

APPROVED MINUTES of the Regular Meeting of the City Council of the City of Rye held in City Hall on October 15, 2008 at 8:00 P.M.

PRESENT:

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

ABSENT: GEORGE S. PRATT

The Council convened at 7:20 p.m. Mayor Otis made a motion, seconded by Councilman Cunningham and unanimously carried to adjourn into Executive Session to discuss attorney/client matters. Mayor Otis made a motion, seconded by Councilman Ball and unanimously carried to close the Executive Session at 8:15 p.m. No decisions were made. The Council reconvened at 8:20 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.

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

John Carolin, 66 Milton Road, came to report that with the help of Councilmen Ball and Sack, progress is being made to resolve the issue of seniors at the Golf Club. The Recreation Commission and the Golf Commission have agreed to establish a pool and golf rate that will be compatible with the Social Membership Classification. In order to participate, seniors must be members of the Rye Seniors Organization. He asked for the Council's support of the Recreation and Golf Commissions to see the project through, adding that some funding might be needed from the City.

Robert Schubert, 980 Forest Avenue, questioned who on City staff was charged with enforcing Chapter 195 of the Rye City Code in connection with the requirement for obtaining a wetlands permit. Mayor Otis said the Planning Commission and City staff, particularly the land

use departments, administered the Wetlands Law. If staff determines that a wetlands permit is necessary for a project, it will be referred to the Planning Commission. In the particular project that Mr. Schubert questions, staff determined that a permit was not necessary. The Mayor again stressed that Mr. Schubert's remedy was with his neighbor or in the courts and not the City Council.

Justus Cowles, golfer and former resident of 245 Milton Road until his death in 1940 (in the earthly form of Doug Carey) came to announce that the Rye Historical Society would be having its Annual Walking Tour on Saturday, October 18, 2008, based on the republication of the book Views of Rye.

4. Update on the Dredging Project at the Rye Marina

Assistant City Manager Scott Pickup informed the Council that the predredge survey that discusses how much material will be removed has been completed and supplied to the contractor, which means that all of the City's predredge requirements have been met. The contract has been signed and the bonding is acceptable to the Corporation Counsel. All permits required from the Army Corp, the New York State DEC and Connecticut DEP have been obtained and are posted at the Boat Basin. The contractor will be mobilizing the week of October 20th. However, one item still awaited is the contractor's dump scow, which is the working craft used to remove the dredged material to the Central Long Island dump site. It must be brought from Boston, a location for mooring must be found, U.S. Coast Guard approval must be obtained and a notice sent out to mariners, after which he will be permitted to begin work. Mayor Otis offered his thanks to City Manager Shew, Assistant City Manager Pickup and Boat Basin Supervisor Peter Fox for bringing back a project that the Council had approved in August but had been placed at risk because one of the communities that was providing cap material backed out of their own project. He said City staff did a tremendous job in finding another source of capping in a short period of time so the City could go forward with our project.

5. Resolution to amend the City of Rye's FOIL procedures

Mayor Otis summarized the issue stating that there is a ten-day rule (ten business days) in which appeals to denials of Freedom of Information Law (FOIL) requests must be heard under state law. It is the City's policy, although not a requirement of law, that those appeals are heard by the City Council. The ten-day rule can present a problem, especially in the Summer, when a Special Meeting of the Council must be called in order to comply. The new proposal will comply with the ten-day rule by having a determination made on the appeal by the Corporation Counsel, but will give applicants the option of waiving the ten-day rule in order to wait until the next scheduled City Council meeting for the Council to rule on the appeal. Deputy Corporation Counsel Kristen Wilson added that there is also new language deeming e-mail FOIL's received after 5:00 p.m. to be received on the next business day. In respect to the appeal process, there will only be one chance at appeal, either by the Corporation Counsel or the City Council but not both.

Council discussion included the following comments:

- The Corporation Counsel should be the appellate body in all cases because for the most part the appeals are legal determinations that require the advice of the Law Department;
- Aggrieved parties always have access to the Courts through Article 78 Proceedings.
- The Freedom of Information Law is about open government and, therefore, having the Council hear FOIL appeals provides the public with a forum for seeing the decision being made.
- Since many FOIL requests received by the City deal with grievances, not with people looking for information, this action eliminates a potential “gotcha” factor when the Council is unable to meet within the required time.
- It would be arbitrary to completely remove the appeal process from the City Council because it is good for the people to have access to the Council.
- If the City is not responsive to a FOIL request with the statutory time, it can be deemed a denial and subject to appeal.
- Appeals should stay with the Council because “the buck” should stop with them.
- This change should be made on a trial basis in order to determine if it is the best way to proceed.
- Most appeals come from the same group and the Council should not be uncomfortable in deciding these questions.
- This change will allow the Council to be in compliance with the law, if they are unable to obtain a quorum for a Special Meeting.

Councilman Ball made a motion, seconded by Councilman Cunningham, to adopt the following Resolution:

WHEREAS, the City Council of the City of Rye (the “City Council”) finds that the current Procedures for Public Access to the Records of the City of Rye need to be updated to reflect changes to New York Public Officers Law Article 6 “Freedom of Information Law”; and

WHEREAS, the City Council, as the Records Appeals Body, finds that since an appeal from a denial of Freedom of Information Law (“FOIL”) request must be responded to within ten (10) business days, it is often impractical for the City Council to convene a special meeting for the sole purpose of hearing FOIL appeals when a regularly scheduled City Council meeting does not fall within the ten (10) day appeal period; and

WHEREAS, the City Council finds that in order to serve the public better and to ensure compliance with the timeframes set forth in FOIL, if the City Council does not meet within ten (10) business days following the date of the appeal, the appeal will automatically be heard by the City’s Corporation Counsel; and

WHEREAS, the City Council, on or before January 31, 2010, will place on a City Council agenda a discussion and review of the changes made herein in order to determine whether any additional changes are appropriate;

NOW, THEREFORE, BE IT RESOLVED, that the following sections of the Procedures for Public Access to the Records of the City of Rye be amended as follows:

Section 6. Request for public access to records.

- (a) Requests for records shall be in writing (hard copy or electronically) in accordance with New York Public Officers Law. The custodian of the records has discretion to waive the requirement for written requests in appropriate circumstances.
- (b) Officials shall respond to a request for records no more than five (5) business days after receipt of the request. This response will acknowledge receipt of the request and indicate that the requester will receive a response within twenty (20) business days unless otherwise noted.
- (f) Upon locating the requested records, the appropriate personnel of the City of Rye shall, as promptly as possible, and within the time limits set in subsection (b) above, either:
 - (1) Make the records available by either (i) indicating a time and date when the records are available for review and inspection, or (ii) send the records electronically if the request was for electronic copies and the records can be sent electronically, or
 - (2) Deny access in whole or part, and explain in writing the reasons therefor.

Section 8. Denial of access to records.

- (a) Denial of access to records shall be in writing stating the reason(s) therefor and advising the requester of the right to appeal to the City Council. However, if the City Council does not meet within the statutory ten (10) business days following receipt of the appeal, the City's Corporation Counsel shall hear the appeal, unless the individual filing the appeal notifies the City Council in writing as part of the appeal that he/she would like the City Council to hear the appeal. In the event the individual prefers the appeal to be heard by the City Council, the individual agrees to waive the ten (10) day statutory period for hearing the appeal and the appeal will be heard at the next regularly scheduled City Council meeting. Appeals heard by either the City Council or the Corporation Counsel are final determinations (i.e. a City Council's determination on an appeal cannot be reheard by the Corporation Counsel and vice versa).
- (b) If requested records are not provided promptly, as required in Section 6(b) of these regulations, such failure shall also be deemed a denial of access. In such cases, appeals must be filed within 30 days of the date by which the records were to be made available.

- (c) The City Council shall hear and determine appeals from denials of access to records in the first instance with the City's Corporation Counsel hearing and determining appeals if there is no regularly scheduled City Council meeting within ten (10) business days after receipt of the appeal.

- (d) The time for deciding an appeal by the City Council or the City's Corporation Counsel shall commence upon receipt of a written appeal identifying:
 - 1. The date of the appeal.
 - 2. The date and location of the original record request.
 - 3. The records to which the requester was denied access.
 - 4. Whether the denial of access was in writing or by failing to provide records in accordance with the applicable time periods.
 - 5. A copy of the written denial, if any.
 - 6. The name and return address (or email address) of the requestor.

- (e) The appeal shall be determined by the City Council or the City's Corporation Counsel's office within ten (10) business days of the receipt of the appeal. If the appeal is submitted via email, any emails received after 5:00 p.m. will be considered received on the next business day. Written notice of the determination shall be served upon the person requesting the record and the Committee on Open Government.

A person requesting an exception from disclosure, or an agency denying access to a record, shall in all appeal proceedings have the burden of proving entitlement to the exception.

ROLL CALL:

AYES: Mayor Otis, Councilmembers Ball, Cunningham, Gamache, Parker and Sack
NAYS: None
ABSENT: Councilman Pratt

- 6. Resolution to amend changes to local law amending Chapter 191, Vehicles and Traffic, of the Rye City Code by amending Section 191-20, Subsections B and C. For the duration of the construction on the Elm Place wall, public parking on Theodore Fremd Road will be temporarily changed from a one-hour limit to a fifteen-minute limit

Roll Call

City Manager Shew said that Assistant City Manager Scott Pickup has been coordinating the construction on the Elm Place wall project with the Federal Government and has reached out to the merchant community to see how the specific area will be impacted in order to help them through the construction project. Mr. Pickup said that traffic will be allowed on Elm Place but it will only be a one-way ten-foot travel lane so the parking currently on the corner near Fong's will disappear for the duration of the project. Currently there is one-hour parking on Theodore Fremd Avenue near Merritt Associates going toward Car Park #2 as well as on the other side of the street. The area on the side by Merritt Associates will be changed to 15 minutes in order to

accommodate the customers of the laundry but one-hour parking will be maintained on the opposite side of the street to satisfy the needs of those utilizing the real estate offices or dentist's office. The number of spaces lost during the construction is approximately 10. This is an attempt to stimulate turnover and allow more people to park for convenience. If this solution does not work, it will be presented to the Council for further action. The contractor will be on site to commence work during the first week in November. If weather conditions are good, the project should take about 12 weeks. The maintenance and travel plans have been shared with the public safety departments and appropriate signage will be installed. The City is working with Con Edison on the gas transmission issue and it is hoped that there will be construction by late November or early December. At this time the City is planning on complying with all construction and noise ordinances but the project is weather dependent.

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

RESOLVED, that Section 191-20, "Parking time limited", of the City Code be amended to delete Theodore Fremd Avenue, South, from Elm Place to the entrance to Car Park No. 2 from subsection B, one-hour limit parking and add it to subsection C, fifteen-minute parking.

ROLL CALL:

AYES: Mayor Otis, Councilmembers Ball, Cunningham, Gamache, Parker and Sack
NAYS: None
ABSENT: Councilman Pratt

7. Authorization for City Manager to execute an Inter-municipal Agreement with the Town of Mamaroneck authorizing collection services to provide garbage and curbside pickup for Mamaroneck residents located in the Greenhaven section of Rye pending approval of Mamaroneck Village Board

Mayor Otis said that there are a few houses in Greenhaven that now receive garbage pickup from the Village of Mamaroneck and the City Manager working with the Village Manager of Mamaroneck has come up with an agreement that would allow garbage pickup for those houses by the City of Rye. City Manager Shew said that Councilwoman Gamache had been instrumental in advocating for this agreement. Councilwoman Gamache thanked all involved in City staff as well as the Village of Mamaroneck for their work in making this happen. She said Mamaroneck trucks make 260 visits a year through Rye to get to seven homes in Greenhaven to service them. This will save wear and tear on the roads as well as air quality issues and should be a major benefit to the people who live in the area and will improve the carbon footprint. Councilman Sack concurred that the environmental aspect was very important and felt that because of the unquantifiable benefit there should not be a precedent value set on the price of what is being charged to Mamaroneck. Councilman Cunningham said that although he supports the idea of the agreement and the quality of life issues he would not vote in favor of it because of financial concerns relative to this proposal and what the City charges the Boat Basin and Golf Club for municipal services. Councilman Ball said that although he understands Councilman Cunningham's concerns he would support the agreement in question because it is a good remedy for the quality of life concerns of the residents involved.

Councilwoman Gamache made a motion, seconded by Councilwoman Parker to adopt the following Resolution:

RESOLVED, that the City Manager is hereby authorized to enter into an Intermunicipal Agreement with the Village of Mamaroneck to provide garbage and curbside pickup for Mamaroneck residents located in the Greenhaven section of the City of Rye.

ROLL CALL:

AYES: Mayor Otis, Councilmembers Ball, Gamache, Parker and Sack
NAYS: Councilman Cunningham
ABSENT: Councilman Pratt

8. Authorization for City Manager to enter into a license agreement with James and Elizabeth Gallagher, residing at 50 Hill Street, Rye, New York, to install a retaining wall

City Manager Shew said this is a license agreement to allow the construction of a retaining wall to allow parking. It does not involve any encroachment of any consequence for the City and has been reviewed and approved by the Corporation Counsel. Councilman Ball added that it was for an unusable strip of right-of-way and had already been reviewed and approved by the Zoning Board of Appeals. *Elizabeth Gallagher, 50 Hill Street*, confirmed that neighbors had been notified of the project before it went before both the Zoning Board and Board of Architectural Review. Deputy Corporation Counsel Kristen Wilson said that the agreement provides for the owner to maintain the wall.

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

RESOLVED, that the City Manager is hereby authorized to enter into a license agreement with James and Elizabeth Gallagher, residing at 50 Hill Street, Rye, New York, to install a retaining wall.

9. Resolution to authorize funding for City Police/Court Building and Site Assessment Study Roll Call

Mayor Otis said that a Request for Proposals (RFP) has been circulated to architectural firms to analyze, on a multi-dementional basis, the choices that the City would have for either using the existing police station for a remodeled Police State/Courthouse Facility, looking at the old CVS building that the City purchased as an option, or to review some other sub options. The RFP was sent to over 20 firms and responses were received from six. Staff reviewed the

responses, interviewed some of the applicants and has recommended one of the firms, who also happens to be the low bidder. City Manager Shew said staff has checked the references of the firm being recommended on their work done with police/court facilities and believes that they are not only the lowest bidder but also the best bidder for this project. They will meet with the Council and provide options and alternatives and will talk with other stakeholders as part of the process. This will give the Council the best information for making a decision.

Council comment included:

- Other participants as well as the public should be involved in the process in order to receive broad general feedback.
- The reason for the RFP is the desire to get professional expertise to weigh in on space needs and compare the logistics of both locations, the feasibility plusses and minuses of each location, the interrelationship between the Police and the Court Facility and to look at the dynamics of the two properties that the City owns and give the Council some choices in order to determine where the Police Station and Courthouse Facilities will be housed in the future.
- The process is being driven by the agreement to purchase 1037 Boston Post Road (the former CVS property) in less than 18 months, which must come before the voters.
- It is important to talk to the stakeholders about what they want, but it is also important to talk about what is needed under the current economic circumstances.
- Although the purchase of 1037 Boston Post Road is a factor, the current Police/Court facility is almost 70 years old and has been suboptimal for a long time and has been costly to tax payers to make it functional and, therefore, it is inherent that the Council find a remedy as quickly and responsibly as possible.

Public comment included:

- *John Carolin did not feel it was necessary to hire consultants and that the City Council should be able to decide where they want to locate the new facility. He felt the Council should only hire a firm to advise the Council on the current facilities or utilize City staff or residents to make the decision. He also said he believed it was important to get feedback from the Police Department as to what they want. (The firm will not decide the location; it will give the Council the tools necessary to make an intelligent decision. It is not self-evident which is the better location or which is the better economic decision for the community and this information is necessary before a decision can be made. The consultants will provide this information.)*
- *Robin Jovanovich, 647 Milton Road, said that residents are looking for economic leadership from the Council and the presentation of the RFP makes it look like the City has already made up its mind to go ahead and create a new Police/Court Facility. She said she is not sure if the voters would approve using the old CVS building as an expansion of the Police/Court Facility, urged the Council to do a real estate analysis and referred the Council to a letter from Harrison Mayor Joan Walsh to residents regarding economic conditions in that community. (The voters will decide whether anything is built, but the Council must come to a conclusion regarding the Police/Court Facility location and it is necessary to get sufficient information before the Council and the public in order for them to make the choice. The consultants are necessary because they will*

provide the Council with the best information to make a decision. The clock is ticking regarding the CVS property and, therefore, it is necessary to move forward with the process. Regarding Mayor Walsh's letter, Harrison does not have the same Aaa credit rating as the City and for the upcoming budget process it will be assumed that the economics of the region will get worse and items that can be deferred will be, except for public safety or flooding. In last year's budget season the Council was realistic regarding elastic revenues unlike the Town of Harrison.)

- *Peter Jovanovich, 647 Milton Road, offered a third alternative of selling the CVS building and not spending more money on a Police/Court facility during the current bad economic times but possibly waiting five years. If the building has lasted for 70 years it will last for 75 years. (The RFP did not request an answer but pros and cons in order to give the Council choices. The decision might be made to sell the CVS building instead of going to referendum. The timetable for doing a project has not been determined yet. The City must be in a position to have the information to make the best financial decision going forward. A decision could be made to put affordable housing on the CVS site but expert advise is needed in order to allow the Council and the public to make decisions.)*

Councilman Sack made a motion, seconded by Mayor Otis to adopt the following Resolution:

RESOLVED, that \$25,000 is hereby authorized to engage the services of JCJ Architecture to complete a Police/Court Site and Building Assessment Study.

ROLL CALL:

AYES: Mayor Otis, Councilmembers Ball, Cunningham, Gamache, Parker and Sack
NAYS: None
ABSENT: Councilman Pratt

10. Resolution to transfer \$25,000 from Contingent Account to Planning Roll Call

Mayor Otis said that this transfer was being made to pay for the study by the consultants approved in the previous agenda item and that the range of responses for the study was from \$25,000 to \$98,000.

Councilman Sack made a motion, seconded by Councilwoman Parker to adopt the following Resolution:

WHEREAS, the City wishes to proceed on site assessment study for a Police/Court facility, and,

WHEREAS, six firms submitted proposals in response to the City's Police/Court Building and Site Assessment RFP, and,

WHEREAS, City staff recommends engaging the services of JCJ Architecture for a price of \$25,000, and,

WHEREAS, the 2008 adopted budget did not provide for these costs, and,

WHEREAS, there are sufficient funds in the General Fund Contingent Account to fund the amount needed for this study, now therefore be it

RESOLVED, that \$25,000 be transferred from the General Fund Contingent Account to the Planning Department Consulting Services.

ROLL CALL:

AYES: Mayor Otis, Councilmembers Ball, Cunningham, Gamache, Parker and Sack

NAYS: None

ABSENT: Councilman Pratt

11. Miscellaneous communications and reports

Councilman Cunningham asked for commitment dates from the Council for Budget Workshops. Mayor Otis suggested the following dates: Monday, November 10th, Wednesday, November 12th, Monday, November 17th and Wednesday November 19th (prior to the City Council Meeting) with a possible date of Monday, November 24th if necessary. The Mayor suggested that Council Members submit particular questions they might have for departments to the City Manager's Office in advance of a workshop in order for staff to have the answer prior to the workshop from that department. Councilman Cunningham asked that a discussion of CIP projects be covered at one of the first workshops.

Assistant City Manager Pickup congratulated Cable TV Coordinator Nicole Levitsky and her crew on getting the new cameras installed and operational in the Council Chambers.

Councilman Cunningham reminded everyone that the Rye Recreation Haunted Park would be held on October 24th and 25th at Rec Park.

12. Old Business

Councilman Ball asked the City Manager for an update on a letter received from a resident regarding an issue of trespassing on Philips Lane and asked if the Council should be considering any action? City Manager Shew said that staff had spoken with the Police Department and the Corporation Counsel regarding what can and cannot be done from a signage standpoint. He said there are restrictions on signage but there are things that a private property owner may be able to do that the City cannot do as a public agency.

Councilman Sack updated the Council on an item he had reported on in a previous meeting. He said that a group of over 60 walkers, including his wife, had completed a 40-mile walk for breast cancer research on the weekend of October 4th and 5th. They raised over \$200,000, the highest amount raised by any team in the country.

Mayor Otis reported that the City of Rye is one of the communities that has received the final application form from Westchester County for the flood mitigation money.

13. New Business

There was no new business.

14. Draft unapproved minutes of the regular meeting of the City Council held October 1, 2008

Mayor Otis made a motion, seconded by Councilman Cunningham and unanimously carried, to approve the minutes of the October 1, 2008 meeting, 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 10:10 p.m.

Respectfully submitted,

Dawn F. Nodarse
City Clerk