

***APPROVED MINUTES*** of the Special  
Meeting of the City Council of the City of Rye held in  
City Hall on September 26, 2007 at 8:30 A.M.

PRESENT:

STEVEN OTIS, Mayor  
ANDREW C. BALL  
MACK CUNNINGHAM  
DUNCAN HENNES  
HOWARD G. SEITZ (arrived at 8:35 a.m.)  
Councilmen

ABSENT: MATTHEW FAHEY  
GEORGE S. PRATT

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. Appeal of redactions to FOILed cell phone records

Mayor Otis told the Council in the case of a denied F.O.I.L. (in this case redacted telephone numbers), the reviewing body must review the case within ten business days and transmit their decision to the State. He said a F.O.I.L. request from Timothy Chittenden, President of the Rye Police Association had been filled, but the last four digits of telephone numbers had been redacted, based on Section 87(2)(b), Section 87(2)(e)(i) and (iii) and Section 87(2)(f) of FOIL. Mr. Chittenden is appealing the redactions to FOILed cell phone records. Corporation Counsel, Kevin Plunkett, reminded the Council that this matter had come before the Council previously when the records requested were displaced due to Police Department renovations and that denial is currently the subject of an Article 78 proceeding. When the records were located and provided to the complainant certain redactions were made upon the advice of Labor Counsel, Vincent Toomey, Esq. Mr. Plunkett said he recommends denial of the appeal due to the law enforcement exemption under the Freedom of Information Law and the expectation of privacy on the part of those speaking to police officers.

Councilman Cunningham questioned the requirement to only keep the phone records for one year. Mr. Plunkett said that New York State records retention schedules only require that cell phone records be kept for that long and Commissioner Connors added that in this case

records had been kept longer than required. Councilman Hennes said he believed that records should not be kept longer than required by law.

In response to Councilman Ball's question about the City's exposure if the appeal is denied, Corporation Counsel Plunkett said it could result in an Article 78 proceeding, which a judge would decide on the merits. (At this point Councilman Seitz arrived.) Councilman Ball then questioned why all numbers had been redacted. Commissioner William Connors reiterated that it was upon the advice of counsel and that the general nature of F.O.I.L. requires that any information provided to one person in response to a request must be provided to anyone else making a similar request. Councilman Seitz pointed out that by redacting all numbers there was no risk of failing to redact a number and thus causing harm to someone unintentionally. Mr. Plunkett agreed and said he believed a court would uphold the decision to redact all numbers.

Councilman Cunningham made a motion, seconded by Councilman Seitz and unanimously carried, to uphold the denial of the F.O.I. L request.

ROLL CALL:

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

NAYS: None

ABSENT: Councilmen Fahey and Pratt

4. Adjournment

There being no further business to discuss, Councilman Hennes made a motion, seconded by Councilman Ball and unanimously carried, to adjourn the meeting at 8:42 A.M.

The next regular meeting of the City Council will be held on Wednesday, October 3, 2007.

Respectfully submitted,

Susan A. Morison  
City Clerk