazard Mitigation Plan and established a Hazard Mitigation Committee to assist in the preparation of the plan; and

**WHEREAS**, the Hazard Mitigation Plan was available to the public for its review and comment including attendance at public meetings of the Hazard Mitigation Committee and on the City's website; and

**WHEREAS**, the Hazard Mitigation Plan was referred to the City Planning Commission and Conservation Commission/Advisory Council, NYSEMO and the Federal Emergency Management Agency (FEMA) for its review and comment; and

**WHEREAS**, the document was revised in response to comments of City, State and Federal Agencies; and

**WHEREAS**, in June 2004, the Hazard Mitigation Plan was re-submitted to FEMA, which approved the document in March 2005 subject to formal adoption of the plan by the local governing body; and

**WHEREAS**, the Hazard Mitigation Plan has been prepared in accordance with the Disaster Mitigation Act of 2000; and

**WHEREAS**, the City Council has reviewed the Hazard Mitigation Plan and affirms that the Plan will be updated no less than every five years; now, therefore, be it

**RESOLVED**, that the Rye City Council adopts the City Hazard Mitigation Plan, and resolves to execute the actions in the Plan.

ROLL CALL:

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

NAYS: None

ABSENT: None

10. Discussion of options for emergency borrowing to pay for flood damage and flood mitigation related costs

Mayor Otis said he hoped to get reimbursed for many of the damages incurred by the April 15 flood, but knows that not all will be paid for by FEMA, and it was important to look at some of the funding options available. One option would be to hold a special referendum to authorize additional borrowing so the funds would be available, if needed, and depleting the undesignated fund balance would not be necessary. Another method would be to consider a change in our City Charter to provide for a declared emergency event exception to our self-imposed City Charter borrowing rules. The purpose of the discussion is to be prepared in the event all expenses cannot be reimbursed.

Much discussion centered around the possible diversion of the \$700,000 already approved for the Theall Road project. Can these funds be used for other purposes (like for a bridge that connects a road)? Can we cancel the \$700,000 bond and go back for a new amount? What would be the timeline? Can we spend money from the undesignated fund and then reimburse it? What is on the list of capital projects that can be deferred because of this

emergency? Councilman Seitz said in light of the flooding he would rescind his approval of the Theall Road project. The Mayor said this would be decided at the next meeting; that they have a good bid (below budget) and maybe we should take it, especially as Theall Road has been further damaged by the flood. Councilman Hennes said the City should do nothing that might hurt our ability to be repaid for damages. City Comptroller Mike Genito said after Hurricane Floyd the City was reimbursed 12.5% by the State; 75% by FEMA and was responsible for the last 12.5% (which could include prepaid goods as well as time and services). Councilman Ball urged emphasis on getting the Marina dredged, referring to it as the cork in the bottle; *Holly Kennedy* urged fixing all storm drains. Although, as Councilman Seitz said, there is no blank check, several people urged the Charter change approach.

11. Miscellaneous communications and reports

Councilman Fahey, liaison to the Rye Golf Commission, reported that previous to the Council Meeting he had attended a meeting of the Commission at which the Commission was asked to consider a new senior citizen membership category. The discussion was lively, with concern that changing membership structure in mid-stream was unwise. The Commission wanted to know if the Council would consider refunding them for any resulting losses? Councilman Cunningham said he was just trying to start a discussion to get Senior Citizens to be able to play on an affordable basis, and he disagrees with the assertion from Councilman Fahey that the Chair of the Commission has responded to every request as requested. The Mayor mentioned the Council never heard back from the Commission after the budget workshops. Councilman Pratt commented that the Commission can expect a challenge to the way they run their operation and asked the City Manager and staff to pay attention to his personal interest in knowing how the Golf Club is run.

Councilman Cunningham said that despite all the flood damage, the Rye YMCA is proceeding with the Rye Derby on Sunday, April 29<sup>th</sup> and he hoped everyone would lend support.

12. Old Business

There was no old business to be discussed.

13. New Business

Councilman Seitz asked that City Manger have City Planner Christian Miller and City Engineer George Mottarella look at current land use restrictions to see what should be modified after the floods.

14. Draft unapproved minutes of the regular meeting of the City Council held April 11, 2007, special meeting of the City Council held on April 14, 2007 and informal minutes of the Joint Meeting of the City Council and Board of Education held on April 14, 2007

Councilman Hennes made a motion, seconded by Councilman Fahey to approve the minutes of the regular meeting of the City Council held April 11, 2007 as amended; the special meeting of the City Council held on April 14, 2007 as submitted; and the informal minutes of the Joint Meeting of the City Council and the Board of Education (already approved by the Board of Education) held on April 14, 2007 as amended.

15. 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 11:49 P.M.

Respectfully submitted,

Susan A. Morison  
City Clerk