

APPROVED MINUTES of the Regular Meeting of the City Council of the City of Rye held in City Hall on May 13, 2009 at 8:00 P.M.

PRESENT:

STEVEN OTIS, Mayor
MACK CUNNINGHAM
PAULA J. GAMACHE
CATHERINE F. PARKER
GEORGE S. PRATT (arrived at 8:35 p.m.)
JOSEPH A. SACK (arrived at 8:14 p.m.)
Councilmembers

ABSENT: ANDREW C. BALL

The meeting convened at 6:43 p.m. Councilman Pratt made a motion, seconded by Councilman Cunningham and unanimously carried to adjourn into Executive Session at 6:44 p.m. to discuss attorney/client matters and personnel. Mayor Otis made a motion, seconded by Councilman Cunningham and unanimously carried, to adjourn the Executive Session at 8:03 p.m. The Council reconvened at 8:11 p.m. at the Square House for the annual ceremonial meeting.

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.

Mayor Otis welcomed everyone to the annual Square House meeting. He said that Rye history is wrapped up in volunteer service and current officials share a bond with past officials who have served the City along with the professional staff. Those who serve and have served, share not only a continuity of service but also of dealing with challenges that confront the City such as flooding, planning for the Central Business District, parking and traffic safety. Even the issue of transportation across Long Island Sound has returned with a proposal for a tunnel. The City is currently facing severe financial challenges as have Councils in the past, and we will continue to face these challenges with "vigor and optimism". The Mayor announced that in the next few weeks there may be important news about the property across the street from Rye Country Day School. The City is expecting a decision from the Thruway Authority regarding a 15-year lease of the field. Mayor Otis concluded his remarks by saying he wanted to especially

honor the service of the late John Twomey and Edith Read, who had served the City well. He added that the Historical Society will have an exhibit honoring Edith Read, who was the first head of the Conservation Commission.

Mayor Otis then introduced Dr. Ruth Smalt, the Executive Director of the Rye Historical Society, who along with Laura Brett, the President of the Historical Society, welcomed everyone to the Square House and to the room where City Council meetings had been held until 1964. She said the City owns the building and the Historical Society maintains it. She invited everyone to an exhibit that the Historical Society would be running at the Knapp House beginning in mid-June on Rye Town Park in conjunction with the park's 100th Anniversary.

The Mayor next asked Council Members if they had any comments. Councilman Cunningham said that he felt it was very important that many former Council Members continued to serve the community after leaving office by serving on Boards and Commissions because they brought with them their added historical perspective. Councilman Sack likened the meeting to an "All Star Game", "Hall of Fame Induction" and "Old Timer's Game" all in one. He said that one is reminded that the faces on the portraits hanging in the current Council Chambers are still active in real life. He said a motto for the Historical Society could be "Rye History – Be Part of it". Councilwoman Gamache thanked City staff for their continued efficiency and the volunteers for the expertise and knowledge they bring to their work. She said we are all stakeholders who should pull together to get the City through these difficult financial times. Councilwoman Parker said this ceremony reminds her that buildings and people change but Rye stays Rye because people work together to keep it that way. She said in modification of the Marine motto "Semper Fi", Rye's motto could be "Semper Rye" or "Always Rye".

Acting City Manager Frank Culross then introduced the staff members who were in attendance:

William Connors	Police Commissioner
James Dianni	Fire Inspector
Peter Fox	Boat Basin Supervisor
Nicole Levitsky	Rye Cable TV Coordinator
Dawn Nodarse	City Clerk
Scott Pickup	Assistant City Manager
Kevin J. Plunkett	Corporation Counsel
Sally Rogol	Recreation Supervisor
Vincenzo Tamburro	Building Inspector

Mayor Otis welcomed former Mayors in attendance. *Ed Grainger* said it was always a pleasure to be at this meeting in the room where he had served and said it was good to hear complimentary thoughts about the Council. He said he believed it was not the job of former Councilmembers to usurp the job of the current Council. He said he had chaired the committee that worked to establish the Council/Manager form of government and hired the first City Manager. *John Carey* noted that when the move was made from the Square House to City Hall, the Rye Historical Society was organized to maintain the Square House. He referred to Ebenezer Haviland, who ran the Inn at the site of the Square House in 1774, and quoted him as saying "no man shall be taxed but by his own consent" when he gathered here with his friends to talk about

their problems with England. *Warren Ross* said he was glad to be here and see old friends and is reassured that the affairs of the City are in good hands. *Ted Dunn* said that Rye has existed for a long time and will continue to exist. He said everyone was doing a good job and thanked them for their service.

Former Councilmembers in attendance were also asked to offer remarks. *Bill Ball* said that seeing former Mayors Grainger and Carey interact brought back memories of his time on the Council. *Patricia Levine* said it was nice to be here and noted that she had been on the search committee when Frank Culross was originally hired as City Manager. *George Latimer* said it was a great honor to serve on the Council and that he did not remember disagreements with those he served with only the privilege of working with them. *Bob Cypher* said he was sorry to hear former Mayor Grainger say that once you leave office you should stay out of things.

County Legislator *Judy Meyers* said she was pleased to be at the meeting and was pleased to represent Rye and work with the Council. Acting City Court Judge *Richard Runes* thanked the Council for letting him serve and said he has learned a lot about Rye from serving on the bench.

The Mayor then acknowledged the following members of Rye Boards, Commissions and Committees:

- *Barbara Cummings*, Chair of the Planning Commission, who said it was a pleasure to serve with the other members of the Commission and praised City Planner Christian Miller for his hard work.
- *Anne Stillman*, Chair of the Landmarks Advisory Committee, said her Committee was conducting an inventory of all buildings in Rye 100-years old or older, which would be a great resource for the entire community.
- *David Cutner*, representing the Board of Architectural Review, said it was a great pleasure to serve and keep Rye looking like Rye. He also praised Building Inspector Vinny Tamburro for doing a great job.
- *Doug French*, Chair of the Recreation Commission, said that this night defines Rye. Many people in the room have worked together on many projects and generations come together through volunteerism and public service.
- *Sis D'Angelo*, representing the Senior Advocacy Committee, said the Committee was working hard to keep seniors in Rye. She praised the work that Committee Chair Marian Shea does as well as the great job the Recreation Department does for the seniors.
- *Serge Nivelles*, representing the Board of Appeals, said it was wonderful to be here and hear the stories and feel the unity. He said the staff, especially Vinny Tamburro and Christian Miller, does a great job.

The Mayor closed the historical portion of the meeting by thanking everyone for coming. The meeting reconvened in Council Chambers at 9:00 p.m.

Mayor Otis made a motion, seconded by Councilman Sack and unanimously carried, to adjourn into Executive Session to discuss a personnel matter at 9:01 p.m. Mayor Otis made a motion, seconded by Councilman Cunningham, and unanimously carried to adjourn the Executive Session at 9:14 p.m. The meeting reconvened at 9:15 p.m.

Mayor Otis made an announcement regarding Agenda Item #9 which was taken out of order.

9. Authorization for Acting City Manager beginning May 1, 2009
Roll Call.

Mayor Otis said that the Council appreciates all of the professional staff, but since the retirement of City Manager Paul Shew last month, the Council has decided that the best way to go forward was not to conduct a search for a new City Manager at this time. The Council has decided to keep Frank Culross as City Manager for the next year or so in order to keep his skills, which are necessary at this time. He said Assistant City Manager Scott Pickup, who will continue to serve in that role, will make a good partner for Mr. Culross. The Mayor said that according to the Charter it was necessary to authorize the continued employment of Mr. Culross from May 1st to May 27th, during which time he will serve as Interim City Manager, while the details of a long-term deal are worked out; at which time Mr. Culross will become City Manager. Councilman Sack said that, although he will vote in favor of the motion, it was not an easy decision because he was not sure if the City should go with a short-term or long-term solution. He said he knows Frank Culross is held in high regard, but he thinks that Scott Pickup is also qualified to serve as City Manager now. He said that since the City is currently without a Comptroller, this is the right decision at this time and the City is lucky to have both men.

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

RESOLVED that Frank Culross is hereby appointed Interim City Manager for the period May 1, 2009 through May 27, 2009

ROLL CALL:

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

NAYS: None

ABSENT: Councilman Ball

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

Robert Schubert, 980 Forest Avenue, asked for an agenda slot at the May 27th City Council Meeting to present an alternate hydrology study to the FPM study commissioned by the City Council relative to his pond at 980 Forest Avenue. He said he has a team of highly qualified university professors, hydrologists, geologists and licensed professional engineers who believe insufficient testing was done. He said he wants an additional independent study of the facts, including subsurface conditions on the Gates property, and has requested permission for access to their property. Mayor Otis said it was up to the Gates to decide if they would provide access to their property, but the City has agreed to provide access to the City facilities that he has

requested. Mr. Schubert contended that the City must do something to see that he can get a good answer. The Mayor said that the first engineer who made a judgment about the situation was the City Engineer. The City then spent City dollars to hire an independent engineer to evaluate the situation. However, the City would be willing to see anything that the experts that Mr. Schubert has hired want to show them. Councilman Pratt offered to help Mr. Schubert close the open valves in the pond that control the flow of water out of the pond in order to assist in raising the water level in the pond. Mr. Schubert admitted that if the valves were closed the pond would fill in approximately a day and a half but contended that the rate of flow of water into the pond has decreased and at the current rate of flow, the pond does not circulate enough to keep it clean. Mr. Schubert said there were discussions held with the Planning Commission at the time the pond was constructed regarding the rate of flow. Mr. Pratt said he would ask the City Manager to provide him with any information from the Planning Commission relative to those discussions. Mr. Schubert also suggested that the Council refer to the memorandum submitted by former Mayor John Carey at the last meeting entitled "Hydrology 101" that contained his suggestions for dealing with the situation. Councilman Pratt said that although Mr. Carey was entitled to his opinion, he does not necessarily agree with it. He believes it is the responsibility of elected officials to come up with solutions that are within their legal rights and the City may not have the right to compel the Gates to participate in another study, which would be a decision for the Corporation Counsel.

Sis D'Angelo, 90 Wappanocca Avenue, asked about the status of the Peck Avenue pump station and inquired as to when the sidewalk would be reopened. Interim City Manager Culross said that the City has finally received approval from the County to operate the pump station, which is now in testing mode for the new system. He added that the sidewalks should be finished within a few weeks.

Ray Tartaglione provided an update on the situation on Hen Island. He said that the Kuder Island Colony Corporation has sent a letter to shareholders instructing everyone to remove propane tanks from the Island and for those houses with electrical equipment to get inspections. He said he was on the Island that day with electrical inspectors who inspected seven cottages and wrote violations, which will be corrected. He added that a clean up has been done and improvements are starting to happen. He added that the sewage and potable water issues have not be dealt with yet and he wants to come back at the next meeting to show photographs that were not viewable at the last meeting due to camera problems.

4. Public hearing to adopt a local law amending Article X, "Swimming Pools" Sections 157-66 through 157-79 of the City Charter of the City of Rye

Mayor Otis opened the public hearing and asked City Building Inspector Vinny Tamburro to provide an overview of the amendment. Mr. Tamburro said the reason for the change is to bring the local law into conformity with the State building code. He said that some of the language in the City's current law makes the Code less restrictive than the State Code, which is not allowed. Councilman Sack suggested that the changes should be put on the City website in order to educate private pool owners of the change. Mayor Otis asked if anyone from the public wanted to comment on the proposed local law. There being no comment, he closed the public hearing.

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

**LOCAL LAW
CITY OF RYE NO. 4 OF 2009**

**A Local Law amending Chapter 157, Sanitary Regulations, Article X, Swimming Pools,
Sections 157-66-79 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.

§ 157-66. Compliance required.

No swimming pool shall be constructed, installed or maintained on any premises within the City of Rye unless it complies with the provisions of this article.

§ 157-67. Use of terms.

“Swimming pool” as used in this Code means any structure intended for swimming, recreational bathing or wading that contains water over 24 inches (610 mm) deep. This includes in-ground, above-ground and on-ground pools; hot tubs; spas; portable pools; temporary pools and fixed-in-place wading pools.

§ 157-68. Application for permit.

- A. No person shall construct or install a swimming pool without having first applied for and received approval from the Board of Architectural Review and received a permit from the Building Inspector. Such applications shall be accompanied by plans and specifications and in sufficient detail showing the following:
- (1) Pool dimensions, depths, and the distance of the pool from all lot lines, pool fencing, existing and proposed structures and septic tanks and their fields, if any.
 - (2) Pool construction, including details of materials to be used, water supply, type and size of filter system, pump details and capacity, drainage, waste disposal facilities and pool piping layout.
 - (3) Pool fencing, lighting layout and estimated cost.
 - (4) For public pools provide proof of Westchester County Health Department reviews and/or approvals.
- B. Plans shall be prepared or approved and signed by a registered architect or licensed professional engineer.
- C. The Building Inspector, after finding that the application and plans and specifications comply with the provisions hereof, shall approval of the issuance of a permit for the construction or installation of such pool.

§ 157-69. Construction and maintenance.

- A. Every pool shall be constructed of materials sufficient to ensure against collapse thereof and leakage of water therefrom.
- B. Filter pumps and mechanical devices used in connection with any pool shall be set back from the adjoining premises in accordance with the Zoning Code and be so constructed as not to interfere with the comfort, repose, health, peace or safety of the occupant of the adjoining premises.
- C. Aprons of suitable material shall be installed around the pool and shall be pitched to drain water away therefrom.
- D. All pool facilities shall be kept clean and in a sanitary condition.
- E. All pools shall be constructed in accordance with the latest editions of the Building Code of New York State and the Residential Code of New York State as amended from time to time. Such requirements are incorporated herein by reference.

§ 157-70. Water supply.

Cross-connection between the piping system of a swimming pool and a potable water system is prohibited. If water for any pool is supplied from a potable water system, the inlet or fill pipe shall be located at least six inches above the overflow of such pool.

§ 157-71. Drainage.

- A. A swimming pool shall be provided with at least one metal grated outlet for drainage of pool water and for backwash water disposal. Such outlet shall have an area of openings at least four times the cross-sectional area of the drainpipe. The drainpipe shall be equipped with a gate valve located outside the walls of the pool and be connected to a storm sewer if it is available, and the backwash shall drain to a sanitary sewer if it is available. If a storm sewer or sanitary sewer is not available, the Building Inspector, with the approval of the City Engineer, will designate the disposal method or methods.
- B. Pool water discharged into a brook or stream must comply with the disinfection and bacteriological regulations issued by the Health Officer of the city or, if none, by the Westchester County Department of Health.

§ 157-72. Abandonment of pools.

If the use of any swimming pool shall be abandoned or permanently discontinued, the owner shall completely fill the pool and return the surface of the ground to its original grade and approximately to the same condition as existed before the pool was constructed.

§ 157-73. Existing pools.

Swimming pools existing on the effective date of this article shall comply with §§ 157-69D, 157-71B and 157-72 of this article.

§ 157-74. Enforcement.

It shall be the duty of the Building Inspector and health officials to enforce the provisions of this article. They may enter premises for the purpose of determining compliance therewith.

§ 157-75. Penalties for offenses.

Any person violating any of the provisions of this article shall, upon conviction thereof, be punished by a fine not exceeding \$250 or by imprisonment for a period not exceeding 30 days, or by both such fine and imprisonment. Each day the violation exists shall constitute a separate violation.

§ 157-76 (Reserved)

§ 157-77 (Reserved)

§ 157-78 (Reserved)

Section 3.

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.

Section 4.

This local law shall take effect immediately upon filing with the Secretary of State.

ROLL CALL:

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

5. Consideration to set a public hearing on June 10, 2009 for cost allocation in connection with the Kirby Lane North Sewer improvement project

Mayor Otis said that the City was able to get a lower rate for bonding for this project from the New York State Environmental Facilities Corporation, which will save money for the homeowners involved.

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

WHEREAS, the City Council of the City of Rye voted in February, 2005 to create the Kirby Lane North Sanitary Sewer Special Assessment District to provide a sanitary sewer improvement benefiting 30 residents on Kirby Lane North and Grace Church Street in response to a petition signed and authenticated by more than 66 2/3% of the 30 property owners within the district pursuant to Chapter 128 of the Rye City Code and following a public hearing; and

WHEREAS, section C22-4 of the Charter of the City of Rye provides for the holding of a public hearing on the assessment of the cost for that sanitary sewer improvement on the benefited properties; and

WHEREAS, it is now desired to call a public hearing on such proposed application, now, therefore, be it

RESOLVED, by the Council of the City of Rye as follows:

Section 1. Pursuant to Section 20 of the Municipal Home Rule Law and the Charter of the City of Rye, New York, a public hearing will be held by the Council of said City on June 10, 2009 at 8:00 P.M. at City Hall, Boston Post Road, in said City, for the purpose of affording interested persons an opportunity to be heard concerning such proposed local law.

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

**PUBLIC NOTICE
CITY OF RYE**

Notice of Public Hearing on the proposed cost assessment on the benefited properties of the Kirby Lane North Sanitary Sewer Special Improvement District

Notice is hereby given that a public hearing will be held by the City Council of the City of Rye on the 10th day of June, 2000 at 8:00 P.M. at City Hall, Boston Post Road, in said City, at which interested persons will be afforded an opportunity to be heard concerning the proposed cost assessment on the benefited properties of the Kirby Lane North Sanitary Sewer Special Improvement District.

Copies of said resolution may be obtained from the office of the City Clerk. Materials on the cost assessment may be obtained through the office of the City Comptroller.

Dawn F. Nodarse
City Clerk

Dated: May 29, 2009

6. Consideration to set a public hearing to amend Chapter 191, Vehicles and Traffic, of the Rye City Code by amending Section 191-9 A, left-hand turns, and Section 191.9.1, right-hand turns, to remove Garver Drive from the prohibited roads

Councilman Cunningham noted that the prohibitions on right and left-hand turns at the intersection of Garver Drive and Theall Road were implemented by the City Council as part of the Planning Commission approval process for the development of commercial buildings in the area as a result of neighbor concerns about traffic. He said he believed the restrictions were no longer applicable due to the traffic flow in the area and it was time to take the restrictions off the books.

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

WHEREAS, the Council wishes to amend Chapter 191, Vehicle and Traffic, by amending Sections 191-9 Subsection A, Left turns, and 191-9.1, Right turns, by deleting Garver Drive from the streets where left-hand and right-hand turns are prohibited ; and

WHEREAS, it is now desired to call a public hearing on such proposed amendments to the law, now, therefore, be it

RESOLVED, by the Council of the City of Rye as follows:

Section 1. Pursuant to Section 20 of the Municipal Home Rule Law and the Charter of the City of Rye, New York, a public hearing will be held by the Council of said City on June 10, 2009 at 8:00 P.M. at City Hall, Boston Post Road, in said City, for the purpose of affording interested persons an opportunity to be heard concerning such proposed local law.

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

**PUBLIC NOTICE
CITY OF RYE**

Notice of Public Hearing on a proposed local law to amend Chapter 191, Vehicles and Traffic, by amending Sections 191-9 Subsection A, Left turns, and 191-9.1, Right turns, by deleting Garver Drive from the streets where left-hand and right-hand turns are prohibited.

Notice is hereby given that a public hearing will be held by the City Council of the City of Rye on the 10th day of June, 2009 at 8:00 P.M. at City Hall, Boston

Post Road, in said City, at which interested persons will be afforded an opportunity to be heard concerning a proposal to amend Chapter 191, Vehicles and Traffic, by amending Sections 191-9 Subsection A, Left turns, and 191-9.1, Right turns, by deleting Garver Drive from the streets where left-hand and right-hand turns are prohibited.

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

Dawn F. Nodarse
City Clerk
Dated: May 29, 2009

7. Consideration of proposed revision of the Rules and Regulations of the City of Rye Police Department

Interim City Manager Culross said the proposed change would clarify the procedures for processing fire arms that come into the custody of the Police Department that have been unlawfully possessed. He said that there have been no negative comments received from the Police Union.

Councilman Cunningham made a motion, seconded by Councilman Pratt and unanimously carried to adopt the revision to the Rules and Regulations of the City of Rye Police Department, General Order #111.04, "Processing of Recovered Firearms: 'Crime Guns'", as submitted.

8. Discussion of obstructions in the right of way

This item was deferred to the next meeting.

9. Authorization for Acting City Manager beginning May 1, 2009
Roll Call.

This agenda item was taken prior to item #3.

10. Miscellaneous communications and reports

Councilman Cunningham said that during the reconstruction of Theall Road a stop sign was put up at the intersection of Theall Road and Garver Drive that does not meet the requirements of the City's Stop Sign Policy or the standards of New York State and he would like the City to remove it. Interim City Manager Culross said the stop sign was put in by mistake and would be removed.

Councilwoman Gamache said the "Butterfield's Picnic and Book Sale" would be held by the Library this coming weekend. There will be a preview party held on Saturday evening, May 16th for a charge of \$25 per person.

11. Old Business

Councilman Cunningham said the Recession Planning Task Force has been meeting regarding the financial challenges facing the City in terms of elastic revenues this fiscal year. They are drafting and will make public at the last meeting in May, the plans that are being put in place for this year and the challenges going ahead in 2010. The Finance Committee will be engaged for recommendations for opportunities. The message will be clear about the challenges this Council and future Councils will face regarding the recession. There will be significant changes in the levels of services and challenges regarding contract employees as far as future opportunities that they may see. There will be a significant undertaking to make sure that the tax impact to the tax payers in Rye can be minimized.

12. New Business

Councilman Cunningham said the City has received the 2007 numbers from the Town of Rye regarding the park. He said the Finance Committee made a commitment during the last budget process to review the numbers and asked if this had been done. Mayor Otis said that he and Mr. Culross have spoken about the specific problems with the 2007 numbers supplied by the Town of Rye and would refer it to the Finance Committee. Councilman Pratt said that because the City picks up half of the cost of the operation of Rye Town Park but does not have equal representation in terms of the management, a situation has been created that causes a disconnect between the bill received at the end of the year and what the City believes the operation of the park actually is. He said he does not want the City to be in the situation where revisionist accounting is used to achieve political goals in another municipality at the expense of the taxpayers of the City of Rye.

Councilman Cunningham pointed out that since July 4th falls on a weekend this year, he would like to get a memo outlining the estimated overtime costs that the Police Department may incur relative to activities at Playland over the holiday weekend.

13. Draft unapproved minutes of the regular meeting of the City Council held April 29, 2009

Mayor Otis made a motion, seconded by Councilman Cunningham and unanimously carried to approve the minutes of the regular meeting of the City Council held on April 29, 2009.

14. Adjournment

There being no further business to discuss, Mayor Otis made a motion, seconded by Councilman Cunningham and unanimously carried, to adjourn the meeting at 10:15 p.m.

Respectfully submitted,

Dawn F. Nodarse
City Clerk