

APPROVED MINUTES of the Regular Meeting of the City Council of the City of Rye held in City Hall on February 25, 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

The meeting convened at 7:44 p.m. Mayor Otis made a motion, seconded by Councilman Cunningham and unanimously carried to adjourn into Executive Session at 7:45 p.m. to discuss real estate matters. No decisions were made. Mayor Otis made a motion, seconded by Councilman Ball and unanimously carried, to adjourn the Executive Session at 7:53 p.m. The regular meeting reconvened at 8:00 p.m.

1. Pledge of Allegiance

Mayor Otis called the meeting to order and invited the Council to join in the Pledge of Allegiance.

2. Roll Call

Mayor Otis asked the City Clerk to call the roll; a quorum was present to conduct official city business.

Announcements

Mayor Otis began the meeting by congratulating the scouts who will be celebrating the annual moving up day of the Webeloes from Cub Scouts to Boy Scouts on March 9th. They are: Luke Bruno, Mark Byrne, Matthew Elliott, Quinn Fahey, Cas Harshbarger, Joseph Lodovico, Brandt Matthews, Adam Newmark and David Schindler.

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

Matt Fahey, 36 Franklin Avenue, said he wanted to thank the Council for recognizing the scouts, who have put in a good amount of time getting activity badges while learning about communication, community affairs and responsibility.

Ashley Craig, 10 Johnson Place, reported that a group of community members are looking to reinvigorate the League of Women Voters of Rye, Rye Brook and Port Chester. She asked people to consider joining the group and provided an email address lwv.rye.ryebrook.portchester@gmail.com where people can find information about upcoming events.

(Agenda items 4, 5 and 6 were covered in the same discussion.)

4. Discussion and update of issues regarding the property at 980 Forest Avenue

The Mayor began by providing an update on the situation. He said that subsequent to the last Council meeting the City Council received new information, additional to what it has had for the last two and a half years, in the form of a phone call to him from the former City Naturalist, Chantal Detlefs, as well as comments by her in the media. The Mayor said he thanked the former City Naturalist for bringing her views to the attention of the Council and that they will look into it. The Mayor said that prior to February 12th, the Council was told there was no diversity of opinion and now are told by the former City Naturalist that there was diversity of opinion, at least by her. He said the Council has always been open to new information, and in light of this new information, the Council has a responsibility to ask additional questions and provide a message to the community that they are concerned about making sure the situation is handled correctly. That process is underway. The Council has asked that all the land use documents in the file relating to this matter be provided to the City Council and they will be made available for public review on the City website. He added that there is nothing in the documents on record that provide a dramatic change to the information that the Council has previously been provided. The Mayor said that the City has a dedicated staff and the Council believes in the good faith of the staff and that they should be treated with respect. Mayor Otis added that this issue has gone on for a long time and everyone is eager to get answers and find a solution for Mr. Schubert. He suggested that the City bring in an outside hydrology engineer who does not practice in Westchester and ask them to take a look at what has been going on around the Schubert property at 980 Forest Avenue and other properties in the area and try to find an explanation about where the water went. It is hoped that this will provide a tool for finding a resolution for the issue. Without doing an independent hydrology analysis everything is speculation in terms of the cause and solution. The Mayor said he does not believe an independent Counsel is necessary because he does not believe that there is anything in the documents that would warrant that at this point. He said he believed it was important for the community to remain calm, reasonable and deliberate in dealing with tough issues where there is conflict. The Mayor said he would make a motion to hire a hydrological engineer for the amount of \$3,500

Councilman Sack said he believed that hiring a hydrology engineer was “putting the cart before the horse” because the City should be talking about why they are asking for a hydrology expert to look into the situation. He said it looks like the City Council is altering their position after a long period of time. Mr. Sack said the allegations the former City Naturalist made in the newspapers are serious and he believes that some investigation should be done. The allegations include that the City made an improper decision in regard to Mr. Schubert’s property and, more seriously, that the City knew all along about the improper determination and attempted to hide that fact from public view. He said they are simply allegations and the Council should not make

any judgment as to their accuracy without looking into them. Mr. Sack said he did not believe it was practical for City Council Members to conduct an investigation because anyone conducting an investigation will have to interview both staff members and Council Members. He also said that from a credibility standpoint it was important for an outside investigation to be made so that the public has faith that the investigation is being done correctly. Councilman Sack added that he did not believe the Corporation Counsel should conduct the investigation either, even though he has always provided the Council good advice on other matters, because he has been providing advice to the City Manager and staff on this issue. Mr. Sack said he has been told that certain Council members requested that the City Manager send an email to Chantel Detlefs asking her to provide a statement and have it delivered to the City Manager's office, which he did not think was proper and to which he had no input. Mayor Otis said that he believed the word investigation was too strong and that the Corporation Counsel has not been conducting an investigation but has been a facilitator to obtain documents and to request a written statement from the City Naturalist. Corporation Counsel Kevin Plunkett clarified that he contacted the former City Naturalist to ask her to provide a factual presentation that would be forwarded to the City Council. Councilman Sack reiterated his view that he believes he was not being told the truth; that he wants to get to the bottom of the issue and that the Council was not capable of doing the job. He said the Council could make a decision after someone else conducts the investigation and presents them with the facts.

Councilman Ball said he wanted to comment on the proposal to hire a hydrologist. He said when it was first mentioned to him, he was not in favor of the idea because even though he thinks it could render clarity to the question of where the water has gone, he believes the primary question is whether or not the City conducted itself within the letter of the law. He said he was especially hesitant to authorize the \$10,000 initially suggested during the current economic climate but thinks the revised amount of \$3,500 is more reasonable. He said he believes the hydrology question will be a difficult one to solve because not only has there been a project conducted at the property on Magnolia Lane abutting Mr. Schubert's property but also one on a property to the north of Mr. Schubert's property on Forest Avenue and another to the southwest of the property on Topsail Lane. Mr. Ball noted that in her statement Ms. Detlefs has described the area as quite a complex wetland watershed area. He now believes that hiring a hydrologist is a good idea.

Councilman Pratt said that as a result of the new information that the Council has received from the former Naturalist there was a suggestion that there was a need for a hydrologist and because of that suggestion he believes it is logical that the Council follow through on that idea in order to find a solution.

Councilwoman Parker clarified the amount of the initial estimate for a hydrologist to be \$5,000 not \$10,000 but said she believed that \$3,500 would be money well spent to find the source of Mr. Schubert's problem. She added that as much as the Council would like to help Mr. Schubert find a solution to his problem, they are legally prevented from gifting the money to fund the solution.

Councilman Cunningham said that since the last meeting the Council has received a great deal of information. He said that what the former Naturalist has said in newspapers is not substantiated in the public record. He said he believed that the money should be spent on the

hydrologist in order to answer the question of where the water has gone. He said this would provide transparency.

Councilwoman Gamache said she supported spending the money on the hydrologist because it was in everyone's best interest to look at the hydrology and, hopefully, answer the question of where the water went. She thought it was important for the Council to get the former Naturalist's statement directly because people are not always quoted correctly in newspapers and articles can be edited for space making it impossible to know what was said vs. what was published.

The following members of the audience commented on the discussion: *Sis D'Angelo, 90 Wappanocca Avenue; Jean Sinnott, 131 Purchase Street; William Becker, Fairway Avenue; Caterina Cabrara, 23 Chester Drive; Joe Murphy, 57 Franklin Avenue; Matt Fahey, 36 Franklin Avenue; Martin Gerson, Forest Avenue; Robert Schubert, 980 Forest Avenue; Jim Amico, 350 Midland Avenue; John Carolin, 66 Milton Road; Greg MacKenzie; Bruce McCloud, 2 Topsail Lane; Ralph Vallone, Midland Avenue; Ted Carroll, Forest Avenue and Ray Tartaglione.* Their comments included:

- The City should not waste money on a hydrologist when it should be fixing sidewalks;
- The taxpayers do not want the City to spend any money in reference to Mr. Schubert;
- What would a hydrologist do that the City Engineer can't do;
- The information that a hydrologist would provide is already available on maps;
- A mistake was made and the Council should correct it;
- The Council was elected to listen to the citizens;
- The hydrologist is not a bad idea because solving the problem of the pond could help with the mosquito problem in Rye;
- Bringing in a hydrologist will only prolong the issue;
- The audience should maintain civility because their children and neighbors are watching; the Council serves voluntarily and if they are driven out people may not like what they get in their place;
- There should be a specific definition of what constitutes a wetland, different from what is currently in the law;
- Water coming from a property on Topsail Lane that used to go to the Schubert property now goes into the sewer on VanWagenen and should be rerouted back to the Schubert property;
- Water from the Magnolia Place property has been channeled into a drywell and the water that comes off their roof into pipes could be routed into the Schubert property;
- The Council should change the way they do business;
- Go back to the contractor who did the work on the Magnolia property and ask him what he did in order to determine where the water went;
- The City should commit to finding a solution to the problem;
- A response to a FOIL request did not produce all the documents that the Council has in their possession. (The FOIL request was for documents relating to the Gates property at 3 Magnolia Place. The documents the Council has that will be put on the City website, contain additional reports.)

- The Council owes Mr. Schubert an apology for bringing someone in to evaluate him. (Councilman Pratt offered his personal apology to Mr. Schubert for any discomfort he may have been caused in the last two or three weeks.)

Robert Schubert said he was hurt by City Manager Shew's allegations and does not want to pursue the issue unless he has to. He said he was hurt that the City Council did not consider an apology to him. He said that he found the way the Council was conducting itself this evening was more favorable to a citizen than he has seen in two and one-half years. He said he was in favor of the investigation from a technical viewpoint and would be glad to participate in it and provide whatever knowledge he can.

5. Resolution to authorize \$3,500 to hire an independent engineering firm to review the hydrology issues at 980 Forest Avenue
Roll Call.

(See discussion related to this item above.)

Mayor Otis said that Council Members could explain their votes if they wanted to. Councilman Ball said he wanted the scope of the work to stipulate that part of the task is to prescribe what is the best and fastest remedy that could be affected. Councilman Cunningham concurred adding that the suggested plan of action be based on information supplied regarding all the properties surrounding 980 Forest Avenue.

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

RESOLVED, that the City Council authorizes spending \$3,500 to hire an outside hydrology engineer to review the properties in the area of 980 Forest Avenue.

ROLL CALL:

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

The motion was adopted.

6. Resolution to authorize up to \$10,000 to hire an independent counsel to investigate and report on the facts surrounding the issues at 980 Forest Avenue
Roll Call.

(See discussion under item 4)

Councilman Pratt said he would second the motion because he did not necessarily disagree with Councilman Sack's suggestion on the need for further exploration of what happened but, it was his belief that from a hydrology point of view, a review of what happened

in the initial determination and finding a solution would provide an action plan with which to work with Mr. Schubert. He said he believed that calling for an investigation was premature; but he would not rule out reconsidering it if there is something in the report from the hydrologist, which is expected to be received within the next 30 days, that would indicate there should be further investigation. Councilman Sack reiterated his belief that the same reason that the Mayor thinks the hydrology engineer should be independent is the same reason the City Council should not be doing the investigation – they are too close to the situation. He added that he could not see any down side in having an independent counsel. Councilwoman Parker quoted Section C6-3 of the City of Rye Charter that empowers the Council to conduct investigations into the affairs of the City.

City Manager Shew asked to address the Council from the podium as both the City Manager and a Rye resident. He said he wanted to address two items. Firstly, he said it was his pleasure to manage the City staff, many of whom he considers to be the tops in their professions. He said they work very hard and care about the people of the City. Mr. Shew said he normally does not speak at Council meetings unless asked to by the Council, but in this instance feels he must say that the people who are being discussed at this meeting are the ones who provide service to the residents of Rye and are very much affected by what is happening at this meeting. His second topic was referrals. When a public official sees someone he believes to be in trouble over a long period of time, he has a higher duty to act than other members of the community. Throughout his career he has tried to seek help for people who need it as part of this responsibility. When referrals are made to the County Health Services, they never show up without calling that person first in the privacy of their own home and asking if the person would like assistance. If the person says no, that is the end of it. Services provided by the County are confidential and professional. They never report back to the person who made the referral. This has been done in this community previously. Mr. Shew says that he has never had an experience before where the services have been offered and accepted and then turned into a publicity event. He said that everyone has an obligation to lend a helping hand when they can and hopes that in his career in public service he never finds himself reluctant to do so.

John Carey, Forest Avenue, suggested that he and former Mayor Ed Granger, who have many years of law practice between them, could look into the situation together and provide an outside viewpoint. He added that he had not approached Mr. Granger with the idea. Councilman Sack said that he would like to amend his motion for an independent counsel to reflect Judge Carey's suggestion. Councilman Pratt said that although he believed it was premature to authorize an independent counsel, if he did support the idea in the future, he would want former Mayors Carey and Granger to know what the charge was from the Council and receive feedback as to how they would like to proceed. He added that if the Council does see the need for an investigation in the future, there should be a discussion of the Council's responsibilities under the Charter as pointed out by Councilwoman Parker. Councilman Ball said that Judge Carey's idea might be a breakthrough idea if the Council does decide to proceed with an independent investigation not run by the operation and suggested that Mr. Carey approach Mr. Granger with the idea. Councilman Cunningham said the two former Mayors would provide a balanced discussion and inquiry if both were involved.

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

RESOLVED, that former Mayor John Carey be appointed by the City Council to serve as independent counsel to investigate the facts and circumstances surrounding the issues at 980 Forest Avenue.

ROLL CALL:

AYES: Councilman Sack

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

ABSENT: None

The motion was defeated.

7. Resolution to transfer \$3,500 from contingency to the Law Department for consultants for an Engineering firm for issues pertaining to 980 Forest Avenue
Roll Call.

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

RESOLVED, that the Comptroller is authorized to transfer \$3,500 from the General Fund Contingency Account to the Law Department for an independent Engineering firm hydrology report on issues pertaining to 980 Forest Avenue.

ROLL CALL:

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

NAYS: Councilman Sack

ABSENT: None

The motion was adopted.

8. Public comment regarding leaf blower law amendments passed in 2008

Mayor Otis began by noting that when the Council passed the leaf blower ban in 2008, they indicated that a discussion would be held early in 2009 for feedback on how the law was working in order to reevaluate if any adjustment was needed in the law. He said comments have been received from many of the exempt entities in the community on how they are trying to minimize leaf blower noise.

Members of the audience commenting included: *Virginia Ellis, 66 Glen Oaks Drive; Anthony Spencer, 11 Brevoort Lane; Bill Lawyer, 15 Hillside Place; Joe Murphy, 57 Franklin*

Avenue; Curtis Spacavento, local landscaper; Peter Jovanovich, 647 Milton Road; Rudi Markl and William Becker, Fairway Avenue. Their comments included:

- The law should be amended to allow residents to use electric blowers;
- If the City allows the use of electric blowers, a type should be found that landscapers can use as well;
- What City agency is charged with enforcing the leaf blower law;
- Banning all leaf blowers makes enforcement simpler;
- There is noncompliance with law regarding amount of equipment in use during time of year when blowers are allowed in certain neighborhoods;
- The police have been responsive when someone calls;
- The problem with leaf blowers is not just noise pollution, it is also air pollution – particulates in the air are bad for children and those with lung diseases;
- This is a good law, don't consider changing it until the May 1st through September 30th ban has been in effect for at least a full year;
- Many different community groups were involved in having the law enacted and were helpful in seeing that it was followed;
- The implementation of the law went better than anticipated;
- The Council should consider keeping the start date at June 1st or May 15th;
- The City of Rye has taken the lead in adopting this ban and other communities will probably follow.

Comment from Council Members included:

- An amendment to the law allowing the use of electric blowers might be considered;
- Input from landscapers on electric vs. gas blowers would be helpful, as well as from residents who do their own yard work;
- Environmental Advocacy Committee centered its concerns on the leaf blower issue on the California EPA study published in 2000, from which the standards have changed considerably;
- A Denver based environmental group called Ecocycle published a document in 2003 including a prescription for people still using leaf blowers to purchase an electric blower that is less polluting and less noisy than gas blowers;
- Professional landscapers are not using electric blowers -- they are primarily being used by residents;
- Yonkers, Bronxville, Larchmont, the Town and Village of Mamaroneck, Pelham, Dobbs Ferry and Scarsdale exclude electric blowers from their laws;
- Staff should request information from those communities who allow the use of electric blowers to determine if there has been an increase in use of electric blowers by professionals;
- It is still an education process and should be given more time to work before any changes are made;
- Law against blowing leaves into the street was probably intended to keep people from blowing leaves off their properties and leaving them in the street;

- The law was implemented on June 1st last year in order to allow time to inform the landscapers;
- It is good to see that the exempt organizations are trying to reduce the use of leaf blowers, but it might not be necessary for the Boat Basin to be included.

9. Discussion of obstructions in the right of way Withdrawn

10. Resolution to transfer \$72,379 from the Capital Project Fund to the Building & Vehicles Fund to cover additional costs on the oil tank removal at Public Works/Disbrow Park
Roll Call.

City Manager Shew said that for the last several years the City has been in a program of removing underground oil tanks. The tank that was removed had passed all of the pressure testing tests for the last several years but when it was removed oil was found and the necessary remediation was done. Assistant City Manager Pickup said that tank removal work is a permitted activity in Westchester County and Madison Energy Corp., the company doing the work, is the permittee on the Westchester County permit and would also be required to do any necessary remediation work. The money requested is to cover all the work done on the project.

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

RESOLVED, that the Comptroller is authorized to transfer \$72,379 from the Capital Project Fund to the Building & Vehicles Fund to cover additional costs on the oil tank removal at Public Works/Disbrow Park.

ROLL CALL:

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

NAYS: None

ABSENT: None

10A. Resolution to grant permission to the Rye Free Reading Room to use a tent on the Village Green for their book sale to be held on Saturday, May 16th and Sunday, May 17th, 2009

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

RESOLVED, that the City Council hereby grants permission to the Rye Free Reading Room to erect a tent in the parking lot adjacent to the Village Green for their

book sale to be held on Saturday, May 16th
and Sunday, May 17th, 2009.

10B. Report by the Mayor regarding opportunities for Federal Economic Stimulus Funding

This item was deferred.

10C. Designation by the Mayor of Liaisons to the Contingency Task Force

Mayor Otis designated Councilmembers Cunningham and Gamache to serve as liaisons to the Contingency Task Force.

11. Two appointments to the Landmarks Advisory Committee for three-year terms to expire in 2012, by the Mayor with Council approval

Mayor Otis made a motion, unanimously approved by the Council, to reappoint Russell Cecil and Frederick Cummings for three-year terms expiring on January 1, 2012.

12. Four appointments to the Planning Commission, two to complete a three-year term to expire in 2011, and two for three-year terms to expire in 2012, by the Mayor with Council approval

Mayor Otis made a motion, unanimously approved by the Council, to reappoint Peter Larr and Hugh Greechan to complete three-year terms expiring on January 1, 2011 and Nicholas Everett and Martha Monserrate for three-year terms expiring on January 1, 2012.

13. Three appointments to the Recreation Commission for three-year terms to expire in 2012, by the Mayor with Council approval

Mayor Otis made a motion, unanimously approved by the Council, to reappoint Thomas Maloney, Esther Martensen and Steven Verille for three-year terms expiring on January 1, 2012.

14. Three appointments to the Traffic & Transportation Committee, one to complete a three-year term to expire in 2011, and two for three-year terms to expire in 2012, by the Mayor with Council approval

Mayor Otis made a motion, unanimously approved by the Council, to appoint Ben Stacks to complete a three-year term expiring on January 1, 2011 and reappoint John Wickham and Nicholas Loddo to three-year terms expiring on January 1, 2012.

15. Miscellaneous communications and reports

Councilman Cunningham said that as banks disappear in town, more restaurants are opening up. He said that he believed that, as a result of this, at some point complaints would come before the Council relative to cleanliness issues in the downtown. He said he believed the Council should be proactive in this issue by having staff put policy in place regarding garbage

pickup and cleanliness around the properties. Councilman Pratt said that if this was not done, there could be complaints about rats and odor problems as well.

Mr. Cunningham also made note of local resident, Mike DeVal, who has been involved in County sports for almost 50 years and is returning to the County Center once again with the Rye Garnets basketball team.

Councilwoman Parker reported on a meeting held with Dan McBride, the Commissioner of County Parks, regarding the pay-one-price issue at Playland. She said residents who are not interested in going on rides would be able to enter the amusement park for \$3.00. The one-day price will be \$25.00, which is the lowest price for amusement parks in the area. Ms. Parker also reported on a meeting held with the Village Managers and Mayors of Rye Brook and Port Chester regarding the EMS contract. She said it was a good meeting and she feels they will be able to get something back to the Council to approve very soon.

16. Old Business

Councilman Cunningham asked Councilwoman Parker for a follow up on the discussions with the merchants about extending the hours for parking meters into the evening. Councilwoman Parker reported that a letter was circulated to the restaurants earlier in the week by the Merchants Association, but only one response has been received so far.

17. New Business

Councilman Ball said he wanted to commend both the career and volunteer firefighters for their service in fighting a fire on Forest Avenue earlier in the week. He said they had worked in the bitter cold for hours in fighting the fire, which resulted in no injuries.

18. Draft unapproved minutes of the regular meeting of the City Council held February 11, 2009

Councilman Ball made a motion, seconded by Councilman Pratt and unanimously carried, to approve the minutes of the regular meeting of the City Council held on February 11, 2009

19. 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 11:50 p.m.

Respectfully submitted,

Dawn F. Nodarse
City Clerk