

APPROVED MINUTES of the Regular Meeting of the City Council of the City of Rye held in City Hall on October 3, 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

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 the Xavier Litigation. Councilman Fahey made a motion, seconded by Councilman Hennes, to close the executive session at 8:08 P.M. The Council reconvened at 8:10 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.

Announcements

Mayor Otis congratulated the Rye High School Football team on their 27-7 victory (fifth in a row) against archrival Harrison, saying it was a great achievement. He wished the team continued good luck for the rest of the season.

Mayor Otis thanked the Rye Garden Club and Little Garden Club for the new planters recently placed throughout the City and planted. He thanked Laura Hennes, President of the Rye Garden Club and City staff who had assisted in the project and said they all looked great.

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

Doug Carey, 131 Purchase Street, invited everyone to the Rye Free Reading Room on Saturday, October 13, 2007 at 5:00 P.M. for a talk by Dr. Robert Bird as part of the "Save the Bird House" campaign. Dr. Bird is the son of Junius and Peggy Bird and is a fascinating speaker.

Joe Murphy, Chair of the Conservation Commission/Advisory Committee and Sarah Barringer, 5 Martin Road, presented a case for banning gasoline-powered leaf blowers during the summer months. Ms. Barringer said hand or electric-powered blowers would produce better air quality and less noise, certainly improving the environment, be better for the plants; and also prevent the spread of asthma-producing flying debris. She said Westchester County has restricted professional landscapers from using gas blowers but this law exempts private homeowners and commercial enterprises. She reported that many communities along the Sound, including Larchmont, Mamaroneck and Pelham have passed laws banning gasoline-powered blowers and she urged the City of Rye to impose a similar ban between June 1 and September 30. Mayor Otis said it is a good time to look at our law again. He asked that her full presentation be circulated to the Council and that the proposal be put on the agenda at some later date.

Bob Schubert, Forest Avenue, asked again for the Council to take action on his problem (of not having enough water). He asked again that the Council enforce its own code so that his water problem can be removed from the docket. He said his petition of random citizens has produced strong support for having the City protect his property and stated if he sues it will be for millions (because of the daily penalties) and that at least 5 other people will sue the City as well. He said Nicholas LaGattuto from Rye Post #128 of the American Legion had written a letter of support for his fellow Legionnaire Mr. Schubert, urging the City to correct its own actions. As Mr. Schubert sat down, Councilman Seitz used the moment to read a letter from Doug and Ellen Mello citing the excellence of City employees and City service. He said positive reports do not make it into the record frequently enough.

4. Public hearing related to Cable Franchise agreement with Verizon

Mayor Otis said the City had received a Cable Franchise agreement from Verizon and opened the public hearing. He turned the podium over to Assistant Manager Scott Pickup who reviewed the history of the negotiations. He said the process had been begun by former Cable Coordinator Jim Kenny who had used focus groups, outside consultants and questionnaires to determine what the Rye public wants from their Cable service. He said the input was very good and he is hopeful both major cable providers have developed agreements with the City of Rye which reflect that input. He thanked not only Jim, but current Cable Coordinator Nicole Levitsky, Kristen Wilson for her legal input, and John Carey and the Rye Cable Committee for all their hard work. He reported that there is now a document to consider. It is a 10 year proposal dealing with a variety of economic provisions that benefit the equipment we use; that maintains the use of the Rye High School studio; and adds some additional features.

John F. Butler, External Affairs Director for Verizon, but also a former Rye resident made the opening statement for Verizon. He said he was proud that Verizon has invested nearly \$276 million in its FiOS fiber network to the City of Rye so that the City can take advantage of the most advanced broadband service available. He pointed out that Verizon has a great track record of local citizenship, employing nearly 2000 Westchester County residents and donating nearly \$280,000 to 50 Westchester non-profit organizations. Now Rye has a real choice and a real competitor to its current cable provider and he asked the Council to grant Verizon permission to offer FiOS TV to the City, pledging continued participation in our community. He noted the hard work of his colleagues and negotiators (Scott Parr, with the Telecommunications Insight Group and both Steve Zahn and Pamela Goldstein with McGuire Woods) and thanked City Manager Paul Shew and Assistant Manager Scott Pickup for shepherding the process; and City Engineer George Mottarella for his assistance in working with Verizon's engineer Michael Miles.

Steve Zahn, Outside Counsel with McGuire Woods to Verizon, discussed the agreement in more detail saying they had worked closely with the Negotiating Team to develop the agreement now before the Council. He reported a Public Education Government (P.E.G.) needs assessment was very useful in that process and the agreement meets all the requirements of both Federal and State law. The agreement has also been analyzed by the New York Public Service Commission (PSC) and all issues surrounding Verizon's Cable Franchises have been resolved. He said the PSC requires a level playing field rule designed to foster true competition. The rule requires 1) that the regulatory and economic burdens of the competing providers be taken as a whole rather than piece-by-piece; 2) is not designed to eliminate competition; and 3) that the PSC is the final arbiter of determining if the playing field is level. Mr. Zahn outlined the highlights of the agreement before the Council are as follows:

- 1) Verizon has agreed to support the City's substantial P.E.G programming by providing for a P.E.G. grant of \$110,000 (\$35,000 within 30 days of signing; \$30,000 in year one and two; and \$15,000 in the third year);
- 2) Verizon will provide for a per-subscriber per month payment in years 4-10 of \$1.00;
- 3) Verizon will interconnect a number of the City's P.E.G. facilities making programming in Rye Neck available to everyone in Rye (Note: The offer is not in the body of the agreement but in an attachment. This may not be as binding as having it in the agreement but they want to be good neighbors and have gone on the public record as offering this service.);
- 4) Verizon will pay the maximum permitted 5% franchise fee;
- 5) Video-on-demand and pay-per-view is included as part of gross revenues;
- 6) Comprehensive insurance is included as well as indemnifications for damaged City property;
- 7) City's right-of-ways remain unviolated;
- 8) Verizon will provide a franchise support grant of \$300 per year (or \$3000 over the term on the contract) for each municipal building or school Cablevision becomes obligated to serve in their renewal agreement;
- 9) Liquidation damages are included;
- 10) Language concerning Verizon's right to offset the Special Franchise Acts (Section 626 of the Real Property Law) is included.

Scott Parr, Telecommunications Insight Group, thanked everyone again and suggested it was time for questions from the Council and public. He responded to a question about educational programming in the Rye Neck School District. Because of the way Verizon's wiring has evolved over the years they will be able to provide viewing on five channels, rather than the three currently existing which do not include Rye Neck. It will also enable Rye residents to watch programming in Mamaroneck, and vice versa. Councilman Pratt asked about digitalized programming. Mr. Parr said in Rye it is digital as it is moving from point to point and analog when it is received by the subscriber. Rye Neck High School currently originates in analog so it will have to convert. Verizon expects 100% to be wired within 5 years (if not sooner), except for multiple dwelling establishments. Currently the figure stands at 77% and they have contacted many of the boards of multiple dwellings. Councilman Seitz inquired about the cost to the consumer. The assumption is that competition will replace regulation in relation to rates. Mr. Parr anticipates that rates will go down as service goes up. Verizon has an incentive to be competitive or it will lose phone customers and they look forward to being approved for this franchise so they too can offer the same "triple play" service as Cablevision. He said if the competition leaves, regulation would return, but he does not anticipate this happening.

There were also questions and comments from the audience. *Cliff Lent, High Street*, a thirteen year resident of Rye and employee of Verizon is looking forward to having the service in Rye. *Peggy Hill, Executive Director of the Rye Arts Center*, thanked Verizon for its support over the years. *Joe Murphy, 57 Franklin Ave*, spoke on behalf of all senior citizens saying he hoped Verizon would take this opportunity to make cable service affordable to senior citizens. *Paul Vitale, Vice President, Government and Community Relations for The Business Council of Westchester* urged a vote in favor of offering FiOS TV in Rye as it will foster competition and a more favorable business climate. *Chris Cutter with the Communication Workers of America* and a Verizon employee said competition is good for everyone; that Verizon is a good community supporter (unlike Cablevision); and he urged approval of the agreement.

Robert Hoch, Director of Government Affairs for Cablevision in Westchester announced that Cablevision is staying and is prepared to be competitive. He said the issue before the Council, however, was not competition but the agreement itself, and whether it will be good for Rye and how it effects Cablevision's Franchise agreement, currently being negotiated. Although he had also just received a copy of the agreement and had not been able to carefully review it, he urged Rye to review the grant offer relating to Internet Service in municipal buildings saying he thought other communities had negotiated a more generous offer. He also suggested checking the 626 Law where a provider can credit against their franchise fees as this has the potential to erase the entire franchise fee and suggested asking for a waiver. (In response, Verizon pledged to take no more credit than Cablevision will take). He urged Rye to make sure the offer of five P.E.G. channels is clearly spelled out in the contract because the PSC only looks at the agreement, not the attachment. (He said Cablevision's agreement will provide for 4 channels in the body of the agreement, rather than in an attachment.) He sees no senior discount which is something Cablevision is negotiating. Look carefully at the "per subscriber" provision as Cablevision believes this method is unstable. Finally, he urged the Council to carefully question the five year time frame for gaining 100% coverage and noted that one cannot offer exclusive agreements in multiple dwellings. (This was confirmed by John Carey, Rye Cable Committee

who said each individual in a Co-op, etc. had the right to choose his or her own service, but the option for both has to be approved by the Co-op Board.) Mr. Hoch said Cablevision's negotiations were on-going and have the potential to be resolved very quickly. He urged the City to level up to get the best deal for Rye citizens from both agreements. He said Cablevision would look forward to providing a more complete analysis.

Mr. Parr asked for a vote in favor of adopting the franchise agreement as it would facilitate their presentation at the November PSC meeting. Councilman Pratt thanked everyone from Verizon, the public, CableVision and the staff for the excellent proposal on a complex issue, but suggested that the prudent path would be to review the agreement more carefully. The Mayor agreed it was a strong proposal, well negotiated, and approval at the next meeting was likely. Councilman Cunningham suggested the public may have more comments as well. Even though the delay to the next Council meeting might cause Verizon to miss the November meeting of the Public Service Commission (the next step), it was the general consensus of the Council not to approve the Franchise Agreement until it could be further reviewed.

Mayor Otis announced that the Public Hearing would remain open and further consideration would be given at the October 17th City Council Meeting. In the meantime any questions should be addressed to Assistant City Manager Scott Pickup who can refer them to Scott Parr from Verizon.

5. Public hearing related to Cable Franchise agreement with Cablevision

The opening of this public hearing was deferred to the October 17th Council Meeting.

5A. Added Agenda Item concerning Xavier Litigation

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

RESOLVED, that the City Council of the City of Rye hereby authorizes a Special Counsel appointed by the Insurance Carrier and the City's Corporation Counsel to settle the Xavier Litigation in accordance with the recommendation of the Special Counsel; and be it further

RESOLVED, that the City Council of the City of Rye hereby authorizes the Corporation Counsel to finalize the settlement issues with the Insurance Carrier.

ROLL CALLL:

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

NAYS: None

ABSENT: None

6. Resolution to transfer \$150,000 from Contingency to Law Department and Personnel for legal services

City Manager Paul Shew explained that the City has engaged outside legal counsel to bring or defend various cases before the courts, or to represent the City in personnel matters, the cost of which is not otherwise covered by insurance or other means. Therefore it is necessary to cover these costs by using funds currently available in the General Fund Contingency Account. The balance after the recommended transfers will be \$45,000

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

WHEREAS, the City is incurring legal costs estimated to total at least \$150,000 more than the amount anticipated in the adoption of the 2007 General Fund budget; and

WHEREAS, the General Fund Contingent Account currently has a balance of \$195,000 available for transfer to other accounts; now, therefore, be it

RESOLVED, that the 2007 General Fund budget be amended as follows:
Transfer \$75,000 from the Contingent Account to the Law Department;
Transfer \$75,000 from the Contingent Account to the Personnel Department

ROLL CALL:

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

NAYS: None

ABSENT: None

7. Approval of the election of a new member to the Rye Fire Department

Mayor Otis made a motion, unanimously carried, with thanks, to adopt the following resolution:

RESOLVED, that the Council of the City of Rye hereby approves the election of Michael Brennan to the Poningo Hook and Ladder Company approved at the September 2007 meeting of the Board of Fire Wardens.

8. Appointment of one member to the Emergency Medical Services Committee for a three-year term ending June 30, 2010

Mayor Otis made a motion, unanimously carried, to ratify the appointment of David Byrnes, the Village of Port Chester Community Representative, to the Emergency Medical Services Committee for a three-year term ending June 30, 2010.

9 Bid Award for Sidewalk Replacement Program

City Engineer George Mottarella said the Annual Sidewalk Repair program is straight forward; that it is an annual contract to perform the work as needed and identified. Councilman Ball asked if we are repairing enough. The City Engineer said the City does what it is asked and reported and takes care of all City sidewalk issues. He confirmed that new sidewalks are part of the criteria for a Certificate of Occupancy when new houses are constructed. The bid tab is as follows:

Contract No. 2007-06 - Sidewalk Replacement Program

	Contractor	Contractor's Bid	Engineer's Check	Dollar Amount Above Low Bid	% Above Low Bidder
1	Contech Construction	\$65,747.50	\$65,747.50	\$0.00	0.00%
2	ELQ Industries	\$67,960.00	\$67,960.00	\$2,212.50	3.37%
3	Peter J. Landi Inc.	\$69,105.00	\$69,105.00	\$3,417.50	5.20%
4	Bilotta Construction	\$72,074.00	\$72,074.00	\$6,326.50	9.62%
5	WJL Equities	\$74,480.00	\$74,480.00	\$8,732.50	13.28%
6	Reet Construction	\$76,200.00	\$76,100.00	\$10,352.50	15.75%
7	John Barreto Construction	\$80,750.00	\$80,750.00	\$15,002.50	22.82%
8	Coppola Paving	\$141,820.00	\$141,820.00	\$76,072.50	115.70%

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

RESOLVED, that Contract 2007-06. Annual; Sidewalk Program, be awarded in the amount of \$65,747.50 to Con-Tech Construction, being the lowest bidder meeting specifications.

ROLL CALL:

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

NAYS: None

ABSENT: None

10. Bid Award for Highland Road/Onondaga Street Drainage Improvements

City Engineer George Mottarella confirmed that the lowest bid, which he is recommending, is below the budgeted amount of \$350,000 so he is pleased. Councilman Seitz thanked Mr. Mottarella and Assistant Manager Scott Pickup for conducting an informative and positive informational meeting for the residents of Indian Village so they could understand what is going to happen with the project. Mr. Mottarella stated that the present 18-24" piping will be replaced with 24"x35" piping which will increase the capacity by 30-40%.

The bid tabulation is as follows:

Contract No. 2007-04 - Highland Road/Onondaga Drainage Improvements

	Contractor	Contractor's Bid	Engineer's Check	Dollar Amount Above Low Bid	% Above Low Bidder
1	ELQ Industries Inc.	\$278,710.00	\$278,710.00	\$0.00	0.00%
2	Joken Contruction	\$353,700.00	\$353,700.00	\$74,990.00	26.91%
3	Peter J. Landi Inc.	\$374,975.00	\$361,731.00	\$83,021.00	29.79%
4	Bilotta Construction	\$377,263.00	\$377,263.00	\$98,553.00	35.36%
5	Montesano Bros. Inc.	\$424,255.00	\$424,255.00	\$145,545.00	52.22%
6	Contech Construction	\$465,365.00	\$465,365.00	\$186,655.00	66.97%
7	WJL Equities	\$494,200.00	\$494,200.00	\$215,490.00	77.32%
8	Coppola Paving	\$704,818.81	\$704,818.81	\$426,108.81	152.89%

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

RESOLVED, that Contract 2007-04. Highland Road/Onondaga Drainage Improvements be awarded in the amount of \$278,710.00 to ELQ Industries, Inc., being the lowest bidder meeting specifications.

ROLL CALL

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

NAYS: None

ABSENT: None

11. Bid Award for Damiano Center Parking Lot Improvements

The City Engineer George Mottarella confirmed that this project has been budgeted for \$150,000, but that lighting had subsequently been added to the specifications so the low bidder is well within the budget.

The bid tabulation is as follows:

Contract No. 2007-05 - Damiano Center Parking Lot Improvements

	Contractor	Contractor's Bid	Engineer's Check	Dollar Amount Above Low Bid	% Above Low Bidder
1	Peter J. Landi Inc.	\$167,000.00	\$167,000.00	\$0.00	0.00%
2	Reet Construction	\$167,468.00	\$167,468.00	\$468.00	0.28%
3	WJL Equities	\$180,000.00	\$180,000.00	\$13,000.00	7.78%
4	ELQ Industries	\$194,843.00	\$194,843.00	\$27,843.00	16.67%
5	Contech Construction	\$212,206.00	\$212,206.00	\$45,206.00	27.07%
6	John Baretto Contruction	\$240,580.00	\$240,580.00	\$73,580.00	44.06%
7	Coppola Paving	\$267,000.00	\$267,000.00	\$100,000.00	59.88%

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

RESOLVED, that Contract 2007-05. Damiano Center Parking Lot Improvements, be awarded in the amount of \$167,000.00 to Peter J. Landi, Inc., being the lowest bidder meeting specifications.

ROLL CALL:

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

NAYS: None

ABSENT: None

12. Miscellaneous communications and reports

Councilman Ball urged everyone to attend the annual Fire Inspection Parade on Thursday, October 4, 2007. This year the parade will return to Purchase Street.

13. Old Business

Councilman Cunningham asked about the status of the Theall Road project. City Manager Paul Shew said there is a much larger than anticipated job moving the utilities. Not only is it costly, but requires the work to be done by the utility company. If the winter is mild, it is possible the job can continue throughout the bad weather months, but it is likely the main part of the project will take place next spring.

Councilman Seitz asked about the Stop Sign report. Scott Pickup reported that the Uniform Traffic Manual had been updated as recently as September 13 so the Traffic and Transportation Committee will need to review the new regulations at their meeting on October 11 and report back to the outside consultant who will, in turn, report to the Council.

Councilman Seitz asked if the City had heard back from the Ethics Committee. It has not, but Mr. Shew said he would follow up.

14. New Business

There was no new business to be discussed.

15. Draft unapproved minutes of the regular meeting of the City Council held September 5, 2007 and special meeting held on September 26, 2007

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 September 5, 2007 as submitted.

Councilman Seitz made a motion, seconded by Councilman Hennes and unanimously carried, to adopt the minutes of the special meeting of the City Council held on September 26, 2007 as submitted.

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 10:15 P.M.

Respectfully submitted,

Susan A. Morison
City Clerk