

*APPROVED MINUTES* of the  
Regular Meeting of the City Council of the  
City of Rye held in City Hall on October 17,  
2007 at 8:00 P.M.

PRESENT:

STEVEN OTIS, Mayor  
ANDREW C. BALL  
MACK CUNNINGHAM  
MATTHEW FAHEY  
GEORGE S. PRATT  
HOWARD G. SEITZ  
Councilmen

ABSENT:

DUNCAN HENNES

The Council convened at 7:25 P.M. Councilman Fahey made a motion, seconded by Councilman Ball and unanimously carried, to adjourn to executive session at 7:26 P.M. to discuss attorney/client matters. Councilman Fahey made a motion, seconded by Councilman Ball, to close the executive session at 8:04 P.M. The Council reconvened at 8:08 P.M.

1. Pledge of Allegiance

Mayor Otis called the meeting to order and invited the Council to join in the Pledge of Allegiance, led by the Boy Scouts in Rye Pack 2, Den 7. Participating were Ben Baker, Lukas Bruno, Mark Byrne, Colin Cornacchia, Matthew Elliot, Quinn Fahey, Ethan Lacombe, Joseph Lodovico, Brandt Matthews, Adam Newmark, Thomas O'Shea, and David Schindler.

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 high school student Colin Leslie for organizing a most successful and enthusiastic Celiac Walk for the second year in a row.

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

*Bob Schubert, Forest Avenue*, appeared again to urge the Council to fix the problem at his home involving a dried up garden. Again, he insisted that the City's Wetlands Law states the

City should have granted a permit to the neighbor who fixed a drainage problem on his own property. He reiterated that he has been trying to get the matter settled for 18 months and feels his is being “stonewalled.” He stated if the City fails to fix this “mistake” he will sue and the legal fees will be at least 10 times the cost of replacing his water. He submitted his statement for the record.

4. Presentation by Chas. H. Sells Engineers on flood hazard mitigation  
(Note: This agenda item was actually heard after agenda item 6)

Mayor Otis said Chas. H. Sells Engineers was ready to present Phase II of their study on flood hazard mitigation – this time focusing on the Bowman Avenue Dam site. He said this piece of the study concentrated on the data and recommendations needed for a grant application due November 9<sup>th</sup> and said other parts of the study will be forthcoming at a later date. Assistant Manager Scott Pickup said this is another piece of the process, following up on the previous hydrology report. The City is planning to submit a grant requesting Hazard Mitigation Funds from the State, as recommended by the consultants (see below). He said \$140 million worth of projects throughout the State have been vetted as appropriate to submit. It is anticipated that about 50% of those applications will actually be submitted so Rye will be part of about \$50-70 million worth of projects competing for funding from \$12 million available. The City does have a Hazard Mitigation Plan approved and in place which is essential to the review process. Once the grant is submitted, it will be vetted in late Fall; and if Rye makes it through the vetting process, awards will be made in January. Should the project receive grant funds, the City will proceed immediately with the approved project.

Mr. Pickup then introduced David Weiss, Andy Hadsell, Dan Ionescu and Susan Fashnacht from Chas. H. Sells, Engineers who presented their findings and recommendations. The project objective was to compare existing water surface elevations with proposed water surface elevations resulting from flood reduction measures at the Bowman Avenue Dam Site and determine the impact/benefit on the reach between I-287 and I-95. Phase one of the study included data collection, field survey and mapping, determination of existing conditions and hydrologic and hydraulic analysis. Phase 2 includes an analysis of mitigation alternatives and recommendations. The examination of existing conditions determined that 1,500 structures are located with the Blind Brook watershed, 140 of which are in the 100-year (1% chance in a given year) floodplain between I-287 and I-95. During the April 15, 2007 100 year storm it is estimated that almost \$85.5 million in damages was sustained. The Bowman Avenue Dam is the only flood control facility on the Blind Brook, originally constructed in the 1900s and reconstructed in 1941 after it collapsed. The upper pond has become heavily silted over the years. The lower pond (where Blind Brook and the East Branch Blind Brook converge) is approximately 30 feet deep but was not designed for flood control purposes. Using FEMA Data as well as their own methodologies, Sells analyzed various alternatives in various storm scenarios (5 to 100 years events).

The alternatives fall into 5 categories:

- 1) No build

- 2) Resizing the Upper Pond to increase storage capacity either through excavation or through dredging. Either procedure will prove costly (between \$10 and 20 million depending upon the rock content. The anticipated benefit is greater in the smaller, more frequent storm scenarios
- 3) Optimizing the outlet of the dam by installing a sluice gate to achieve optimum opening during any given storm event. The most significant reductions in flow would be for the 25-100 year storms as compared to upper pond resizing.
- 4) Raising the elevation of the dam crest which would increase the storage capacity behind the dam, but would require significant restructuring of the dam to prevent collapse and would increase upstream flooding.
- 5) Resizing upper pond with outlet optimization (a combination of categories 2 and 3 providing maximum flow reduction during various frequency storms.

The report studies category 2 Optimizing Outlet (Alternative A); Optimize Outlet with maximizing Upper Pond Area (Alternative B) and Optimizing Outlet, maximizing Upper Pond Area and 2-feet dredging (Alternative C). It was determined that Alternative C would require both a short and long-term maintenance plan and would be comparable to Alternative B. The report also looks at the various costs and the effect of each alternative on upstream properties. It did not study the effect of downstream tides in as great detail.

The conclusions and recommendations are as follows:

- 1) Proceed with Alternative A – Optimizing Outlet by installing a sluice gate system which will cost between \$1 and 2 million. It will be a dynamic solution as the system may be adjusted based on future needs. It will provide the greatest cost-benefit ratio and provide a 3 ft.plus reduction at Highland Road in a 50 year flood.
- 2) Study the feasibility of maximizing storage capacity at the Upper Pond taking into account that the cost will be \$10-20 million and will require consistent maintenance.
- 3) Revise FIS and FIRM mapping based on this study to accurately reflect constructed mitigated measures in compliance with regulatory requirements, working with both the State and FEMA to better define the floodplain.
- 4) Study feasible alternatives at the Lower Pond to maximize storage potential, improve outlet control and evaluate pre-draining options.
- 5) Provide hydraulic improvements at upstream locations

In conclusion the report recommends that the City 1) submit a Hazard Mitigation Grant application (HMGP) for the sluice gate (Alternative A); 2) complete the feasibility analysis of the Lower Pond alternatives and 3) continue investigation of Upper Pond resizing.

Mayor Otis thanked all members of Chas. B. Sells, calling the report good, but needing more upstream analysis. Councilman Pratt pointed to the I-95 culvert as the main culprit. Members of the audience, who applauded the presentation, also commented on the report. *Peter Sinnott, Mendota Avenue*, didn't believe the dam would collapse and would like to see it raised. *Andy Goodenough, Mohawk Street and head of the Flood Coalition*, thanked Chas. B.

Sells and questioned more about how the sluice gate would work. In answer to a question from *Allison Martin, Pine Lane*, concerning the downstream impact, particularly when combined with high tides the consultants indicated there would be no negative impact. They said the sluice gate method has been used elsewhere. *Can we do the sluice gate now and more later?* Yes, but it is recommended that the grant application concentrate ONLY on the sluice gate as there is more concrete data and it is better to ask for less now than add other components at this time.

5. Continuation of public hearing related to Cable Franchise agreement with Verizon

Mayor Otis announced the continuation of the public hearing related to a cable franchise agreement with Verizon. *John Carey, Forest Avenue and a member of the Rye Cable Committee*, presented his comments concerning Verizon's first draft, as presented at the last meeting. He acknowledged that agreements often present areas of concern and sometimes it is acceptable to take risks, but that is good to be made aware of some of the issues. He listed his issues as follows:

- He suggested that any agreement should do more than reference existing laws; that the exact laws should at least be appended to the agreement.
- He urged not rushing to approve the agreement this evening until many of the items are worked out.
- He urged caution on any mention of video on demand as so much is now on the internet.
- Section 2.7.1 uses the term "liberally construed". What does that mean?
- Why is there any reference to density requirement as Rye is already built up?
- The liquidation damage schedules are inadequate.
- The Arbitration clause is inadequate.
- He referred to a "cross ruff" danger whereby competing companies can help each other out at Rye's expense.
- If the agreement to have a 4<sup>th</sup> (and 5<sup>th</sup>) channel is not in the body of the agreement, it is worthless.

The Mayor thanked Mr. Carey for his careful analysis, saying that it was instrumental in revising the draft and turned the podium over to Kristen Wilson from the Corporation Counsel's office. Ms. Wilson said the present draft includes the 4<sup>th</sup> channel in the body of the agreement, there is now a 30 day notice included in the liquidation damage schedule and more definitions have been added. The general tenor of the Council was to hold off from approving the agreement just received. Councilman Cunningham asked about protection for Rye citizens from having Verizon sell data based on user habits. Verizon will only use data for in house analysis.

*Robert Hoch, Director of Government Affairs for Cablevision in Westchester*, added his company's comments on the draft agreement

- There should be further definition of the change in public access.
- The language regarding who may use the channels needs to be clarified.
- There is no definition of "non-cable" as mentioned in the draft. This wording is too limited.

- He questioned the description of police powers in the City's right-of-way (Section 2.8).
- Schedule B should be changed as too arbitrary and vague.
- The 4<sup>th</sup> Channel is good and acceptable to Cablevision.
- The Public Educational government (PEG) formula based on per subscriber is not good, unfair, unstable, unreliable and unworkable.

Mr. Hoch said if the P.E.G. formula was revised Cablevision was prepared to offer

- A PEG grant of \$25,000 per year over 11 years to be matched by Verizon (a more than 100% increase over the last agreement);
- A PEG arrangement for 4 channels;
- A waiver to offset the 626 property tax;
- An agreement within a week, provided the Verizon agreement is not accepted this evening.

*Scott Parr, Telecommunications Insight Group*, told the Council it had been a very productive two weeks resulting in an improved agreement and he apologized for the late submission (particularly distressing to Councilman Pratt). He feels the P.E.G. formula based on per subscriber, while a volatile issue, is best for the City of Rye. He urged Cablevision to go ahead with the fixed amount, but urged acceptance of the agreement from Verizon, pointing out that the speed of entry into the market is essential so the costs can be somewhat even. He said Verizon had worked hard to earn the Council's vote. In response to Councilman Seitz's question about why Verizon is not willing to set their terms and stand by them rather than offering to match Cablevision, Mr. Parr said they had structured the agreement this way so they could get into the level playing fields as early as possible.

Other issues, such as the location of the Verizon boxes and the desire to have double poles removed were raised. Both Councilman Cunningham and Councilman Fahey described the boxes as a hazard. Mr. Pickup said Verizon and the City were working on this problem and were heading toward a solution. There was a general consensus that Verizon had not been particularly responsive.

Mayor Otis, thanked Verizon, and all those commenting (in particular John Carey) and, sensing the general feeling of the Council, moved to keep the public hearing open until the regular meeting of the City Council on November 7.

6. Public hearing related to Cable Franchise agreement with Cablevision

The public hearing related to the Cable Franchise agreement with Cablevision was deferred to the next meeting.

7. Authorization for City Manager to execute Assumption Agreement transferring Control of franchise agreement between City of Rye and NEON Optica, Inc. to RCN Corporation

The City currently has an executed Telecommunications Franchise Agreement with NEON Optica, Inc. which has entered into a Stock Purchase Agreement with RCN Corporation.

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

**RESOLVED**, that the City Manager is hereby authorized to execute an Assumption Agreement transferring control of the Telecommunications Franchise Agreement between the City of Rye and NEON Optica, Inc., to RCN Corporation.

8. Authorization to fill the position of Environmental Coordinator

The recent resignation of the City Naturalist has created a vacancy. The City Manager is proposing a change in title to Environmental Coordinator so that in addition to regulatory duties currently performed by the City Naturalist, the Coordinator would be responsible for the coordination of all MS-4 Phase II matters. The salary would be comparable to that currently paid to the City Naturalist. The decision to authorize this position was deferred, pending input from the Council concerning the new duties. The final job description will have to be approved by the County.

9. Authorization to fill the position of Senior Account Clerk in the Finance Department

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

**RESOLVED**, that the City Manager is hereby authorized to fill the position of Senior Account Clerk, made vacant due to a retirement in the Finance Department.

ROLL CALL:

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

10. Appeal of denial of F.O.I.L. request made by Rye Police Association

Kristen Wilson, representing Corporation Counsel, said she had reviewed the F.O.I.L. request submitted to the Police Department requesting information concerning the coming inside and outside of Police Headquarters for a certain member of the Department on a certain date,

denied by the Police Commissioner on September 27, 2007. She said she concurred with the decision of the Commissioner and recommended that the Council uphold the denial.

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

**RESOLVED**, the appeal of the denial of a F.O.I.L. request submitted to the Rye Police Department requesting digital and videotape recordings depicting a member of the Department's coming inside and outside of Police Headquarters on a certain date and time is denied, pursuant to Section 87(2)(e) of the NYS Public Officers Law.

ROLL CALL:

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

11. Approval of the election of three new members 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 Ryan Prime and Stephen Rossi to the Poningo Hook and Ladder Company and Jonathan Capasso to the Milton Point Hose Company, approved at the October 2007 meeting of the Board of Fire Wardens.

12. Bid Award for Fuel Island with Canopy, Fuel Pumps and Fuel Management System at Department of Public Works

Acting City Manager Scott Pickup said the new Fuel Management System has long been needed at the Department of Public Works as a means of recording consumption and maintenance schedules of City vehicles. He said three contractors had been contacted but that only one submitted a bid. He said that bid was within budget and the City Engineer was recommending its acceptance. He said he thought the expected payback would be 10-20%.

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

**RESOLVED**, that Contract 2007-07. Supply and Install Fuel Island with Canopy, Fuel Pumps, and Fuel Management System at the Department of Public Works be awarded in the amount of \$179,950 to American Petroleum, being the sole bidder meeting specifications.

ROLL CALL

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

13. Miscellaneous communications and reports

Councilman Cunningham urged everyone to attend the Rye Recreation Haunted Park event. It will be a great family event.

14. Old Business

Councilman Seitz asked about the progress of marking off a parking space near the corner of Palisades and Midland so the corner has a better sight line.

15. New Business

There was no new business to be discussed.

16. Draft unapproved minutes of the regular meeting of the City Council held October 3, 2007 and joint meeting of City Council and Board of Education held on October 2, 2007

Councilman Seitz made a motion, seconded by Councilman Cunningham and unanimously carried, to adopt the minutes of the regular meeting of the City Council held October 3, 2007 as submitted.

Councilman Seitz made a motion, seconded by Councilman Cunningham and unanimously carried, to adopt the minutes of the joint meeting of the City Council and the Board of Education held October 2, 2007 as amended.

17. Adjournment

There being no further business to discuss, Mayor Otis made a motion, seconded by Councilman Fahey and unanimously carried, to adjourn the meeting at 11:45 P.M.

Respectfully submitted,

Susan A. Morison  
City Clerk