

***APPROVED MINUTES*** of the Regular Meeting of the City Council of the City of Rye held in City Hall on June 10, 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 7:10 p.m. Mayor Otis made a motion, seconded by Councilman Cunningham and unanimously carried, to adjourn into Executive Session at 7:11 p.m. to discuss personnel matters. Mayor Otis made a motion, seconded by Councilman Cunningham and unanimously carried, to adjourn the Executive Session at 8:00 p.m. The regular meeting convened at 8:04 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 started the meeting with the following announcements and congratulations:

- Congratulations to the Rye High School Lacrosse team, who were recently eliminated from the playoffs in their championship game, for their good year.
- Congratulations to Ryan Feeley who was honored by the Lions Club with their Athlete of the Year award.
- Congratulations to Corporation Counsel Kevin Plunkett, Deputy Corporation Counsel Kristen Wilson and consultants Laura Tessier and Kevin Phillips for their work, which resulted in the Administrative Law Judge in the Beaver Swamp Brook matter issuing a decision that stopped Harrison from getting a permit to add additional fill. There will

now be a full adjudication hearing on the merits of the request and the City will have full-party status in the matter.

- A note of appreciation to all the groups that participated in the recent workshop on the September 11<sup>th</sup> Memorial Gazebo. Their thoughtful discussion led to a decision on where to locate the Gazebo.
- A grant of \$350,000 has been awarded from the New York State Office of Parks, Recreation and Historical Preservation for the purchase of the Bird homestead property. The property will be saved entirely from funds coming from either grants or outside funds raised by the Save the Bird Homestead Committee.

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

*Sis D'Angelo, 110 Wappanocca Avenue*, came to thank the City for finishing the work on the Peck Avenue sidewalk. She also offered thanks to City Manager Culross and Councilwoman Parker for having a flower pot removed from a sidewalk on Purchase Street that was blocking access to a handicapped parking space.

*Henry King, 76 Coolidge Avenue*, said the flag on the old Biltmore Jeep building was in bad condition and should be removed and properly disposed of.

*Greg Faughman, 131 Purchase Street*, thanked the Council for not extending the parking meter hours into the evening.

*Steve Feeney, 54 Hughes Avenue*, responded to the memorandum read at the last City Council meeting by former Mayor John Carey, on behalf of himself and three other residents, regarding the Osborn litigation. Mr. Feeney it was important to contravene the misinformation propagated in the memo. His presentation, developed from his personal files on the matter, touched on the following points:

- The action consists of three parties (The Osborn, City of Rye and School District) and was commenced by The Osborn.
- The issue is real estate taxes imposed on The Osborn from 1996 on, as a result of the "Osborn 2000" Renovation/Expansion project that changed the business operation model of the facility.
- There are three legal issues: the charitable exemption The Osborn has held since 1892, the hospital exemption and the assessed value of the land and buildings.
- The Court ruled: (1) The Osborn was no longer entitled to the charitable exemption; (2) the hospital exemption was based on square footage and only applied to 18% of the facility, making the remaining 82% of the facility taxable; and (3) The Osborn's assessed valuation methodology was accepted and upheld. The rulings are being appealed.
- Since 1997 \$20 million in tax revenue has been collected from The Osborn.
- Contrary to claims made that the litigation has cost \$15 million, the defense expenses have been \$8.7 million (94% incurred by the School District and 6% by the City).
- The School District has received \$12 million in revenue, the City has received \$4 million and the County has received \$4 million. Based on the Court's decision, the School

District refunded \$2.8 million and the County refunded \$900,000, the 18% portion of taxes collected that represented the hospital exemption. The City has not refunded its portion of the 18% yet (currently with interest approximately \$1 million).

- If litigation figures are subtracted from the amount collected in taxes, the net “profit” to the School District is \$1 million, to the City is \$3.5 million (without refunding the 18%) and to the County \$3.1 million, representing \$7.6 million in revenue to the three jurisdictions.
- The Osborn could change their business model to allow for tax breaks for their residents.
- Settlement discussions were held without attorneys at least three times among representatives of the three parties.
- Settlement proposals failed. The City and School District would not agree to a proposal that cut the County of Westchester out of the picture and split the County’s portion of the tax. The 50-year PILOT (Payment In Lieu Of Taxes) proposal was too low.
- There has been no mention of the 1970’s PILOT negotiated with The Osborn for the last 25 years.
- The Osborn’s strategy is to delay. Bonds sold by the New York State Dormitory Authority in 2000 for The Osborn project represented the facility as being tax-exempt. If no longer a tax-exempt facility the bonds will become taxable.

Councilman Cunningham thanked Mr. Feeney for his presentation and asked that it be put on the City website.

*Joe Murphy, 57 Franklin Avenue*, spoke about Highland Hall and developments relative to major construction improvements. There is a proposal to add a \$15 per room increase to the rent. He urged the City to pass a Resolution that would make senior citizens eligible for SCRIE (Senior Citizen Rent Increase Exemption), which would exempt senior citizens living in Highland Hall from paying the proposed increase. Corporation Counsel Plunkett said that his office will work on the appropriate documentation for the July 15<sup>th</sup> meeting. Mayor Otis pointed out that capital improvement increases become a permanent part of the rent.

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

**WHEREAS**, the Council wishes to amend Chapter 177, Taxation, of the Code of the City of Rye for the purpose of adding a new Article XI “Abatement for Rent-Controlled and Rent-Regulated Property occupied by Senior Citizens or Persons with Disabilities”; 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 July 15, 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 177, Taxation, of the Code of the City of Rye, for the purpose of adding a new Article XI “Abatement for Rent-Controlled and Rent-Regulated Property occupied by Senior Citizens or Persons with Disabilities.**

Notice is hereby given that a public hearing will be held by the City Council of the City of Rye on the 15th day of July, 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 177, Taxation, of the Code of the City of Rye for the purpose of adding a new Article XI “Abatement for Rent-Controlled and Rent-Regulated Property occupied by Senior Citizens or Persons with Disabilities.

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

Dawn F. Nodarse  
City Clerk  
Dated: July 3, 2009

*Ray Tartaglione*, asked for clarification as to what had happened to the letter he provided to the City regarding conditions on Hen Island. City Manager Culross said it has been forwarded to the County Health Department by the City Building Department. Mr. Tartaglione asked if the City was going to inspect the septic systems or potable water systems on the Island. Mr. Culross reiterated that the County Health Department is responsible for inspections related to that portion of the Code. Mr. Tartaglione showed photos of water collection troughs on Hen Island and asked why the City allowed it to continue. Mayor Otis said that the City has been very solicitous to Mr. Tartaglione and has taken his issues seriously by referring his letter to City staff and the County but does not know what else the Council can do for him. He referred him to the City Manager for discussions on how his issues were being handled. Mayor Otis suggested that Mr. Tartaglione bring his concerns about the County Health Department to the County Board of Legislators. Mayor Otis asked for a voice vote of the Council regarding this suggestion. All members of the Council unanimously agreed.

4. Public hearing on proposed cost assessment on the benefited properties of the Kirby Lane North sewer project

Mayor Otis opened the public hearing. City Manager Frank Culross said that a residents' meeting had been held the prior week in order to answer questions regarding the Kirby Lane North Sanitary Sewer Special Assessment District, which consisted of 30 homes that received sanitary sewer improvements. Additionally, the City facilitated 12 of those properties in receiving water and gas improvements. The County Health Department has signed off on the improvements. This public hearing is the final step in the process in order to assess the cost of the project to the property owners. The amount can be paid in a lump sum or in special assessments over a 30 year period. The City received temporary funding through the New York State Environmental Facilities Corporation (EFC) and the bonding for the permanent funding will take place in the Fall. The assessment will be divided equally and the actual assessments will be based on what the bonds sell for. The City spent \$400,000 on storm drain improvements and paving improvements that were done at the same time. Mayor Otis added that the portion of the funding that is coming from the EFC is at a lower rate than the portion the City will bond for and, therefore, will lower the cost to the residents. Mayor Otis asked if there was any public comment. There being none, he closed the public hearing.

Councilman Pratt made a motion, seconded by Councilwoman Parker to adopt the following resolution:

**WHEREAS**, the City Council of the City of Rye voted on February 16, 2005 to create a special assessment district to provide sanitary sewer improvement benefitting 30 property owners within a district known as the "Kirby Lane North Sanitary Sewer Special Assessment District" in response to a petition filed by those residents and following a public hearing and;

280 Grace Church Street (146-8-2-19)	350 Grace Church Street (146-8-2-33)	7 Kirby Lane North (146-8-1-20)
286 Grace Church Street (146-8-29-2)	355 Grace Church Street (146-8-1-11)	9 Kirby Lane North (146-8-1-19)
289 Grace Church Street (146-8-1-24)	360 Grace Church Street (146-8-2-32)	11 Kirby Lane North (146-8-1-18)
290 Grace Church Street (146-8-2-29-1)	365 Grace Church Street (146-8-1-10)	12 Kirby Lane North (146-8-1-17)
300 Grace Church Street (146-8-2-29-3)	370 Grace Church Street (147-5-1-8)	14 Kirby Lane North (146-8-1-16)
309 Grace Church Street (146-8-1-23)	385 Grace Church Street (146-8-1-9)	15 Kirby Lane North (146-8-1-4)
320 Grace Church Street (146-8-2-31)	3 Kirby Lane North (146-8-1-22)	16 Kirby Lane North (146-8-1-15)

330 Grace Church Street (146-8-2-34)	4 Kirby Lane North (146-8-1-14)	18 Kirby Lane North (146-8-1-7)
331 Grace Church Street (146-8-1-13)	5 Kirby Lane North (146-8-1-21)	25 Kirby Lane North (146-8-1-5)
345 Grace Church Street (146-8-1-12)	6 Kirby Lane North (146-8-1-8)	27 Kirby Lane North (146-8-1-6)

**WHEREAS**, cost of the sanitary sewer improvement project has now been established by the City Engineer at \$2,435,835 and;

**WHEREAS**, the City of Rye will finance these costs through funding received from the Environmental Facilities Corporation (EFC) in the amount of \$2,373,374 (30 years @ 2.75%) and through bonding by the City in the amount of \$62,461 (30 years @ 5.00%) totaling \$2,435,835 and;

**WHEREAS**, the City Council hereby establishes December 31, 2009 as a date certain up to which a person may pay the entire sum in the full amount of \$81,195, or pay an annual special assessment of \$4,042 and;

**(\*Rates and annual amounts are estimated based on current available information. The Interest Expense will be determined at the time of the sale of the EFC bonds.)**

**WHEREAS**, in addition to providing sanitary sewer improvements, water/gas improvements were provided to the following (12) twelve properties within the “Kirby Lane North Sanitary Sewer Special Assessment District”:

5 Kirby Lane North 146-8-1-21	6 Kirby Lane North 146-8-1-8	7 Kirby Lane North 146-8-1-20
9 Kirby Lane North 146-8-1-19	11 Kirby Lane North 146-8-1-18	12 Kirby Lane North 146-8-1-17
14 Kirby Lane North 146-8-1-16	15 Kirby Lane North 146-8-1-4	16 Kirby Lane North 146-8-1-15
18 Kirby Lane North 146-8-1-7	25 Kirby Lane North 146-8-1-5	27 Kirby Lane North 146-8-1-6

**WHEREAS**, the City of Rye will finance these costs through bonding in the amount of \$20,044 (30 years @ 5.00%), now, therefore, be it

**WHEREAS**, The City Council hereby establishes December 31, 2009 as a date certain up to which a person may pay the entire sum in full amount of \$1,670 or pay an annual special assessment of \$109 and, now therefore be it;

(\*Rates and annual amounts are estimated based on current available information.)

**RESOLVED**, that the City of Rye approves the above referenced cost assessments related to the Kirby Lane North Sanitary Sewer Special Assessment District sanitary sewer improvement project and water/gas project.

ROLL CALL

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

NAYS:

ABSENT: Councilman Cunningham

5. 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

Mayor Otis opened the public hearing. Councilman Cunningham said that the original restrictions on left and right-hand turns at Garver Drive were unnecessary and unenforceable and the proposed local law had been endorsed by the Traffic and Transportation Committee. City Manager Culross said the restrictions had been created as a result of a Planning Commission Resolution for a traffic issue that never materialized. Mayor Otis asked if there was any public comment. There being none, he closed the public hearing.

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

**LOCAL LAW  
CITY OF RYE  
LOCAL LAW NO. 5 2009**

**A local law amending Chapter 191, Vehicles and Traffic, of the Code of the City of Rye by amending Section 191-9, Subsection A, Left turns, by deleting Garver Drive from the streets where left-hand turns are prohibited and amending Section 191-9.1, Right turns, by deleting Garver Drive from the streets where right-hand turns are prohibited**

Be it enacted by the Council of the City of Rye as follows:

**Section 1. Subsection A of Section 191-9 of Chapter 191, Vehicles and Traffic, of the Code of the City of Rye is hereby amended to read as follows:**

**§ 191-9. Left turns.**

A. Left-hand turns are prohibited as described below during the hours indicated:

Location	Hours
Apawamis Avenue and Milton Road	7:30 a.m. to 8:30 a.m., Monday through Friday
From Boston Post Road at the intersection southbound with Cross Street (rear of police booth)	
Boston Post Road northbound at Liberty Lane (rear of flagpole)	
At the intersection of Cedar Street and the ramp leading to the westbound side of Station Plaza	7:30 a.m. to 8:30 a.m.
From the Citibank exit onto Cross Street	
From Cross Street at the driveway into Citibank	
Elm Place at Purchase Street	
From Grandview Avenue into the Rye Country Day School driveway closest to Cedar Street	
From Grandview Avenue into the Rye Country Day School driveway closest to Elizabeth Street	
At the high school parking lot exit and Milton Road	7:30 a.m. to 8:30 a.m., Monday through Friday
From the Oakland Beach Avenue driveway exit of 520 Milton Road	
At the driveway of Osborn School leading onto Boston Post Road	When school is in session, from 8:00 a.m. to 9:00 a.m. and 2:30 p.m. to 3:30 p.m.
From Palisade Road at Milton Road	
From Rye Country Day School's driveways	

closest to Hillside Avenue onto the Boston  
Post Road

Smith Street at Purchase Street

From the YMCA parking lot onto Mead  
Place

**Section 2. Section 191-9.1 of Chapter 191, Vehicles and Traffic, of the Code of the City of Rye is hereby amended to read as follows:**

**§ 191-9.1. Right turns**

Right-hand turns are prohibited as described below during the hours and days indicated:

<b>Location</b>	<b>Hours; Days</b>
From Mead Place onto YMCA parking lot	
From Rye Country Day School's driveway on the easterly side of Grandview Avenue closest to Elizabeth Street	

**Section 3. This local law will take effect immediately upon filing in the Office of the Secretary of State.**

**ROLL CALL**

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

NAYS: None

ABSENT None

6. Presentation on the Hydrology report regarding 980 Forest Avenue

William Canavan, a hydrogeologist with the firm of HydroEnvironmental Solutions, Inc. (HES) presented a report on the drainage and a hydrogeologic review of 980 Forest Avenue, the property owned by Robert and Rita Schubert. Mr. Canavan outlined what his firm did and how their work related to the studies done by FPM Group for the City and to the drywell project on 3 Magnolia Lane.

- The field investigation involved walking the Schubert property, the Martin property at 950 Forest Avenue as well as Forest Avenue and Magnolia Place. The Gates property at 3 Magnolia Place was surveyed from the Martin property. HES did not have access to the Gates property.
- A file review was conducted of City files and the FPM report.
- Prior to drainage work done at 3 Magnolia Place in 2006 there was a high outflow into the Schubert pond, characteristic of an oligotrophic pond with the flow substantial or adequate even in drought conditions at approximately 42 gallons per minute. The pond is fed by both surface water and ground water. The ground water is referred to as base flow because it is there on a year round basis.
- Subsequent to the drainage work at 3 Magnolia Place, there is a high degree of eutrophication or lesser quality of water, a lower turn over rate and decreased base flow.
- No detailed hydrogeologic evaluation and subsurface investigation have been completed to determine the relationship between the drywell, the “French drain” and the pond.
- The drywell installation does not appear to have followed proper procedure and design requirements in the City Code.
- The Gates “as-built” plan does not show the connection from the drywell to the French drain that was shown on the “pre-built” plan; the “pre-built” does not show a basement sump pump discharging into the drywall, which is shown on the “as-built” without a discharge location; and the “pre-built” and “as-built” both show two inlets but according to the FPM report only one inlet is present in the drywell.
- The drainage system design for 3 Top Sail Lane also done in 2006 includes test data such as test pit logs, percolation rate tests and stormwater runoff calculations used to design drywells, which were not done for 3 Magnolia Lane project.
- The FPM report concluded that the only way Mr. Gates could have affected the local water balance into Mr. Schubert’s pond was to hard pipe the runoff from his roof to the street and, therefore, did not divert stormwater from his property and all runoff water eventually enters the pond.
- HES does not agree with several FPM conclusions. (1) If the drywell was installed in a manner where it provided a preferential flow pathway from the “French drain” the groundwater base flow could have been disrupted, and, (2) the drywell may be acting as a groundwater sink.
- There is multiple “layer cake” geology over the “French drain”. If the drywell was installed and breached the clay layer, ground water could migrate downward and the flow to the pond could be intercepted.
- FPM suggested diverting stormwater runoff from Forest Avenue into the pond but HES does not agree because of the poor quality of the runoff.
- FPM suggested drilling a well to augment flow to the pond. HES believes that flow from a shallow well would be poor and would de-water quickly. A bedrock well would be more expensive and would be a 300-500 foot well to get a flow of 10-30 gallons per minute. If the well were over pumped there could be saltwater intrusion or the water quality could be poor.
- The FPM suggestion that HES agreed with in general is connecting the Gates’ drywell to the pond but a determination must be made of a connection between the drywell and the “French drain”.
- HES believes many FPM claims are poorly substantiated.

- HES recommends dye testing (also suggested by FPM) as well as subsurface evaluation including test pits and long-term monitor wells to determine if the Gates drywell is acting as a groundwater sink.

Council comment and questions included:

- The detail referred to in the plans for 3 Top Sail Lane was required because the project went before the Planning Commission.
- Work was done on 1000 Forest Avenue, 950 Forest Avenue, 3 Top Sail Lane and 3 Magnolia Place; properties that are all part of a an eight to ten acre watershed area.
- In December 1994 the Planning Commission approved a plan that reduced the average depth to one foot and would not replace the wetland with a pond. (HES interpretation is that the City approved the pond enhancement but told the Schuberts to leave the ephemeral wetland upgrading upstream alone.)
- Could 60,000 gallons of water flow through a narrow channel in a wetland on a daily basis and only leave a six inch deep by 40 square foot area? (Yes)
- The sluice gate created a pond and the pond level is larger than the original area.
- What is the flow of water currently? (Approximately 5 gallons per minute)
- A great deal of information could be learned by performing a dye test.
- There were five drywells put in during the 3 Top Sail Lane construction project that is closer to the Schubert property than the Gates' property. If there was extensive water control work done at a structure closer to the Schubert residence and pond than the Gates property or their drywell, is it possible that the runoff from the Top Sale Lane property could have been arrested and negatively impacted the flow of water into the pond? (It is possible but much of the water from Top Sail lane would likely have flowed downhill to Forest Avenue and would not have been coincident to the flow in the French drain.)
- The FPM presentation indicted that water table changes occur unpredictably but with some regularity, can be isolated to certain spots and can occur on relatively short notice. Is that a stretch? (Seasonally, in that area the water table fluctuates a couple of feet up and down. If flow is disturbed with subsurface structures it can impact the flow of groundwater.)
- Are there any other inflows going to the pond? (Yes. There is a neighboring property that has an easement and drains to it.) The Martin project does not show detail of pipes going from their work into the Schubert pond. An agreement made with the Schuberts is in violation of the permits.
- There was no approval for the sluice gate. An artificial pond was created without a permit. Was there a permit required or granted for the construction of the sluice gate? (Mrs. Schubert contended that they had received a wetland permit to do the work.)
- FPM conducted a physical examination of all the different elements in question on the site. What physical examination did HES conduct on the Schubert property? (They walked the pond, photographed it, looked at the pond quality, looked at the outfall, and the influent.)
- The FPM report could find no other place where the water in the basin was going and said gravity would be taking the water toward the Schubert property. The HES report does not present physical evidence that the water is going elsewhere. (There is no physical evidence in the FPM report either.)

- What happens if the less permeable surface is pierced and water goes underneath? (With groundwater, the permeability of a unit dictates the flow. If there is a breach from a lower permeability to a higher permeability area the water can migrate vertically and disrupt the base flow.)
- Can the City Administration comment on whether they agree or disagree with the opinion in the HES report that a permit should have been required?
- Whether or not a permit was required, did what was done have an affect on the Schubert pond? (If the project was designed properly, the problem probably would not have occurred.)
- The HES report is a theory. The FPM report is not wrong just because HES disagrees.
- The Gates property is higher in elevation than the Schubert property. If some of the water is not going out of the drywell but into the ground below the drywell, wouldn't it go into the same soil it would have gone into if the Gates had done nothing? (If it is going vertically into the ground, it could flow in a couple of directions, not necessarily into the pond.)
- According to the FPM report the purpose of the drywell was to protect the water going to the French drain not to send it somewhere else.
- When an addition is made on a home and the impervious surface is being changed, a permit is needed, which necessitates the percolation tests. It is not common to require a percolation test for a repair, which was what the Gates project was believed to be. (Tests should be done regardless of whether a permit is required when a drywell is put in.)
- Would a well work if it was half the 60,000 gallon capacity? (Any well on the property would probably run dry if a pump was used.)
- Because there is no evidence that testing was done on the Gates property, it does not mean that it was not done.
- The FPM report said the flow of water going into drywell was consistent with the flow of water going into the pond, which would seem to indicate that water was not seeping underneath the drywell and going somewhere else. (FPM could not measure flow into the drywell.)

The following members of the audience commented on the discussion: *Robert Giglia, 14 Chester Drive; Jim Graham; former City Naturalist Chantal Detlefs, 96 Fox Run, South Salem; Ted Carroll, Forest Avenue; Jean Sinnott, 131 Purchase Street, John Carolin, 66 Milton Road and Ray Tartaglione.* Their comments included:

- It does not matter how much water flows into the pond. The question is how the pond is cleared out by a constant flow of water after it is filled. Something happened at the upper end of the French drain in 2006 that has shut off the natural flow of the water. If nothing is done to correct that the pond will continue to deteriorate.
- It is obvious where the water is going. When the water table is perched, the water goes below.
- If the project had gone through a permit process there would be less complications. If the drywell was dug deeper than what was originally there, it would have required a wetlands permit. The former Naturalist feels she should have been given the opportunity to do a wetlands determination. (In a repair situation a wetlands permit is not required. There was a disagreement among City staff. The former City Naturalist could have written a

violation if she felt a permit was required, although she says she did not have the power to do so, or noted her disagreement in the memo she wrote in 2006.)

- If the City believes the project did not require a wetlands permit, why was the hydrologist hired? (After the former City Naturalist made a charge in February 2009 about the process that was followed, a hydrogeology engineer was hired in order to determine what happened and how could it be remedied.)
- The City is responsible for the situation because it allowed work to go on that should have required a permit. (The City makes decisions based on the facts they have before them.)
- Could the speed of the flow of water from leaders and gutters that at one time ponded on the Gates property and has been directed into the drywell change the speed of flow into the pond? (The HES report theorizes that the drywell is “stealing” water from the French drain and the groundwater table in the vicinity of the drywell.)
- Are drywells usually installed in wetlands? (Not usually. They do not work too well because the soils are poor.)
- Has anything that has been said convinced the City Council that something could be done to restore the water to the pond? (A dye test could be performed to establish the flow to the pond. There has been no demonstration of cause and effect. The City cannot act unless someone overturns the presumption made in the FPM report that the Gates property was not a factor.)
- The City should find a way to get access to the Gates’ property. (There are private property rights involved.)
- Some people in the community believe that the proper tests were not done on the Gates’ property in the beginning and, therefore, hold the City Council at fault for not doing something to relieve the situation.
- The “as built” plans are not accurate because they show a drywell with two inlets going into it and the FPM investigation photos shows only one. (Plans were not required because it was an unregulated activity.)

7. Update on the Recession Planning Task Force

City Manager Culross reported current economic conditions have had a serious economic impact on the City’s elastic revenues, with a revenue shortfall of at least 3% expected for 2009. City staff have developed a plan to offset this shortfall with expense cuts. The Recession Planning Task Force believes the City faces a multi-year impact and long term, alternative and regional service delivery opportunities must be developed. The immediate task is to prepare for the 2010 budget. The consequence of normal expense growth and an extraordinary drop in revenue results in a forecast of expenses exceeding revenues in 2010 at level tax rates. A portion of the gap can be closed by user fee adjustments and a modest property tax rate increase. The City is reviewing contractual relationships and considering service level adjustments. The Task Force is working with Senior Staff to identify areas for savings, opportunities for restructuring and a review of services in order to provide the Council and the community with choices when the 2010 budget is adopted. Mr. Culross added that one could hope things get better as the year continues but it is not the operating assumption of the Task Force.

Councilman Pratt said it was critical for the City to get input from the County as soon as possible relative to what is happening in terms of mortgage recording tax through the balance of 2009.

8. Consideration of proposed revision of the Rules and Regulations of the City of Rye Police Department: General Order #103.10 deployment of Electro-muscular Disruption Devices (Tasers)  
Roll Call

City Manager Culross said that this is a revision of the current rules and regulations that slightly expands the use of taser devices. It would authorize a member of each shift, generally the sergeant, to physically carry the taser in a holster. It is currently kept in the police vehicle. There have been discussions over the last several months with the Rye Police Association, who would prefer a policy allowing deployment of tasers to all officers at all times, and, therefore, they chose not to comment on the proposed revision. Police Commissioner Connors said that the Department has two tasers and that one is kept in a vehicle and one at headquarters. The proposed policy is an evolution in the deployment of the device. He added that according to the Police contract, when a rule or regulation change is proposed the Police Association is allowed 10 days to comment. This proposal was sent to them on April 16<sup>th</sup>. In response to a question about the number of officers needed to respond to traffic stops decreasing if all officers were issued tasers, the Commissioner responded that department policy on backing up other officers would not change as a result of this revision.

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

**RESOLVED**, that the revision to the Rules and Regulations of the City of Rye Police Department, General Order #103.10, "Deployment of Electro-muscular Disruption Devices (Tasers)" is hereby adopted, as submitted.

ROLL CALL

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

The Resolution was adopted by a vote of 6 to 1.

9. Resolution to grant permission to the Rye Free Reading Room to hold two free public programs "Tales with tails: Bedtime stories from around the world" on the Village Green on Tuesday, July 14, 2009 from 6 to 7 p.m. and Tuesday, August 11, 2009 from 6 to 7 p.m  
Roll Call.

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

**RESOLVED**, that the City Council hereby grants permission to the Rye Free Reading Room to hold two free public programs “Tales with tails: Bedtime stories from around the world” on the Village Green on Tuesday, July 14, 2009 and Tuesday, August 11, 2009 from 6:00 to 7:00 p.m.

ROLL CALL

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

NAYS: None

ABSENT None

10. Bid award for reconstruction of the City Hall Steps for the City of Rye Department of Engineering  
Roll Call.

Mayor Otis said this item has been put over from the last meeting because of Council questions about the necessity of doing the project at this time. City Manager Culross reiterated the staff recommendation that the project should proceed and the low bid be accepted. Councilman Ball asked for comments from other Councilmembers who have looked at the steps since he raised his objection at the last meeting. Comment included:

- The stairs are falling apart and the bids are low -- the project should be done.
- If the project is done, it should be done right and an architect should design it because City Hall is a centerpiece of the City.
- It should be patched to reduce any hazard or liability.
- The City should not go forward with a “business as usual” project in current economic times.
- If City staff believes the project should be done during these times, the Council should trust their recommendation.
- Patching is a waste of money, if the project is just being deferred for a year.

City Engineer George Mottarella said that the repair project would replace everything that is there now exactly the same way because the building is landmarked. He added that every time the project is patched more work has to be done and the patching does not last.

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

**RESOLVED**, that Contract No. 2009-03, Reconstruction of City Hall Steps, is awarded to Contech Construction Technology, the low bidder whose bid meets the specifications, for the amount of \$59,414.00.

ROLL CALL

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

NAYS: Councilmembers Ball and Parker

ABSENT None

The Resolution was adopted by a vote of 5 to 2.

**Contract #2009-03**

**Reconstruction of City Hall Steps**

<b>BIDDER</b>	<b>SECURITY</b>	<b>AMOUNT BID</b>
Contech Construction	Bid Bond	59,414.00
Tardio Landscaping	Bid Bond	64,500.00
K-Con Site Developers	Bid Bond	91,530.00

11. Discussion regarding the restoration work needed on the Square House

City Manager Culross said the purpose of this agenda item was to update the Council regarding the project to repair the roof on the historic building, which was approved in the budget. There was \$81,000 allocated for the project in the budget, but a problem with chimneys that was not anticipated could increase the project to \$150,000. Councilman Pratt said he believed that short-term solutions can cost more money in the long run, especially with roofing projects. Councilwoman Parker said the City should consider a challenge grant for the project and suggested the Historical Society do some private fund raising. Mayor Otis said the Historical Society was still working on fund raising for their share of the fire suppression system for the Knapp House that protects the City's archives. Councilman Cunningham inquired as to why the entire project was not completed in 2008 when it was first approved. City Engineer Mottarella said that originally the Director of the Historical Society got a price on replacing the entire roof but problems with the chimneys were discovered and there was not enough money to do the entire project.

12. Discussion regarding revising the Rye City code to allow for outdoor dining

Councilwoman Parker said that the Central Business District (CBD) Task Force determined that residents would like outdoor dining and a provision in the City Code that allowed for this expired in 2000. She would like to see the law reinstated as soon as possible because recently some restaurants had started outdoor dining on their own property and were told they had to stop. City Manager Culross said that there were two issues involved in outdoor dining. Restaurants that have room on their own property must receive permission from the Planning Commission and those without room on their own property must also receive a license agreement from the City, which indemnifies and insures the City. He added that all restaurants may not be able to institute outdoor dining because of the width of some sidewalks in the CBD. Councilman Cunningham said that the Planning Commission was generally supportive of the idea but only in the downtown and also wanted clarity about what is considered a restaurant. Councilman Ball said he believed it should be extended to areas other than the CBD. Mayor Otis suggested that the Council set a public hearing for the next meeting but also pass a Resolution that would allow the Building Department and Planning Commission to receive applications in advance of the public hearing in anticipation of the law being enacted. Councilman Sack said there should be guidelines in the law. City Manager Culross said that applications on private property would go before the Planning Commission but those needing license agreements to use City property would also have to come before the City Council.

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

**WHEREAS**, the Council wishes to amend Chapter 197, Zoning, of the Code of the City of Rye by amending §197-86 to allow accessory seasonal outdoor customer seating; 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 July 15, 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 197, Zoning, of the Code of the City of Rye by amending § 197-86 to allow accessory seasonal outdoor customer seating.**

Notice is hereby given that a public hearing will be held by the City Council of the City of Rye on the 15th day of July, 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 197, Zoning, of the Code of the City of Rye by amending § 197-86 to allow accessory seasonal outdoor customer seating.

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

Dawn F. Nodarse  
City Clerk  
Dated: July 3, 2009

Mayor Otis made a motion, seconded by Councilman Pratt and carried by a voice vote of 6-1 with Councilman Sack voting against, to allow businesses interested in beginning a dialogue with the Building Department and Planning Commission relative to outdoor dining to do so based upon past practices.

13. Miscellaneous communications and reports

Councilman Cunningham announced that the 20th Annual Kirby outing would be held on July 20<sup>th</sup>. He said that last year, the outing, which raises money to supplement Senior program expenses at Rye Recreation, raised over \$12,000. He asked anyone interested in participating in or sponsoring the event to call Tom Maloney at 310-7631.

14. Old Business

There was no old business to be discussed.

15. New Business

Councilman Sack suggested that since the Library has the names of contributors on the bricks outside the building, maybe there was some vanity funding the City could get for the City Hall steps. He also suggested that the City Council consider holding a meeting at The Osborn. He added that people who live at The Osborn may not be getting all the information about the litigation that would be discussed at a public meeting. Councilman Cunningham suggested that a forum would be held there in the Fall as part of the election.

16. Draft unapproved minutes of the regular meeting of the City Council held May 27, 2009 and minutes of the special City Council Meeting/Workshop held June 1, 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 May 27, 2009 and the special meeting/workshop held on June 1, 2009, as amended.

17. Adjournment

There being no further business to discuss, Mayor Otis made a motion, seconded by Councilwoman Parker and unanimously carried, to adjourn the meeting at 1:05 a.m.

Respectfully submitted,

Dawn F. Nodarse  
City Clerk