

APPROVED MINUTES of the Regular Meeting of the City Council of the City of Rye held in City Hall on March 5, 2008 at 8:00 P.M.

PRESENT:

STEVEN OTIS, Mayor
ANDREW C. BALL
MACK CUNNINGHAM
PAULA J. GAMACHE
CATHERINE F. PARKER
GEORGE S. PRATT
JOSEPH A. SACK
Councilmembers

ABSENT: None

The Council convened at 7:30 P.M. Mayor Otis made a motion, seconded by Councilman Cunningham and unanimously carried, to adjourn to an attorney/client meeting at 7:31 p.m. Councilman Ball made a motion, seconded by Councilwoman Parker to close the attorney/client meeting at 8:15 p.m. The Council reconvened at 8:18 p.m.

1. Pledge of Allegiance Led by Cub Scouts Den 8

Mayor Otis called the meeting to order and invited the Council to join in the Pledge of Allegiance. The Pledge was led by members (Eddie Collins, Peter Fahey, Liam Fallon, Andy Gomez, Alec Jautz, Hall Luthringer, Brendan Simandl and Crispian Thorne) of Cub Scouts Den 8.

Announcements

Mayor Otis introduced the new City Clerk and congratulated her on being appointed to the position.

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

Joe Murphy, 57 Franklin Avenue, delivered the fully executed Memorandum of Understanding between the City of Rye and Elderserve. He said this is not the first example of a public/private partnership but is the first time the services have been provided free of charge. Mr. Murphy also indicated that he was resigning as pro-bono

member of the Rye Senior Advocacy Committee. Mayor Otis thanked Mr. Murphy and said this Agreement will enhance the level of expertise already provided to seniors by the Rye Senior Advocacy Committee.

Henry King, 76 Coolidge Avenue, had questions relating to Beaver Swamp and Harrison's Project Homerun. He asked why a conference call with the Department of Environmental Conservation (DEC), that was originally to have taken place at the end of February, had not been rescheduled. Kristen Wilson of the Corporation Counsel's Office said this was because the DEC was waiting for additional information requested from the Town of Harrison as a result of the hearings held last July. She said that the DEC will not sign off on the original remediation work performed by Harrison, which is a prerequisite to considering the redevelopment application, until the requested information is received. Mayor Otis added that if the City had not done the aggressive filings last Summer and participated in the hearings, much of the project might already have been approved.

Carolina Johnson, 5 Mendota Avenue, delivered more petitions in support of the City acquiring the "keyhole" property on Bowman Avenue in the Village of Rye Brook and said they would also be delivered to County Legislator Judy Myers. She asked two questions: would the residents be given a "heads up" on when the next Sells report would be issued and, will they be notified whether the FEMA application is approved? Mayor Otis answered yes to both questions and said things looked good for the FEMA application. Ms. Johnson said she believed the County was starting to get ready to disburse funding related to flooding. Mayor Otis said that Rye was the first community to have a pre-application meeting with the County Task Force on Flooding in order to be eligible for funding. (A report on the statewide flooding summit is included under Miscellaneous Reports.)

4. Continuation of public hearing on a local law amending Chapter 133, Noise, Sections 133-8(E) (Construction Work restricted to certain hours and days) and Section 133-9 (Penalties for offenses) of the Code of the City of Rye

Mayor Otis reconvened the public hearing to amend Chapter 133, Noise, Section 133-8(E) (Construction Work restricted to certain hours and days) and Section 133-9(Penalties for offenses) of the Code of the City of Rye. He said the Council needed to decide whether the penalties for all violations of construction noise rules should be the same, which would require continuing the public hearing, or, as provided in the new draft, one fine for normal construction noise violations (\$200/\$500) and a separate fine for rock chipping/dynamite violations (\$500/\$750) plus a three-business-day stop work order, which could be voted on at this meeting.

Mike Shea, 15 Wappanocca Avenue, said he believed the \$500 fine was minor because so much money is involved in the chipping process, that developers might just pay the fine and continue to work, so couldn't the fine be increased. Mayor Otis pointed out that there was an increase in the fine but the three-business-day stop work order is the real deterrent. *Annie Gaillard, local landscaper*, believes that rock chipping has

decreased in the last three years, but agrees that the stop work order will take the place of any fine. She said most drivers of rock chipping machines are union and do not like to work Saturdays and suggested there might be possible insurance liability questions if non-union drivers were operating the machines. Councilman Pratt disagreed that rock chipping had decreased and sited several projects where it has been used.

Councilman Ball said that based on reports submitted by City staff there did not appear to be as many violations of the rock chipping ordinance as first suspected and, although he supported the law, he wanted to be sure the Council was addressing a real problem. A question was raised regarding discrepancies in the numbers of violations of the construction noise ordinance noted on Police Department vs. Building Department records (the Building Department enforces the construction noise ordinance during the work week when construction activity is legal and the Police Department on weekends during the times when it is not). A lengthy discussion followed regarding the process and procedures for enforcing the proposed changes to the ordinance, including:

- The need for coordination between the Building Department and Police Department to track violations issued, repeat offenders and compliance with stop work orders. Is there sufficient staff to do so?
- Who is the violation issued to (general contractor, sub-contractor or the site)?
- Should penalties for rock chipping violations be more than for regular construction activity violations?
- Should penalties escalate for repeat offenders (increase in fine or additional days added to stop work order)?
- Could repeated violations by a contractor jeopardize his county license?
- Discretion of Judges in imposing fines.
- Notification to public of changes to ordinance.

Richard Filippi, 13 Loewen Court, suggested keeping track of violations by using standardized excel spreadsheets and putting sealing stickers on machines to prevent violation of the stop-work order.

Mayor Otis kept the public hearing open for two weeks in order for Corporation Counsel to prepare a new draft.

5. Consideration of setting a public hearing amending Chapter 133, Noise, Section 133-3(A)(3) (Permissible intensity of noise) and Section 133-7 (Lawn maintenance equipment regulations) of the City Code of the City of Rye

Mayor Otis said that after a lengthy discussion at the last meeting, Kristin Wilson of the Corporation Counsel's Office had drafted changes to the current sections of the noise ordinance that relate to leaf blowers, based on Councilman Cunningham's proposals. He said that at this meeting it would be determined what version of the law would be presented for public hearing and if the public hearing would be set for the March 19th or April 2nd meeting.

Kristen Wilson summarized the draft local law before the Council as imposing a seasonal ban on all leaf blowers from May 1 through September 30 but allowing for an automatic exemption for a five-day period after a significant storm event or for other emergency events as determined by the City Manager. The law would also restrict the hours of use during the non-seasonal ban period.

Councilman Cunningham said he believed this was a quality of life issue and said that Rye was not the first community to consider a seasonal ban of leaf blowers. The Council discussed whether, based on information provided since the last meeting, the exemptions to the leaf blower ban currently in effect under Section 133-7B should be continued or modified in the proposed change.

Mayor Otis then asked for any comments from the public after noting that this was not a public hearing but a pre-drafting discussion. *Ashley Craig, 10 Johnson Place*, thanked the Council for considering the proposed change to the Noise Ordinance but said she believed the environmental and health considerations were significant and, therefore, urged that the exemption section not be extended because the health of those operating the machinery is being put at risk. *Joe Murphy, 57 Franklin Avenue*, supported a ban for everyone from all leaf blowers from May 1st through September 30th. He said businesses should “think outside the box” to find solutions other than using leaf blowers and urged the Council to be firm. *Annie Gaillard, local landscaper*, likened the use of leaf blowers to the use of asbestos and warned that within three to five years businesses using leaf blowers might face health liability issues from their workers.

Curtis Spacavento, local landscaper, said he did not believe a seasonal ban on leaf blowers was necessarily a bad thing because he understood that this is what the community wants, but disagreed with a May 1st start date rather than June 1st because May is the month when most of the blossoms come off the trees. He also said that five days may not be sufficient time for clean up after major storms such as hurricanes, which happen at a time of year when the leaves are still on the trees, and asked if the time restriction could be extended at the discretion of the City Manager. In response to a question from Councilman Ball about how the ban might impact his business, Mr. Spacavento said that it could affect his ability to provide the same level of service to his large customers such as the Osborn. *Ashley Craig*, reiterated her belief that it was more important to do what is right for the community than what is cost efficient for the landscaping industry.

Councilman Sack brought up the issue of the cost of enforcement by City staff of both the proposed changes to the construction noise ordinance and the leaf blower ban. He said the Council may ultimately determine that no matter what the cost is, it is worth it, but he would like to know before a decision is made and asked that prior to the next meeting the City Manager provide an economic analysis of how much more it will cost to enforce all the proposed changes to the Noise Ordinance. *Bill Lawyer, 15 Hillside Place*, said he believed that banning all types of leaf blowers would make enforcement easier. *Mitch Pallet, 70 Grace Church Street*, encouraged enforcement stating that some landscape contractors work on several sites in the same neighborhood simultaneously,

making it impossible to go outside. *Curtis Spacavento*, believes that if the current law was enforced, the proposed law might not have been necessary and urged the Council to educate both the public and landscape contractors of the changes.

Councilman Ball, suggested that although he was in favor of implementing the ban on leaf blowers, based on his research of changes to the equipment made by the industry over the last few years and conversations with a Member of the Yonkers City Council regarding that City's enactment of a leaf blower ban, Rye might consider implementing a sunset clause or some other method of revisiting the legislation to determine if it was adequate. The Council discussed a break-in period for the new law, which will require public outreach to encourage compliance, making the implementation date of the ban June 1st instead of May 1st for the first year only, and how much time was needed to make the proposed changes and properly notice the public hearing. Mayor Otis asked Corporation Counsel to prepare a new draft reflecting the comments heard at the meeting but also including the language currently in the law regarding exemptions, which could be removed at that time of the public hearing.

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

WHEREAS, the Council wishes to amend Chapter 133, Noise, Section 133-3(A)(3) (Permissible intensity of noise) and Section 133-7 (Lawn maintenance equipment regulations) of the Code of the City of Rye; and

WHEREAS, it is now desired to call a public hearing on such proposed amendments 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 April 2, 2008 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 laws.

Section 2. Such notice of public hearing shall be in substantially the following form:

**PUBLIC NOTICE
CITY OF RYE**

**Notice of Public Hearing to amend Chapter 133, Noise, Sections 133-3(A)(3)
(Permissible intensity of noise) and Section 133-7 (Lawn maintenance
equipment) of the City 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 2nd day of April, 2008 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 proposal to amend Chapter 133, Noise, Sections 133-3(A)(3) (Permissible intensity of noise) and Section 133-7 (Lawn maintenance equipment) of the City Code of the City of Rye.

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

Dawn F. Nodarse, City Clerk

Dated: March 12 , 2008

6. Discussion of LISWIC Storm Water District Proposal

Mayor Otis announced that the resolution before the Council supports the drafting and introduction of state legislation that would authorize a storm water district and would include provisions to allow communities to opt in or not at that time. This resolution is not binding and moves a process forward that Rye has been involved in. Kristen Wilson will attend a meeting in March regarding drafting of the legislation. Councilman Sack asked for a change in the resolution as proposed to make it consistent with Mayor Otis's explanation.

Councilman Pratt made a motion, seconded by Councilman Ball and unanimously carried, to adopt the following Resolution as amended by Councilman Sack.

WHEREAS, the Environmental Protection Fund grant provided funding to enable the Long Island Sound Watershed Intermunicipal Council (LISWIC) to enter into an agreement with Malcolm Pirnie, Inc. a recognized engineering and consulting firm, to identify and evaluate methods of providing services, funding scenarios, organizational structures, proposed staffing, details of governance and the advantages and disadvantages of a regional storm water management district; and

WHEREAS, the devastation to persons and property resulting from the April 2007 nor'easter that struck Westchester County underscores the exigency for regional cooperation to address storm water quantity as well as storm water quality issues; and

WHEREAS, Malcolm Pirnie's final report entitled *Evaluation of a Regional Storm Water Management District* details and recommends an organizational, operational, and financial structure for a regional storm water management district and outlines legislative strategies, procedures, statutory powers, authority, responsibility and other essential legislative components of such a district; and

WHEREAS, LISWIC members desire to implement the recommendations of the Malcolm Pirnie report and to achieve the economic, environmental, public health and service benefits that can be realized by developing a legislative model to foster cooperation among local governments in addressing regional storm water management and flooding concerns.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Rye hereby endorses the recommendations contained in the *Evaluation of a Regional Storm Water Management District* report and authorizes LISWIC to request that the state legislature draft legislation to create a regional storm water management district for the lower Long Island Sound Drainage Basin with the authority, powers, duties and responsibilities delineated in the Malcolm Pirnie report. The draft legislation will be distributed to LISWIC and member communities before introduction, and the decision on whether to join the storm water district will be made by all communities after state legislation is enacted.

6A Consideration of Stop Sign Policy

Mayor Otis said the City Council spent a great deal of time on this issue in 2006 and 2007 and it was put on hold as changes were made to the federal regulations. Those changes do not deal with the issues the Council had before it. Police Commissioner Connors had drafted a policy setting up a procedure, which has been slightly tweaked, and would allow the City more flexibility to the federal rules in order to make stop sign decisions tailored to our neighborhoods. He suggested that the policy be adopted. Suggestions by Councilmembers included:

- Requiring that heads of those City departments or agencies involved in the review process be required to sign off on their review in order to better track the process;
- Include a standard that would evaluate a request that might not meet a traffic count requirement but might improve a location and would cause no harm.

Councilman Ball made a motion, seconded by Councilwoman Gamache and unanimously carried, to adopt the following resolution:

RESOLVED, that the City Council of the City of Rye hereby adopts the proposed Stop Sign Policy with an amendment requiring that the heads of City departments or agencies reviewing the request, sign off on their review.

7. Consideration of proposed revision of the Rules and Regulations of the City of Rye Police Department, General Order #103.8, "Use of Mobile Notebook Computers"

This item was deferred to the March 19, 2008 meeting.

8. Consideration of proposed revision of the Rules and Regulations of the City of Rye Police Department, General Order #118.01, "X Cards CAD and Records Management System"

This item was deferred to the March 19, 2008 meeting.

9. Consideration of proposed revision of the Rules and Regulations of the City of Rye Police Department, General Order #118.9, "Employee Personal History Form"

This item was deferred to the March 19, 2008 meeting.

10. Consideration of proposed revision of the Rules and Regulations of the City of Rye Police Department, General Order #119.4, "Guardian Calling"

This item was deferred to the March 19, 2008 meeting.

11. Miscellaneous communications and reports.

Mayor Otis reported that last week he participated in a statewide summit on flooding held in Binghamton and attended by key State official. The case was made that more State and Federal money is needed for flood mitigation projects.

Mayor Otis congratulated the Rye High School varsity hockey team for making it into the State finals. Councilman Ball also offered congratulations to the Rye High School swim team and Ryan Feeley in particular who holds not only a school record but also a state record.

Councilman Ball also announced that on Friday evening March 14th the Lions Club would be holding a fundraiser at Rye Country Day School called "Dancing for Sight". The event will feature Irish music and dancing in order to raise money for "sight" charities.

Councilman Cunningham reported that he and Councilman Ball had attended a forum at SUNY Purchase on the Tappan Zee/I-287 Corridor Project. He said he believes the City has signed on as a party of interest and that public comment could be received until March 31st. He requested that a link for the project be placed on the City website. Mayor Otis added that he had also attended a meeting on this topic with other local officials. He said other communities along the corridor have concerns similar to the City of Rye about parking and traffic problems.

12. Old Business

There was no old business to be discussed.

13. New Business

There was no new business to be discussed.

14. Draft unapproved minutes of regular meeting of the City Council held on February 13, 2008

Mayor Otis made a motion, seconded by Councilman Cunningham and unanimously carried, to adopt the minutes of the regular meeting of the City Council held February 13, 2008, as amended.

15. Adjournment

There being no further business to discuss, Mayor Otis made a motion, seconded by Councilman Cunningham and unanimously carried, to adjourn the meeting at 11:55 P.M.

The next regular meeting of the City Council will be held on Wednesday, March 19, 2008.

Respectfully submitted,

Dawn F. Nodarse
City Clerk