

APPROVED MINUTES of the Regular Meeting of the City Council of the City of Rye held in City Hall on March 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 (left at 10:00 p.m.)
JOSEPH A. SACK
Councilmembers

ABSENT: None

The meeting convened at 7:07 p.m. Mayor Otis made a motion, seconded by Councilwoman Parker and unanimously carried to adjourn into Executive Session at 7:07 p.m. to discuss personnel matters. No votes were taken. Councilman Ball made a motion, seconded by Councilman Cunningham and unanimously carried, to adjourn the Executive Session at 8:45 p.m. The regular meeting reconvened at 8:36 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 by offering congratulations to the Rye High School Hockey Team for making it to the playoffs where they unfortunately lost to Pelham. He also congratulated the Girls' Basketball Team at Rye Country Day School for winning the State Championship for their division in the Independent School League. The Mayor also complimented Deputy Corporation Counsel Kristen Wilson for her work in connection with the old bungalows on Beck Avenue and Wainwright Street. An agreement has been reached that will require the "at risk" buildings to be taken down by the end of the month.

Councilman Ball said that Rye High School swimmer Ryan Feeley broke his own record at the State Championships the prior week.

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

John Carey, 860 Forest Avenue, addressed the Council on a memo he sent to them the previous week concerning City Code Chapter 195, Wetlands and Watercourses. He quoted from Sections 195-1B(1), Intent; 195-4, Permit requirements, regulated activities, determining wetland boundaries; 195-5D, Permit standards and procedures, and 195-8, Enforcement. He said he wanted to call the attention of the Council to the provisions in these sections in order for them to draw their own conclusions as to whether they were complied with in connection with 980 Forest Avenue. He said he believed there was an innocent mistake made and that City officials never dreamed that work done on the Magnolia Place property would impact any other property.

Robert Schubert, 980 Forest Avenue, came to discuss issues related to his pond and raised the following points:

- He asked if City Manager Shew had the permission of the Mayor before he called the Westchester Hospital to conduct an exam related to his sanity?
- He has been billed for the visit by the doctor.
- He finds flaws in the hydrology investigation, which is at its mid-point.
- He believes that the investigating team consisting of the City Engineer, the City Planner, the City Attorney, the City Consultant and himself is unbalanced.
- He was told there was to be a meeting on Thursday, March 5th at 9:00 a.m. at his home and no one came.
- The only property examined so far has been his property.
- The engineering drawings of the Gates property do not agree.
- The consulting engineer is technically qualified, but was selected by the City Attorney, who has previously worked with FPM Group.
- A second hydrology engineer should be retained.

Responses from the Council and staff included:

- The City Council was not aware of the actions of the City Manager as was made clear when Mr. Schubert contacted the press about the matter.
- The City Manager has offered his personal explanation of why he made his decision, which people can like or not like.
- The Mayor asked that he provide the City with the documentation of the medical bill so the Corporation Counsel can make a determination on how it could be handled.
- The hydrology engineer review is being conducted by the Consultant, Kevin Phillips of the FPM Group firm from Long Island. City staff are providing background information to the consultant in order for him to make his review of the situation, just as Mr. Schubert has been asked to do.
- Mr. Schubert had indicated on Wednesday, March 4th that he would not meet on Thursday morning.
- Kevin Phillips has contacted the Gates' attorney seeking permission to set up a telephone conference with the Gates' engineer and follow up, if necessary, with a site visit to the Gates property on Magnolia Place. Corporation Counsel Plunkett received an email at 6:14 p.m. that evening from the Gates' attorney to Mr. Phillips agreeing to schedule the telephone conference and the possible site visit.

- The hydrology engineer has been retained to review the properties in the area of the Schubert property and do an independent review and report back to the Council within 30 days.
- The hydrology engineer will have the opportunity to review the drawings.
- The City had a prior relationship with the FPM firm and the Council was satisfied with their work in connection with the Beaver Swamp situation. Selection of the firm was based on prior quality work in a situation that lacked clarity and price. Good work done in the past should not disqualify FPM from being used on this project.

Sis D'Angelo, 90 Wappanocca Avenue, said she thought City Manager Shew should pay for Mr. Schubert's medical bill.

Ray Tartaglione, said he wanted to make a statement. The Council had said the reason they were hiring a hydrologist was because they were not affiliated in Westchester but now it has been learned that the one hired has done work for the City previously. Mayor Otis said FPM Group is based in Long Island and does not do work regularly in Westchester. Mr. Tartaglione asked what the City's position was on Hen Island? Mayor Otis said that he knew that Mr. Tartaglione has a lawsuit against his neighbors on Hen Island that he brought the City and County into. The case has been dismissed in court. Mr. Tartaglione disagreed that the City has been out to the island to inspect it and said he wanted to invite the members of the Council out there to view the conditions on the island.

Rudy Markl, 14 Fairlawn Street, said that at the last meeting it was announced that there was new information that might call for reconsidering the Council's view of the last few years regarding the Schubert issue. He quoted from a Rye Record newspaper article that reported claims made by the former City Naturalist Chantal Detlefs saying she had expressed her concerns that an error had been made about the Schubert situation over two years ago. He said this statement implies that the Council knew of her opinion since that time. Councilman Ball said the letter Mr. Markl refers to is the first new information the Council has received throughout the process. When the Council first heard of the situation, almost three years ago, they conferred with staff to find out what had happened, and received the opinion from staff on what the process was behind their point of view that no permit was required. What is at issue now is whether that determination was correct. Ms. Detlefs' letter was received on February 18, 2009, which was new information to the Council. Mr. Ball said that he does not know enough about the veracity of the letter to know if what she says is correct or not, but said it troubles him that Ms. Detlefs has implicated the most senior Department Head as well as two other senior employees of the City. The Council's position has been shaped by discussions with the experts that are paid to make sure laws are enforced and recently there has been a development that has caused the Council to reassess the situation. He encouraged people to review the documents that have been put on the City's website. Councilman Pratt reiterated that he had not had any contact with Chantal Detlefs regarding the issue either prior to her letter dated February 18th or since and understands that she has confirmed that she had not spoken to the Council. He also added that what sells newspapers is not always the full story.

Jean Sinnott, 131 Purchase Street, referred to statements made by Chantal Detlefs and said that the City made a mistake and the Council has it within their power to settle the Schubert matter. She also asked why the Gates attorney was involved in the matter? Mayor Otis said that

when it was arranged that the hydrology engineer was coming to Rye, he called and asked for permission to come on to the private properties involved. Mr. Schubert gave his permission. The Gates are represented by an attorney and the proper procedure when an attorney is involved is for the City's attorney to contact their attorney to receive their permission, which has been done. Councilman Ball said the Council does not have the luxury of saying that a mistake has been made without determining what happened.

Ralph Vallone, Midland Avenue, thanked Councilwoman Parker for her help in a recent safety-related issue he brought to her attention.

(Councilman Pratt said that as he had notified the Council the previous day, he had to leave the meeting at this time due to a business commitment early the following morning.)

4. Public Hearing to amend changes to local law Chapter 191, Vehicles and Traffic, of the Rye City Code by amending Section 191-18, Subsection D(2) prohibiting all-night parking except that parking will be allowed on the westerly side of Theall Road, off the travel portion of said road from a point approximately four hundred thirty-five 435 feet north of its intersection with Osborn Road and running north for a distance of three hundred fifteen 315 feet
(Ministerial function only to close the public hearing. No action will be taken by the City Council.)

Mayor Otis opened the public hearing and said he was going to close it and table the matter until there was enough information available to resolve the matter.

(Agenda Items 5 and 6 were discussed together.)

5. Discussion to amend local law Chapter 191, Vehicles and Traffic, of the Rye City Code, Section 191-38, to extend the hours of meter operation from 6:00 p.m. to 9:00 p.m.

Councilwoman Parker said although she had originally been opposed to parking meters, she has come to accept that they are not going away and that they do provide the City with additional revenue. The reason she is proposing extending the time of meter operation to 9:00 p.m. is that the restaurants tend to draw people to the City from other communities. In good times the money from the parking meters has been set aside for improvements to enhance the pedestrian experience in the Central Business District and in bad time the money has gone back into the General Fund which offsets the property tax bill. Comments have been received from three restaurants, two are opposed to the extension and one is not opposed based on the fact that money from parking meters has gone into the Central Business District in the past. Councilwoman Parker suggested changing Car Park No. 3, the small lot on the south side of Smith Street, from two hour to three hour parking. She said this could benefit people coming into town to do more than one thing as well as diners in the evening who can't find a spot on Purchase Street. This change could also benefit part-time employees such as realtors who are not in their offices on a regular basis and, therefore, choose to feed the meters. Since this car park tends to be one of the least utilized lots, it could move these employees out of the more desirable lots for shoppers. Councilman Cunningham asked that City staff look at this idea from the bigger picture of not just revenue but merchants. Councilman Sack concurred with the idea of extending the hours of the parking meters. Mayor Otis said he would like to hear feedback from residents and storeowners before acting on these items and suggested that these items be put on

the next agenda for consideration of setting a public hearing. Corporation Counsel Plunkett said laws could be drafted reflecting the proposed changes and circulated within the next two weeks.

6. Discussion to amend local law Chapter 191, Vehicles and Traffic, of the Rye City Code, Section 191-20 to provide a new Three-hour parking limit for Car Park No. 3

(See discussion above.)

7. Assignment of Lead Agency and SEQRA on the Sluice Gate application
Roll Call.

Mayor Otis gave a status report on the City's application to the County for funding noting that the County has narrowed the list of communities in the lead for funds and the City is in the first group of four applications. Assistant City Manager Pickup said that the application must go through a public comment period and the action of the Council this evening would kick off that period in order to share it with other impacted organizations such as Rye Brook and Harrison and to allow for public comment. He said that if the application with the County goes forward the City would have completed the SEQRA process requirements. The comment period is 30 days.

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

RESOLVED, that the City Council declare its intent to be Lead Agency under SEQRA in connection with the Sluice Gate Flood Mitigation Project application submitted to Westchester County for Flood Action Program Funding.

ROLL CALL:

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

8. Consideration of proposed revision(s) of the Rules and Regulations of the City of Rye Police Department

Police Commissioner Connors said that both revisions were routine administrative procedures. The New York State Law Enforcement Accreditation Council has issued two new standards, one regarding sex offender monitoring and the other on the collection of DNA, which require a written directive be in place to codify procedures. Commissioner Connors confirmed that copies of the proposed revisions were submitted to the PBA on February 9, 2009 for their review and they have not commented.

Councilman Cunningham made a motion, seconded by Councilman Ball and unanimously carried to adopt two revisions to the Rules and Regulations of the City of Rye

Police Department, General Order #111.03, "Collection of DNA" and General Order #118.11, "Monitoring of Sex Offenders", as submitted.

9. Adoption of 2009 County property tax rates
Roll Call

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

RESOLVED, that the tax rates for the amounts of Westchester County, Blind Brook Sewer District, Mamaroneck Valley Sewer District and Refuse Disposal District charges for the fiscal year beginning January 1, 2009, shall be as follows:

<u>Westchester County</u>	
Levy	\$20,367,433
Taxable Assessed Value	139,233,189
Taxable Rate per \$1,000 Assessed Value	146.283
<u>Blind Brook Sewer District</u>	
Levy	\$3,005,638
Taxable Assessed Value	142,129,899
Taxable Rate per \$1,000 Assessed Value	21.147
<u>Mamaroneck Valley Sewer District</u>	
Levy	\$518,108
Taxable Assessed Value	20,597,286
Taxable Rate per \$1,000 Assessed Value	25.154
<u>Refuse Disposal District No. 1</u>	
Levy	\$1,978,689
Taxable Assessed Value	142,476,934
Taxable Rate per \$1,000 Assessed Value	13.888

And be it further

RESOLVED, that the Council does hereby certify to the City Comptroller the above stated levies and tax rates for Westchester County, Blind Brook Sewer District, Mamaroneck Valley Sewer District and Refuse Disposal District No. 1 charges, and the City Comptroller is hereby directed to apportion and extend against each taxable property listed upon the assessment roll of the City of Rye for 2009 at the rates specified, the amount of taxes required to produce the total sums certified and to render tax notices for, and receive and collect, the several sums computed and determined, and, it is further

RESOLVED, that the tax warrant of Westchester County be signed by the Mayor and directed to the City Comptroller to collect the amount of said taxes with interest as provided by law and any special assessment heretofore authorized and approved.

ROLL CALL:

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

The Resolution passed.

10. Consideration of request for permission to close a section of Purchase Street for the Rye Arts Center Street Fair to be held on Sunday, September 13, 2009

Peggy Hill, Executive Director of the Rye Arts Center, presented an overview to the Council regarding a new event that the Arts Center is considering sponsoring that could make the City of Rye a cultural destination. The free event could bring three to five thousand people into town and would attract professional artists creating chalk drawings on the street, which will wash away with the first rain, and also include fine arts vendors, a human chess game, a stage for entertainment utilizing Rye Arts Center teachers and students that would highlight the activities of the Arts Center. She said they hoped the food would come from the local restaurants and not from outside vendors. As far as parking is concerned, people can park at the train station on one end of the street and a shuttle service could be provided between the High School and the Library on the other end. Organizers have been speaking with possible corporate sponsors, not only for financing but also volunteers, and will approach Senator Oppenheimer and Assemblyman Latimer for State funding or grants. They are asking that the City consider this activity as it does other activities such as Window Painting and Mistletoe Magic that request closure of streets. It is understood that there will be a need for police coverage and the Arts Center will work with the City regarding reimbursement for the cost. There may not be enough time to plan this event for September 2009 and an alternate time would be in May 2010. Mayor Otis said that it sounds like an interesting idea but noted that the length of time that Purchase Street would be closed is longer than normally granted and asked if the event could possibly be held in a parking lot. Councilwoman Parker said she felt having the festival on Purchase Street would bring more people into the businesses than it would if it were held in a parking lot. Councilman Cunningham said that although he endorses the idea of the festival, he is troubled that the Board of the Arts Center has not adopted the idea yet. He thinks it would be better if the organizers meet with the City staff and work out the logistics of the event, such as what is done for the Triathlon, before the idea comes to the Council for approval. Councilman Ball asked if there was any information available from groups who have held similar events regarding any environmental impacts resulting from the chalk and particulates in the air. The consensus of the Council was that while they are generally supportive of the idea and willing to work with the Arts Center but need more specific details regarding costs and logistics before giving final approval. It was also suggested that a longer planning period for an event of the scope proposed could be more conducive to its success.

11. Discussion by the Mayor regarding opportunities for Federal Economic Stimulus Funding

Mayor Otis said that he had attended a few sessions in both Westchester and Albany on the Federal Stimulus Program. He said the City has already submitted over 20 projects for Federal Stimulus funding that were put together prior to the federal legislation passing. It will be very difficult to get funding for transportation projects because the federal requirements say that the normal federal approval process must be followed and the project must be "shovel ready" within 120 days so unless the project is already in the State TIP program decided by a Regional Transportation entity, it will generally not be eligible. An area where there is some hope is for Energy Efficiency Projects such as replacing street lights to LED lighting which brings a savings in electricity costs or getting solar panels for the Recreation Building as has been discussed in the past. These projects could qualify for 100% Federal funding. There does not appear that there are big pots of money for flood mitigation projects in the Stimulus Package; but the Regional Director of the State Department of Environmental Conservation (DEC) indicated there might be flood money available through the National Resources Conservation Service, a part of the Agriculture Department. The City will continue to look for areas where funding could be found that would match up with the City's Capital Projects Plan. In addition, the Mayor announced that Congresswoman Nita Lowey has secured a \$30,000 grant for police training and equipment that is separate from the Stimulus Program.

12. Miscellaneous communications and reports

There were no miscellaneous communications and reports to be discussed.

13. Old Business

Councilman Cunningham asked about the status of the oil tank abatement at the Department of Public Works. Assistant City Manager Pickup said that there is still some gravel that remains to be put back into the existing site but it will be filled and ready to go prior to the opening of Little League Baseball on April 1st. Mayor Otis noted that the removal of oil tanks is an area where there is Federal Stimulus money available and suggested staff contact the New York State Department of Environmental Conservation in connection with removing any remaining in-ground oil tanks on City property.

Councilman Sack asked that the topic of rocks in the right-of-ways be put on the March 25th meeting agenda.

14. New Business

Corporation Counsel Kevin Plunkett said that he was turning over a check to the City in the amount of \$6,231.70 representing a refund in connection with the Home Depot litigation.

Mayor Otis said he has heard concern about deer issues and possibly taking action on deer fencing. The Nature Center is looking at doing a deer fencing project on their property and there have been questions from residents about amending the fence law to allow for deer fencing. The Mayor referred to the Town of North Castle deer fence ordinance, which provides for mesh deer fences that are allowed to be two feet higher than normal fencing. He suggested the City review laws in other communities and consider amending the City fence law to allow for mesh, see through deer fencing. Councilman Ball said he made a site visit to the Nature Center as

liaison to the Zoning Board of Appeals to inspect the area where they intend to put up the temporary deer fencing in an attempt to reclaim an area of the forest that would be in place if the herd were not overly developed. He said the type of fence they propose to use is designed to not be visibly intrusive and to be taken down quickly. Mr. Ball said if the Council considers amending the fence law it should be precise as to the standards that would be acceptable.

15. Draft unapproved minutes of the special meeting of the City Council held February 18, 2009 and the regular meeting of the City Council held February 25, 2009

Councilman Cunningham made a motion, seconded by Councilman Ball and unanimously carried to adopt the minutes of the special meeting of the City Council held on February 18, 2009 and the regular meeting of the City Council held on February 25, 2009, as amended.

16. Adjournment

There being no further business to discuss, Councilman Cunningham made a motion, seconded by Councilman Ball and unanimously carried, to adjourn the meeting at 11:10 p.m.

Respectfully submitted,

Dawn F. Nodarse
City Clerk