

APPROVED MINUTES of the Regular
Meeting of the City Council of the City of Rye held in
City Hall on February 11, 2009 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

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

Robert Schubert, 980 Forest Avenue, came to discuss the situation of his pond. He thanked City Manager Shew for his recent concern for his mental health and well being and announced that he had received a totally clean bill of health after a two-hour examination by doctors. City Manager Shew said he was pleased that Mr. Schubert had a favorable experience and added he believes he has an obligation to respect Mr. Schubert's privacy. City Manager Shew concluded the discussion with Mr. Schubert by acknowledging Mr. Schubert's comments and saying that in public service it is often easiest to do nothing, but that is not necessarily the right thing.

Mr. Schubert reiterated his belief that he had done nothing to create the situation at his pond; that City staff had given permission to his neighbor for a project that, in Mr. Schubert's opinion, caused damage to his pond; and that the Council has an obligation by law to remedy the situation. The following people appeared and spoke in support of Mr. Schubert's position: *Sis D'Angelo, 90 Wappanocca Avenue; John Carolin, 66 Milton Road; Tom Fendler, 27 Radcliffe Avenue; Jean Sinnott, 131 Purchase Street and Jordan Glass, Esq.* They offered the following comments:

- The City caused the problem;
- The City must determine where the water from Mr. Schubert's pond is going;
- The Council should have asked the City Engineer to look into the matter again;
- The City Engineer made a mistake in determining a permit was not necessary and should correct the mistake;
- The City should have shown compassion and done something to help Mr. Schubert;
- Mr. Schubert's civil rights under §1983 may have been violated;
- City Manager Shew and the City Council should apologize to Mr. Schubert.

Mayor Otis reiterated that the City Engineer and legal counsel had determined that a permit was not required and that the solution to the problem is in Mr. Schubert's hands, not the City's. He advised Mr. Schubert to speak to his neighbor and that possibly they could split the cost of a pipe to pipe the water from the neighbor's property to Mr. Schubert's property. The Mayor said that every member of the previous City Council visited Mr. Schubert's property when he first brought the issue to their attention, and also questioned the City Manager and Corporation Council regarding the facts. The City cannot bestow a gift of repairing the problem in a private dispute. Councilman Ball said that Mr. Schubert makes inaccurate comments and other people repeat them. The City Engineer determined that a permit was not necessary and, therefore, no permit was issued. Councilman Sack said that the City Council does not lack sympathy for Mr. Schubert's problem, but the City Engineer made a determination that Mr. Schubert does not agree with. The issue has devolved into a blame game and the focus should be on solutions. He suggested that the City could possibly mediate by arranging a meeting between Mr. Schubert and his neighbors to discuss the situation. Mayor Otis said that City Planner Christian Miller had attempted to do that in the past without success, but it could be tried again. In response to a suggestion from a member of the audience that the City Council set a date for the meeting that evening, Councilman Ball pointed out that the City cannot force Mr. Schubert's neighbors to attend a meeting. Councilman Pratt took exception to the statement that the Council did not have compassion and said that the Council has done their homework on the issue; that work has been done behind the scenes as a result of what is said at meetings and, as a result of Councilman Sack's suggestion, the situation will be revisited again. He added that the facts get twisted as to what role the Council has played.

Jordan Glass, Esq., 7-11 Legion Drive, Valhalla, attorney for Healtheharbor.com, spoke about the issues of interest to his client related to conditions on Hen Island. He said he has spoken to the Council previously about documents he provided that are available on his client's website. He asked the City to revisit the issue and contact the County Department of Health about alleged violations on Hen Island regarding sanitary, water and mosquito issues. He called on the Council to enforce the Health, Building and Safety Codes. He called on the City to enforce Fire Safety conditions with regard to the installation of dry hydrants on Hen Island. Mayor Otis said he believed that the issues raised by Mr. Glass where the City has a role, separate from the area that is under the control of the County Department of Health, have been examined by site visits to Hen Island by City staff. City Manager Shew said that the Fire Department has routinely checked Hen Island and done testing that is appropriate for the area, as has the Building Department, and there have been no violations. Mayor Otis reiterated that Mr. Glass is there to represent the beliefs of his client and there has been litigation between neighbors

on Hen Island. *Ray Tartaglione, a homeowner on Hen Island*, asked that Building Inspector Vincenzo Tamburro answer questions about his inspection of Hen Island. Mayor Otis said the proper forum would be to address his questions to the City Manager. Mr. Tartaglione chose not to do so.

Announcements

Mayor Otis recognized and congratulated Rye Residents Maureen Fearon, James Kennedy, Noreen Kennedy, Susan Garofalo and Natalie Linton for their efforts in helping the Crohn's & Colitis Foundation by competing in the Miami half marathon the previous weekend. He said they had helped the event raise over \$1.6 million dollars.

4. Public Hearing to adopt a Local Law rescinding Chapter A201 "rules adopted by the Building Inspector with the Consent of Council" and amending Chapter 68 "Building Construction" of the City Code of the City of Rye

Mayor Otis said the public hearing was opened at the January 28th meeting. City Building Inspector Vincenzo Tamburro said that the purpose of the local law was to consolidate the City's building rules and regulations under one chapter as required by the State. Councilman Cunningham said he had requested the hearing remain open in order to give the public an opportunity to comment. The Mayor asked if anyone in the audience wanted to comment. There being no comment, he closed the public hearing.

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

**CITY OF RYE
LOCAL LAW NO. 1 2009**

A Local Law Rescinding Chapter A201 "Rules Adopted by the Building Inspector With the Consent of Council" and Amending Chapter 68 "Building Construction" of the City Code of the City of Rye

Be it enacted by the City of Rye, in the County of Westchester, as follows:

SECTION 1: PURPOSE AND INTENT

This local law shall provide for administration and enforcement of the New York State Uniform Fire Prevention and Building Code (Uniform Code) in the City of Rye. This local law is adopted pursuant to Section 10 of Article 2 of the Municipal Home Rule Law. Except as otherwise provided within this law, state law, or within the Uniform Code, all premises regardless of use, are subject to the provisions which follow.

SECTION 2:

§68-1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ALTERATION – Any change, rearrangement or addition to a building other than repairs; any modification in construction or in building equipment.

BUILDING – A structure wholly or partially enclosed within exterior walls, or within exterior and party walls, and a roof affording shelter to persons, animals or property.

DEMOLITION – the removal of an entire structure or pool.

REPAIR – Replacement or renewal, excluding additions, of any part of a building, structure, device or equipment with like or similar materials or parts for the purpose of maintenance, preservation or restoration of such building, structure, device or equipment.

SMALL PROJECTS – Any addition to or alteration or modification of an existing single – or two-family residence structure:

- A. For which a valid certificate of occupancy exists for all structures on the property;
- B. Upon which property there are no open building permits and no building permit or certificate of occupancy was issued within the immediate past 12 months;
- C. That:
 - (1) Has a gross floor area of 300 square feet or less where located in Zoning Districts R-1, R-2 and R-3 and 200 square feet or less where located in all zoning districts;
 - (2) Does not create a second story if none previously existed on the structure; and
 - (3) Is less than 15% of the existing floor area of the structure; and
- D. That does not substantially change the appearance visible from the street of any front or side façade or roof.

STRUCTURE – An assembly of materials, forming a construction framed of component structural parts for occupancy or use, including buildings.

§68-2. Building Inspector.

- A. The Office of Building Inspector is hereby created and shall be filled by an appointment by the City Manager. The Building Inspector shall possess background experience related to building construction or fire prevention and shall, within the time constraints proscribed by law, obtain such training as the State of New York shall required for code enforcement personnel.

§68-3. Acting Building Inspector and Fire Inspector.

In the absence of the Building Inspector, or in the case of his inability to act for any reason, the City Manager shall have the power to designate a person to act on behalf of the Building Inspector and to exercise all the powers conferred upon him by this chapter.

Fire Inspector - The Office of Fire Inspector is hereby created and shall be filled by an appointment by the City Manager. The Fire Inspector shall possess background experience related to building construction or fire prevention and shall, within the time constraints proscribed by law, obtain such training as the State of New York shall require for fire code enforcement personnel.

§68-4. Appointment of Subordinates.

The City Manager may appoint one or more subordinates, as the need may appear, to act under the supervision and direction of the Building Inspector and to exercise any portion of the powers and duties of the Building Inspector as directed by him.

§68-5. Restrictions on employees.

No officer or employee of the Department of Buildings shall engage in any activity inconsistent with his duties or with the interest of such Department; nor shall he, during the term of his employment, be engaged directly or indirectly in any building business, in the furnishing of labor, materials or appliances for the construction, alteration or maintenance of a building or the preparation of plans or specifications thereof within the City of Rye, excepting that this provision shall not prohibit any employee from such activities in connection with the construction of a building or structure owned by him and not constructed for sale.

§68-6. Compensation.

The compensation for the Building Inspector, acting Building Inspector(s), Fire Inspector and subordinates shall be fixed and adjusted as needed by the City Manager.

§68-7. Duties and Powers of Building Inspector.

The Building Inspector shall administer and enforce all the provisions of the Uniform Code and the provisions of this chapter, including receiving building permit applications, reviewing plans and specifications, conducting inspections, issuing permits for the erection, alteration, relocation, addition, repair and/or demolition of buildings and structures, issuing certificates of occupancy, collecting fees as set forth by the City Council and maintaining and filing all records necessary for the administration of the office to the satisfaction of the City Council. The Building Inspector is authorized to pursue administrative actions and in consultation with the Corporation Counsel, legal action as necessary to abate conditions not in compliance with the Uniform Code, this chapter or other laws, rules or regulations of the City of Rye or of the State of New York.

§68-8. Building and Demolition Permits.

A. Except as hereinafter provided, no person, firm, corporation, association or partnership shall commence the construction, enlargement, alteration, improvement, removal, relocation or demolition of any building or structure or any portion thereof, or install a solid fuel burning heating appliance, chimney or flue in any dwelling unit, without first having obtained a permit from the Building Department. Other examples of buildings, structures and activities requiring the issuance of a building permit are:

- (1) Erection of a deck or open porch or the expansion of decks or porches.
- (2) Window, door or other changes that increase the thermal conductivity.
- (3) The installation of solid-fuel devices, fireplaces and stoves.
- (4) Placing a roof over a deck, a terrace or entry door.
- (5) Finishing or making improvements in a basement or cellar to provide recreation space, living area, or toilet.
- (6) Finishing attic space for any type of occupancy.
- (7) Changing exits or reducing required natural light or ventilation.
- (8) Erection of lawn storage buildings, with or without foundations, if any dimension is eight feet or larger.
- (9) Erection of any type of in-ground/above-ground receptacle for water where the depth exceeds 24 inches.
- (10) Public or private utility structures.
- (11) Changes in use or occupancy.
- (12) Tennis courts and other recreational facilities.
- (13) Retaining walls of 4 feet in height measured along the face of the wall.
- (14) Freestanding walls of 4 feet in height, measured from grade.

B. No permit shall be required for:

- (1) Necessary repairs which do not materially affect structural features;
- (2) Alterations to existing buildings provided that the alterations:
 - (a) Do not materially affect structure features; and

- (b) Do not affect fire safety features such as smoke detectors, sprinklers, required fire separations and exits; and
 - (c) Do not involve the installation or extension of electrical systems; and
 - (d) Do not include the installation of solid fuel burning heating appliances and associated chimneys and flues.
- (3) Residential storage sheds where all dimensions are less than 8 feet which are not intended for use by one or more persons as quarters for living, sleeping, eating or cooking; for example, a small storage building.
 - (4) Nonresidential farm buildings, including barns, sheds, poultry houses and other buildings used directly and solely for agricultural purposes.
 - (5) Retaining walls less than 4 feet in height and terraces (may be subject to other permit requirements).
 - (6) Interior decorations that do not involve structural changes, including light, ventilation or systems alterations, such as changing kitchen cabinets, closet alterations or bath modernization, provided that plumbing is not moved and replacement is performed by a licensed plumber.
 - (7) Exterior improvements that do not materially change the appearance of the building and are not structural in nature, including resurfacing deteriorated walls and replacing windows and doors.
 - (8) Adding a new roof covering, provided that the resulting dead load does not exceed the design capacity of the roof framing.
 - (9) Painting.
 - (10) Any structure not intended to be occupied that will not be above the surface of the ground.

C. Application for a permit.

- (1) The application for a building or demolition permit, and its accompanying documents, shall contain sufficient information to permit a determination that the intended work accords with the requirements of all local, county, state and building codes.
- (2) The form of the permit and application therefore shall be prescribed by the Building Inspector. The application shall be signed by the owner (or his authorized agent) of the building and shall contain at least the following:
 - (a) Full name and address of the owner and if by a corporation, the name and address of the responsible officials;

- (b) Identification and/or description of the land on which the work is to be done;
 - (c) Description of use or occupancy of the land and existing or proposed building;
 - (d) Description of the proposed work;
 - (e) Four sets of plans and specifications for the proposed work, including a site plan, drawn to scale, showing the location and size of all proposed new construction, showing the first floor elevation with respect to mean sea level, and all existing structures on site. If necessary, the Building Inspector may require details of structural, mechanical and electrical work.
 - (f) The information provided on the site plan shall be based on a survey prepared within the last 2 years of the submission date. A copy of the survey must be submitted along with the site plan.
 - (g) The required fee; and
 - (h) Such other information as may reasonably be required by the Building Inspector to establish compliance of the proposed work with the requirements of the applicable building laws, ordinances and regulations.
- (3) Applicant shall notify the Building Inspector of any changes in the information contained in the application during the period for which the permit is in effect. A permit will be issued when the application has been determined to be complete and when the proposed work has been determined to conform to the requirements of all local, county, and state building codes. The authority conferred by such permit may be limited by conditions, if any, contained therein. Amendments, if any, to the application or to the plans and specifications accompanying the same shall be filed with the Building Inspector and approval shall be received from the Building Inspector and/or Board of Architectural Review prior to the commencement of such change of work.
- (4) Plans and specifications shall bear the signature of the person responsible for the design and drawings and, where required by §7302 of the New York State Education Law, the seal of a licensed architect or a licensed professional engineer.
- (5) The Building Inspector may waive the requirement for filing plans and specifications for minor alterations.

D. General Requirements.

- (1) The Building Inspector shall examine or cause to be examined all applications for permits and the plans, specifications and documents filed herewith. He shall approve or disapprove the application within a reasonable time. Such applications

may only be approved by the Building Inspector. Any building or demolition permit issued pursuant to this chapter shall be prominently displayed on the property or premises to which it pertains.

- (2) Upon approval of a building permit application and if the Board of Architectural Review shall approve or fail to act on such application within the time specified in Chapter 53 of the Rye City Code, the Building Inspector shall approve the issuance of a building permit to the applicant upon the form prescribed by him. Upon approval of the application, the plans and specifications shall be endorsed with the word "approved" and shall be initialed by the Building Inspector. One set of such approved plans and specifications shall be retained in the files of the Building Department and the other sets shall be returned to the applicant together with the building permit.
- (3) The issuance of a building or demolition permit shall constitute authority to the applicant to proceed with the work in accordance with the approved plans and specifications and in accordance with the applicable building laws, ordinances or regulations. All work shall conform to the approved application, plans and specifications.
- (4) All building and demolition permits shall be prominently displayed on the job site at all times during the progress of construction or demolition so as to be readily seen from adjacent thoroughfares. A set of approved drawings shall be kept on site in a four-inch diameter PVC pipe four feet long and shall be securely attached to a post.
- (5) An application for change in plans or work in the building or upon the property must be made by the owner or his agent and a written permit obtained before any part of the change is commenced. The Building Inspector shall issue a permit for such change.
- (6) All work covered by the Westchester County home improvement licensing requirements must be performed by contractors holding a current home improvement license issued by the County.
- (7) All contractors or homeowners, if they as homeowners are the applicants, are required to produce, by certificate of insurance naming the City of Rye as additional insured, proof of liability insurance in the amount of \$500,000 and proof of workers' compensation and disability insurance as required by law.
- (8) After completion of footings and establishing forms' first course of the foundation walls or equivalent structure, the owner shall notify the Building Department. If required by the Building Inspector, the owner shall cause a survey to be made by a licensed land surveyor, showing the true location of such foundation walls with respect to the lot lines of the lot and the top of foundation elevation in respect to mean sea level and a copy of such survey shall be filed with the Building Inspector before construction is continued.

- (9) Prior to issuance of a certificate of occupancy, the owner shall provide a final survey in regards to the true location of the structure with respect to the lot lines, if required by the Building Inspector.

- (10) A building or demolition permit issued pursuant to this chapter shall expire one (1) year from the date of issuance or upon the issuance of a certificate of occupancy, whichever occurs first. The permit may, upon written request, be renewed for successive one-year periods provided that:
 - (a) The permit has not been revoked or suspended at the time the application for renewal is made,
 - (b) The relevant information in the application is up to date, and
 - (c) The renewal fee is paid.

- (11) Buildings, construction and improvements requiring building permits as provided by §68-7(A) of this chapter shall include all conditions and building occupancy classifications listed in Part 701 of the New York State Uniform Fire Prevention and Building Code (9NYCRR701). Those building classifications are:
 - (a) One and two-family residences
 - (b) Multiple dwellings
 - (c) Business occupancies
 - (d) Mercantile occupancies
 - (e) Industrial occupancies
 - (f) Storage occupancies
 - (g) Assembly occupancies
 - (h) Institutional occupancies
 - (i) Miscellaneous occupancies

E. Revocation of building/demolition permit.

The Building Inspector may revoke a permit heretofore issued in the following instances:

- (1) Where he finds that there has been any false statement or misrepresentation as to a material fact in the application, plans or specifications on which the building permit was based.

- (2) Where he finds that the permit was issued in error and should not have been issued in accordance with the applicable law.
- (3) Where he finds that work performed under the permit is not being prosecuted in accordance with the provisions of the application, plans or specifications.
- 4) Where the person to whom a permit has been issued fails or refuses to comply with a stop work order issued by the Building Inspector.

F. Expedited issuance.

- 1) The Building Inspector may issue a building permit on an expedited basis for additions and alterations existing as of May 17, 1995, to one and two-family residential properties upon submission, in form and substance satisfactory to the Building Inspector, of the following documentation:
 - (a) Plans signed and sealed by a New York State licensed architect or engineer.
 - (b) A representation by that architect or engineer that the plans as submitted conform in all respects to all applicable state and local building, fire and zoning codes and that the work was completed in accordance with the submitted plans.
 - (c) An agreement personally signed by each owner and the architect or engineer agreeing to:
 - (i) Use of this expedited procedure;
 - (ii) Indemnify and hold harmless the City, its agents and employees for any claims arising out of the issuance of the building permit;
 - (iii) Release and waive all rights against the City, its officers, agents and employees, from all claims arising out of the issuance of the building permit and any certificate of occupancy based upon the building permit; and
 - (iv) Permit the City to inspect the premises at any time to determine that the work was done in compliance with the plans and the law.
 - (d) Payment of appropriate fees and penalties, if applicable.
- (2) Every building permit issued under this expedited procedure and any certificate of occupancy issued based upon that building permit shall contain a notation thereon indicating that it was issued pursuant to this section and was based upon the representations and agreements made in order to obtain the building permit.

G. Notice.

An applicant for a building permit needing Board of Architectural Review approval or for any small project shall notify immediate neighbors of that application upon its filing and at least 14 days before the date of any Board of Architectural Review meeting. Such notice shall be given either personally or by first class mail and the notice shall substantially conform to the model notice in Schedule A. Immediate neighbors shall include those adjacent to or opposite from the property that is the subject of the application, as identified by Schedule B. An affidavit attesting to proper notice must be submitted to the Building Department with the application similar in form to Schedule C. (Editor's Note: Schedules A, B, and C are on file in the Building Department).

§68-9. Department records and reports.

- A. The Building Inspector shall keep permanent official records of all transactions and activities conducted by him, including all applications received, permits and certificates issued, fees charged and collected, inspection reports, and notices and orders issued. All such records shall be public records open to public inspection during business hours.
- B. The Building Inspector shall annually submit to the City Manager a written report and summary of all business conducted by the Building Department, including permits and certificates issued, fees collected, orders and notices promulgated, inspections and tests made and appeals or litigation pending.

§68-10. Cooperation of other departments.

The Building Inspector may request and shall receive, so far as may be necessary in the discharge of his duties, the assistance and cooperation of the Police and Fire Departments and of all municipal officials exercising any jurisdiction over the construction, use or occupancy of buildings or the installation of equipment herein.

§68-11. Plumbing and drainage.

- A. No person shall make any connection with the public sewer or drain without a permit being issued in accordance with Chapter 162 of the City Code. No permit shall be issued to connect to a public sewer or drain unless such person holds a Westchester County Plumbing license.
- B. Plans including a riser diagram and specifications of all plumbing and drainage work, except the mere removal of obstructions or the repairing of leaks or such replacement of old or broken fixtures as does not involve any change in piping or traps, together with an application, signed by the owner or his agent, for a permit, must be submitted to the Building Inspector for approval, and a permit must be obtained before any such work is commenced within any building or upon any property. The Building Inspector shall issue the permit.

- C. A peppermint test will be performed on all waste and vent piping with a combined developed length greater than 10 feet.

§68-12. Oil or gas heating equipment; permit requirements.

- A. No such permit shall be issued unless the applicant has submitted proof that the installation work shall be done or directly supervised by a licensed plumber or by a person who has successfully completed an examination conducted by the former Examining Board of Installers of Mechanical Equipment of the City of Rye or by a person who has successfully completed a comparable examination conducted by at least one other municipality located in Westchester or Putnam Counties and has demonstrated competence to perform all necessary functions of installing oil-burning equipment. If the applicant has contracted with a partnership or corporation for performance of the installation, at least one partner or officer must be either a licensed plumber or person who successfully completed the required proficiency test.
- B. All electrical work associated with the installation of any oil or gas heating equipment shall be performed by a licensed master electrician. A master electrician shall have passed an examination conducted by Westchester County, to determine his or her competence to perform the functions of a master electrician properly
- C. No alteration in existing oil or gas heating installation, HVAC or an electrical installation, for which a permit has been issued, shall be made without the inspection and approval of the Building Inspector. Where a replacement of another oil or gas heating unit is made, application must be made as if the installation is a new one.

§68-13. Fees.

- A. Upon the filing of any application for a building related permit or license, fees shall be payable in connection with the following:
 - (1) Plumbing, oil heating, gas heating or electric certificate of competency.
 - (2) Building permits.
 - (3) Plumbing permit for changes in plumbing that do not require a building permit in existing buildings.
 - (4) Oil or gas heating permits in existing buildings where a building permit is not required.
 - (5) Electrical permits in existing buildings where a building permit is not required.
 - (6) Certificate of occupancy.

- B. A fee schedule shall be established, and changed as needed, by resolution of the City Council.
- C. In the event that an application for a building permit is not approved, the applicant shall be entitled to a refund of 50% of the fee paid, provided that no construction has been commenced. If construction work has been started and the application is not approved, the fees shall not be refunded.
- D. Due to the large additional administrative and inspection expenses incurred by the City, an additional application fee of \$1,000 shall be payable when construction work has been commenced prior to the issuance of the building permit or when, as determined by the Building Inspector acting reasonably, construction work has been done in a manner not substantially consistent with a prior approval by the Board of Architectural Review or when, as determined by the Building Inspector acting reasonably, construction work has been done in a manner not in substantial compliance with the requirements of a building permit.

§68-14. Certificate of occupancy.

- A. No building erected subject to the Uniform Code shall be used or occupied, except to the extent authorized hereunder, until a certificate of occupancy has been issued by the Building Inspector.
- B. No building similarly enlarged, extended, or altered, or upon which work has been performed which requires the issuance of a building permit shall be occupied unless a certificate of occupancy has been issued.
- C. No change shall be made in the nature of the occupancy of an existing building unless a certificate of occupancy authorizing the change has been issued by the Building Inspector.
- D. The owner or his agent shall submit an application for a certificate of occupancy. Accompanying this application and before the issuance of a certificate of occupancy, there shall be filed with the Building Inspector an affidavit of the registered architect or licensed professional engineer who supervised the construction of the work or of the superintendent of construction who supervised the work and who, by reason of his experience, is qualified to supervise the work for which the certificate of occupancy is sought. This affidavit shall state that the deponent has examined the approved plans of the structure for which a certificate of occupancy is sought. This affidavit shall state that the deponent has examined the approved plans of the structure for which a certificate of occupancy is sought, that the structure has been erected in accordance with approved plans and, as erected, complies with the law governing building construction except insofar as variances therefrom have been legally authorized. Such variances shall be specified in the affidavit.

- E. All applications for a certificate of occupancy are to be accompanied by a certification of the actual cost of the work, inclusive of professional fees and contractor profit. Any additional fees are due prior to the issuance of a certificate.
- F. When electrical work is performed as part of a building permit a certificate of compliance from the electrical inspection agency shall be submitted prior to a certificate of occupancy being issued.

§68-15. Issuance of certificate of occupancy.

When, after final inspection, it is found that the proposed work has been completed in accordance with the applicable building laws, ordinances and regulations and also in accordance with the application, plans and specifications filed in connection with the issuance of the building permit. The Building Inspector shall approve the issuance of a certificate of occupancy upon the form provided by him. If it is found that the proposed work has not been properly completed, the Building Inspector shall refuse to approve the issuance of a certificate of occupancy and shall order the work completed in conformity with the building permit and in conformity with the applicable building regulations.

- A. A certificate of occupancy shall be issued, where appropriate, within 30 days after application therefore is made.
- B. The certificate of occupancy shall certify that the work has been completed and that the proposed use and occupancy is in conformity with the provisions of the applicable building laws, ordinances and regulations and shall specify the use or uses and the extent thereof to which the building or structure or its several parts may be put.
- C. The certificate of occupancy shall certify that the work has been completed and that the proposed use and occupancy is in conformity with the provisions of the applicable building laws, ordinances and regulations and shall specify the use or uses and the extent thereof to which the building or structure or its several parts may be put.

§68-16. Inspection.

- A. Inspections during construction:
 - (1) Work for which a building permit has been issued hereunder shall be inspected for approval prior to enclosing or covering any portion thereof and upon completion of each stage of construction, including, but not limited to, building location, site preparation, site drainage, excavation, foundation, framing, superstructure, electrical, plumbing, and heating and air conditioning. It shall be the responsibility of the owner, applicant, or his agent to inform the inspector that the work is ready for inspection and to schedule such inspection.
 - (2) Work which requires special inspections during construction shall be the responsibility of the owner, applicant, or his agent to provide a list at their expense. A statement of the special inspections, including a complete list of

materials and work requiring such inspections, and a list of the individuals, and approved agencies shall be provided to the Building Inspector for the permit application file. The reports of such special inspections shall be provided to the Building Inspector for the permanent record.

- (3) If entrance to make an inspection is refused or cannot be obtained, the City Council, after being notified by the inspector of the situation, may apply to any court of competent jurisdiction for an order to make an inspection.

B. Fire Prevention and Property Maintenance Inspections.

- (1) Multiple dwellings shall be inspected for the purpose of determining compliance with fire prevention and property maintenance requirements of the Uniform Code at least once in every thirty-six (36) months. Inspections of such buildings shall include the common areas such as halls, foyers, staircases, etc. and vacant dwellings units. Where the tenants of occupied dwelling units allow, the inspection may include such units.
- (2) Fire safety inspections of buildings or structures having areas of public assembly, defined as “all buildings or portions of buildings used for gathering together fifty or more persons for amusement, athletic, civic, dining, educational, entertainment, patriotic, political, recreational, religious, social, or similar purposes, the entire fire area of which they are a part, and the means of egress therefrom” shall be performed at least once in every twelve (12) months.
- (3) All other buildings, uses and occupancies (except one-or two-family dwellings) shall be inspected at least once in every twenty-four (24) months.
- (4) An inspection of a building or dwelling unit may also be performed at any other time upon:
 - (a) The request of the owner, authorized agent, or tenant.
 - (b) Receipt of a written statement alleging that conditions or activities failing to comply with the Uniform Code exists; or
 - (c) Other reasonable and reliable information that such a violation exists.
- (5) Enforcement/Inspection of the fire prevention and property maintenance inspections shall be performed by the Fire Inspector.

§68-17. Tests.

Whenever there are reasonable grounds, the Building Inspector may require material, construction equipment or assemblies to be subjected to tests in order to furnish proof of compliance with the reference standards of the Uniform Code.

§68-18. Penalties for offenses.

- A. It shall be unlawful for any person, firm or corporation to construct, alter, repair, move, remove, demolish, equip, use or maintain any building or structure or portion thereof in violation of any provision of this chapter or to fail, in any manner, to comply with a notice, directive or order of the Building Inspector or to construct, alter or use and occupy any building or structure or part thereof in a manner not permitted by an approved building permit or certificate of occupancy.

- B. Any person who shall fail to comply with a written order of the Building Department within the time fixed for compliance therewith and any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent or their agents or any other person taking part or assisting in the construction or use of any building who shall knowingly violate any of the applicable provisions of this chapter or any lawful order, notice, directive, permit or certificate of the Building Department made thereunder shall incur a penalty of not more than \$250 or 15 days imprisonment, or both. Each day that a violation continues shall be deemed a separate offense.

- C. This section shall not apply to violations of the provisions of the Uniform Code punishable under § 385 of the Executive Law of the State of New York nor to violations of the provisions of the Multiple Residence Law punishable under § 304 of the Multiple Residence Law of the State of New York.

§68-19. Abatement of violations.

Appropriate actions and proceedings may be taken at law or in equity to prevent unlawful construction or to restrain, correct or abate a violation or to prevent illegal occupancy of a building, structure or premises or to prevent illegal acts, conduct or business in or about any premises; and these remedies shall be in addition to the penalties prescribed in the preceding section.

§68-20. Conflict with other codes, rules or regulations.

If there is any conflict with other codes, rules or regulations, the most restrictive provisions shall apply.

SECTION 3: SEVERABILITY

If any section of this local law shall be held unconstitutional, invalid, or ineffective, in whole or in part, such determination shall not be deemed to affect, impair, or invalidate the remainder thereof.

ROLL CALL:

AYES: Mayor Otis, Council members Ball, Cunningham, Gamache, Parker
Pratt and Sack

NAYS: None

ABSENT: None

- 4A. Home rule resolution supporting S1887 (Oppenheimer)/ A289 (Latimer), extension of City of Rye Hotel Occupancy Tax
Roll Call.

Mayor Otis said the City must pass a Home Rule Message in order to get the Hotel Occupancy Tax, which is set to expire later this year, renewed for an additional three years. He said the 3% tax, which is the same percentage as the County Hotel Tax, provides the City about \$200,000 in revenue. The Mayor added that all such taxes around the State require renewal every three years.

Mayor Otis made a motion, seconded by Councilman Pratt to, adopt a Home Rule Message.

ROLL CALL:

AYES: Mayor Otis, Council members Ball, Cunningham, Gamache, Parker
Pratt and Sack
NAYS: None
ABSENT: None

5. Designation of the Chairman of the Board of Appeals by the Mayor

Mayor Otis redesignated Alan Weil as Chairman of the Board of Appeals.

6. Three appointments to the Board of Appeals for three-year terms, by the Mayor with Council approval.

Mayor Otis made a motion, unanimously approved by the Council, to re-appoint Alan Weil, Serge Nivelles and Maureen Powers to the Board of Appeals for three-year terms expiring on January 1, 2012.

7. Designation of the Chairman of the Board of Architectural Review by the Mayor

This item was deferred.

8. Two appointments to the Board of Architectural Review for three-year terms, by the Mayor with Council approval

Mayor Otis made a motion, unanimously approved by the Council, to appoint Guy Parisi to the Board of Architectural Review for a three-year term expiring January 1, 2012.

9. Two appointments to the Conservation Commission/Advisory Council for three-year terms, by the Mayor with Council approval

This item was deferred.

10. Two appointments to the Landmarks Advisory Committee for three-year terms, by the Mayor with Council approval

This item was deferred.

11. Four appointments to the Planning Commission for three-year terms, by the Mayor with Council approval

This item was deferred.

12. Three appointments to the Recreation Commission for three-year terms, by the Mayor with Council approval

This item was deferred.

13. Four appointments to the Traffic & Transportation Committee for three-year terms, by the Mayor with Council approval

This item was deferred.

14. Acceptance of Grant Award from Governor's Traffic Safety Committee in the amount of \$4,050 for participation in the "Selective Traffic Safety Program (STEP)" program
Roll Call

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

WHEREAS, the City of Rye Police Department has been awarded a grant in the amount of \$4050 for participation in the statewide "Selective Traffic Safety Program: (STEP); now, therefore, be it

RESOLVED, that the City of Rye accepts the aforementioned grant.

ROLL CALL:

AYES: Mayor Otis, Council members Ball, Cunningham, Gamache, Parker
Pratt and Sack
NAYS: None
ABSENT: None

15. Authorize payment of the balance of the 2008/2009 Rye Neck Union Free School District taxes collected by the City to the School District
Roll Call

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

RESOLVED that the City Council of the City of Rye hereby authorizes payment of the balance of \$155,753.10 of unpaid Rye Neck U.F.S.D taxes, on property within the City of Rye as of December 31, 2008, be made to the Treasurer of the Rye Neck UFSD.

ROLL CALL:

AYES: Mayor Otis, Council members Ball, Cunningham, Gamache, Parker
Pratt and Sack

NAYS: None

ABSENT: None

16. Appeal of denial of FOIL request by Timothy Chittenden

Corporation Counsel Kevin Plunkett explained that this is an appeal of a determination made by the Police Commissioner denying a request for a report. The report is contained in a personnel file of a member of the Police Department and, therefore, the request was denied based on New York State Civil Rights Law, which prohibits disclosure of documents in a personnel file. Accordingly there is a basis to deny the appeal under the Freedom of Information Law.

Councilman Pratt made a motion, seconded by Councilman Cunningham and unanimously carried, to adopt the following Resolution:

RESOLVED, that the appeal of the denial of a Freedom of Information Law (F.O.I.L.) request made by Timothy Chittenden is hereby denied based on New York State Civil Rights Law §50-a(1) and Freedom of Information Law §87(2)(b).

17. Miscellaneous communications and reports

There were no miscellaneous communications or reports.

18. Old Business

Councilman Cunningham said he had asked the Engineering Office about the “watercourse” running down Peck Avenue. The City Engineer is working with United Water to locate the turn off valve on the Avon property. He said he also inquired about the status of the pump station at that location and learned that it cannot be turned on until the Westchester County Board of Health gives their approval.

Councilman Ball asked for a status update on the Central Avenue Bridge repair. Assistant City Manager Scott Pickup said the original project was submitted to FEMA, a Project Engineer was selected and the redesign was initiated. A determination was made by FEMA that based on the State classification for Central Avenue, it was a State-owned roadway and it changed the source of funds to a State Department of Transportation (DOT) Emergency Relief Fund, which delayed the project for approximately four months and kicked the project into a separate set of State requirements. The State did not recognize the City’s consultant and was

reluctant to reimburse the City because design work had already been done for the bridge. The City appealed that determination and the consultants were finally approved. The City has asked the DOT if, since it was an Emergency Relief Project, could they bypass some of the normal regulatory requirements and give the City some regulatory relief. At this point, if the City is required to go through the normal full design review process it will add another year to the design review process and another \$180,000 in professional services. The bridge is 90% designed. Mr. Pickup said the City could be required to submit a new hydrology analysis, a new bridge type design analysis and a new right-of-way plan. Mayor Otis added that he has learned that there is a unit at the State Parks Commission that is supposed to approve redesign of the bridge. He would like to set up a conference call to find out how much the City has done that will be required for the Commission to approve the redesign of the bridge. Councilman Cunningham suggested that there be an agenda item at the next meeting in order to inform the public of the situation.

Councilman Sack asked that the issue of rocks in the right-of ways also be included on the next agenda. He would like to see the Council take action this year. He said the rocks are dangerous to pedestrians, bicyclists and cars. He said that recently volunteer firefighters responding to a fire on Forest Avenue could not pull off the street to park because of the rocks, and that interfered with the optimum passage of other vehicles. He suggested that the City implement a pilot program, possibly on Forest Avenue, for removal of the rocks. Mayor Otis said that the last time this topic was discussed, he had asked for a public information campaign to educate residents about the reasons they should remove the rocks and asked if that had been done.

19. New Business

Councilman Cunningham said that the list of projects submitted to Congresswoman Nita Lowey for possible funding did not address bridges. He said he believed the City had a couple of bridge projects that were ready to go and asked why they were not included in the request. Assistant City Manager Pickup said he would check; that he believed the bridge projects were in the submission made to Congresswoman Lowey's Office but might have been left off the copy provided to the Council.

20. Draft unapproved minutes of the regular meeting of the City Council held January 28, 2009

Mayor Otis made a motion, seconded by Councilman Cunningham and unanimously adopted, to approve the minutes of the regular meeting of the City Council held on January 28, 2009.

21. 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 9:45 p.m.

Respectfully submitted,

Dawn F. Nodarse
City Clerk