

**APPROVED MINUTES** of the Regular Meeting of the City Council of the City of Rye held in City Hall on August 12, 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. Councilman Cunningham made a motion, seconded by Councilman Ball and unanimously carried, to adjourn into Executive Session at 7:11 p.m. to discuss attorney/client matters. Councilwoman Gamache made a motion, seconded by Councilman Cunningham and unanimously carried, to adjourn the Executive Session at 8:02 p.m. The regular meeting convened at 8:06 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 noting the passing of several individuals with ties to the community: Russell Cecil, who served on the Landmarks Advisory Committee and the Board of Architectural Review and was involved in the founding of the Rye Arts Center; Jim Garrity, a man with a strong moral compass who served as a City Court Judge; Pat Patterson, who was know for her quilts and helpfulness to the Rye Seniors Organization, and Thomas Rispoli, the father-in-law of City staff member JoAnn Rispoli. He offered the condolences of the City to their families.

3. Presentation of the 2010-2014 Capital Improvements Program

Mayor Otis said that the Capital Improvements Program (CIP) is a list of projects. Decisions on projects will be made during the budget discussions, when the Council will decide what projects the City can afford to do in these economic times.

City Manager Culross said that the Capital Improvements Program is a plan document that according to the City Charter must be presented to the City Council 90 days prior to the budget presentation in early November. Mr. Culross said that the presentation would be made by City Planner Christian Miller, but also acknowledged Deputy Comptroller Joseph Fazzino for his work.

City Planner Miller began his presentation by saying that this is a list of projects and acquisitions that is required to be presented to the Council by the City Charter but added it is also good business to identify needs, priorities and their costs. He said that this year staff has tried to be as comprehensive as possible and include all the projects that staff knows about and that the Council and public have asked about. The projects are organized across a five-year time frame for purposes of planning according to need. It is just a plan, not a budget and not a commitment to fund anything. Projects selected for the CIP are non-recurring capital improvement expenses that exceed \$15,000. There are 70 projects included at an approximate total cost of \$66 million over a five-year period with \$34 million for flood mitigation projects, \$1 million for drainage projects, \$8 million for building projects, \$1.2 million for sewer projects, \$19 million for transportation projects and \$3.8 million for recreation projects (\$10 million in 2010, \$12 million in 2011, \$7 million in 2012, \$3 million in 2013 and \$30 million in 2014). Additionally, the CIP identifies vehicle and equipment needs for the next five years (approximately \$4.7 million). The largest source of funding for projects comes from grants and aid, but it also comes from general revenues, fund balance and debt. If the cost of a project exceeds \$350,000 it is assumed it would be funded by debt.

The following projects were highlighted in the presentation:

Flood Mitigation Projects:

- 2010 high priority: Bowman Avenue Sluice Gate (\$2.2 million). Much of the funding is expected to come from outside sources (Village of Rye Brook, County of Westchester, and State of New York), with the City's local match \$546,840.
- Long term projects: Bowman Avenue Lower Pond Resizing (\$20 million) and Bowman Avenue Upper Pond Resizing (\$10 million). Both of these projects are currently beyond the City's financial capabilities and would require non-city funding, but are included for future planning consideration so that the challenges of the projects, such as ownership rights and DEC and Army Corp of Engineers requirements can be identified and dealt with.

Drainage Projects:

- Stonycrest Road drain located near the Forest Avenue and Boulder Road intersection – any new drain would have to be rerouted because the existing drain line is not within an easement (\$35,000 for design analysis in 2010 and \$350,000 for construction in 2012).

- LaSalle Avenue drain – the project is in design and could cost up to \$150,000 for construction in 2011.

Building Projects:

- Purchase of 1037 Boston Post Road – (assumes that the \$5 million balance originally due in 2010 will be pushed out two years).
- Police/Court facility -- funding (\$50,000) for a study is proposed that will look at the feasibility of reusing the existing building in order to understand how services will be enhanced or compromised. The Office of Court Administration has jurisdiction over the operation of City Court and there are many new mandates for operation of a modern Police facility.

Sewer Projects:

- Hewlett Avenue Pump Station and Force Mains – approximately \$454,000 is currently funded, including a \$191,000 EPA Grant, leaving \$137,000 to be funded in 2010.
- Brevoort Lane Force Main -- the existing force main associated with the pump station needs replacing (\$300,000 for construction in 2011).

Transportation Projects

- Central Business District (CBD) -- \$1.8 million in improvement projects which would include reconstruction of Purchase Street and Smith Street, improvements to the intersections of Elm Place and Smith Street, replacement of traffic signals at Purdy Avenue and Theodore Fremd Avenue, Locust Avenue and Purchase Street and pedestrian enhancements.
- Pedestrian Safety Projects -- \$900,000 in projects including a sidewalk on the Boston Post Road from Johnson Place to the Mamaroneck border, improvements to the intersections of Playland Parkway and Forest Avenue and Midland Avenue and Palisades Road, and improvements to Oakland Beach Avenue in the area near Disbrow Park. Much of the money for these projects may come from Federal stimulus funding in 2010.
- Purchase Street Roundabout (\$500,000) -- This project is in design. It is hoped the City will receive some funding from the County in exchange for taking over County roads.
- Bridges and Walls – approximately one-third of the costs attributed to transportation. The Nature Center Bridge has been “yellow flagged” by the Department of Transportation (DOT). The total cost to replace the existing bridge is \$1.1 million, but not replacing the bridge and using a secondary access to the property could be considered. The historic character of the bridges in Rye is a challenge because the State Historic Preservation Office (SHPO) is more involved when State funds are being used. The City is awaiting final design approval from SHPO on the reconstruction of the Central Avenue Bridge. The project is budgeted at \$1.8 million with the City responsible for 20%.

Recreation Projects

- Thruway Field -- \$150,000 would be needed in 2010 for design.
- Damiano Center Building projects – \$800,000 remains from the 2002 Recreation Bond.

Vehicle and Equipment Needs

- The list of vehicles that need to be replaced is drawn up based on staff input. The 2010 list includes vehicles that were deferred from the 2009 budget. Staff does not anticipate additional vehicles and is trying to determine if the number of vehicles can be reduced.

Council comment and questions included:

- It would be helpful to have an additional report indicating the amount of funding for projects that was expected to come from outside sources. (Christian Miller will provide the Council with an updated table indicating by year the anticipated funding source for projects.)
- How many 2010 projects are new, how many were listed for 2010 last year and how many projects listed for 2010 in last years CIP have been deferred to future years such as the LaSalle Avenue drain project? (Some projects have been dropped because they were funded, some are new and many have been modified.)
- Can staff look into how much more projects that have been deferred will cost when they are done.
- The Council will have more time to evaluate the proposed projects and prioritize them by budget workshop time.
- A financial analysis must be done as part of the decision process for approving capital projects. If service levels are affected, the City must be able to explain why it is paying for long-term projects.

City Manager Culross noted that the entire CIP will be put on the City's website.

4. Continuation of Public hearing to adopt a local law for Senior Citizen Rent Increase Exemption (SCRIE)

Corporation Counsel Kevin Plunkett said that the public hearing had been held open at the last meeting in order to answer a question about how the process works. Deputy Corporation Counsel Kristen Wilson said that SCRIE is administered by the State and qualifying seniors will be given a voucher containing a percent exemption from property taxes, which is given to the taxing authority in the local municipality and the reduction in taxes for the owner of the property is then spread out over the other property owners of the City. At this time SCRIE would only apply to residents of Highland Hall with a maximum income of \$29,000 and over 62 years of age.

Council comment and questions included:

- If the City is helping seniors at Highland Hall, why can't this help be given to other seniors in Rye since the tax relief from SCRIE will be passed along to other seniors who do not live in apartments in tax increases? (The enabling legislation is geared only to buildings controlled by ETPA.)
- There are already senior property tax and veterans exemptions for homeowners that are administered by the Assessor's Office as well as the enhanced STAR program.

- Since there are only a few people who would qualify for SCRIE, the trade off in tax revenue makes it worthwhile since the City does not have much affordable housing.
- It is a way of maintaining diversity in the community.
- It is basically a symbolic gesture that will have little impact on the tax payers.

Members of the public offering comment included, *Doug Carey* and *Dorothea Halliday*, both residents of Highland Hall, *Joe Murphy*, 57 Franklin Avenue and *Roger Laurence*, 12 Laurel Street. Their comments included:

- There are 12 people in the required age group but four who might be eligible under the economic guidelines. The City should adopt this law.
- This is an opportunity for the City to invest in affordable housing.
- The City should consider raising the income eligibility amount. (It is controlled by statute. The only change the City could make would be to lower the income amount.)
- This should be done for all seniors, not just those in Highland Hall. ETPA should be extended to other apartments as well. The Memorandum of Understanding among apartment owners that voluntarily restricts rent increases for seniors has not been signed for this year. (The Mayor indicated the City would monitor the issue of the renewal of the Memorandum of Understanding and could revisit the issue of ETPA if the situation warrants.)

The Mayor closed the public hearing.

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

**LOCAL LAW  
CITY OF RYE NO. 8 OF 2009**

**A Local law to amend Chapter 177 “Taxation” by adding Article XI “Abatement for Rent-Controlled and Rent-Regulated Property Occupied by Senior Citizens or Persons With Disabilities” to the City Code of the City of Rye.**

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

**Section 1. Chapter 177 “Taxation” is hereby amended by adding Article XI “Abatement for Rent-Controlled and Rent-Regulated Property Occupied by Senior Citizens or Persons With Disabilities” as follows:**

**§ 177-70. Purpose and Legislative Intent.**

Both SCRIE and DRIE provide eligible residents age 62 and older, who live in rent controlled or rent stabilized apartments, an exemption to rent increases if their incomes and the proportion of their income spent on rent meet eligibility guidelines. This is available in New York City and in several municipalities in Nassau and Westchester counties. When a landlord raises the rent, tenants with

SCRIE/DRIE do not have to pay the increased rate. Instead of the increased rent, the landlord is eligible for an equivalent credit on his or her property taxes. The local municipality then reduces the property taxes owed by the landlord in the amount equivalent to the credit. The impact of this local law will depend on the number of eligible citizens as well as the proposed rent increase. Essentially, the non-eligible residents of Rye will be paying for any loss in tax revenue by the City of Rye from residents who qualify for and are granted this rent increase exemption.

The City Council of the City of Rye finds it in the public interest to adopt legislation in accordance with the enabling legislation enacted by the State Legislature with respect to tax abatements of real property taxes for senior citizens and disabled persons living in rent-regulated/rent-controlled properties.

**§ 177-71. Definitions.**

The following terms “disabled person,” “dwelling unit,” “head of household,” “income,” “income tax year,” “increase in maximum rent or legal regulated rent” and “members of the household,” as used in this article, shall have the definitions ascribed to them in the Real Property Tax Law § 467-b, Subdivision 1.

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

**DISABLED PERSON** – 1) A person currently receiving social security disability insurance (SSDI) benefits, or disability pension or disability compensation benefits provided by the United State Department of Veterans Affairs; or 2) a person who previously received SSI or SSDI disability benefits and is currently receiving medical association benefits based on a determination of disability pursuant to Social Services Law Section 366.

**DWELLING UNIT** – That part of a dwelling unit in which a head of the household resides and which is subject to either the Emergency Housing Rent Control Law or to the Rent and Rehabilitation Law or to the Emergency Tenant Protection Act of 1974.

**HEAD OF HOUSEHOLD** – A person who is 62 years of age or older, or who qualifies as a person with a disability pursuant to the definition of “disabled person” as defined in this section and is entitled to the possession or to the use or occupancy of a dwelling unit.

**INCOME** – Income from all sources after deduction of all income and social security taxes and includes social security and retirement benefits, supplemental security income and additional state payments, public assistance benefits, interest, dividends, net rental income, salary or earnings, and net income from self-employment, but shall not include gifts or inheritances, payments made to individuals because of their status as victims of Nazi persecution, as defined in P.L. 103-286, or increases in benefits accorded pursuant to the Social Security

Act or a public or private pension paid to any member of the household which increase, in any given year, does not exceed the consumer price index (All items United States city average) for such year which take effect after the date of eligibility of head of the household receiving benefits hereunder whether received by the head of the household or any other member of the household.

**INCOME TAX YEAR** – A twelve-month period for which the head of household filed a federal personal income tax return, or if no such return is filed, the calendar year.

**INCREASE IN MAXIMUM RENT OR LEGAL REGULATED RENT** – Any increase in the maximum rent or the legal regulated rent for the dwelling unit in question pursuant to the applicable rent control law or to the Emergency Tenant Protection Act of 1974, respectively, or such classes of increase thereunder as may be specified in a local law, ordinance or resolution enacted pursuant to this section, over such base period rent as specified in New York State Real Property Tax Law § 467-b, subdivision 3, paragraph c or d.

**MEMBERS OF THE HOUSEHOLD** – The head of household and any person, other than a bona fide roomer, boarder or subtenant who is not related to the head of the household, permanently residing in the dwelling unit.

**§ 177-72. Abatement of taxes.**

All taxes of the City of Rye imposed on real property containing a dwelling unit by an amount not in excess of that portion of any increase in maximum rent or legal regulated rent which causes such maximum rent or legal regulated rent to exceed 1/3 of the combined income of all members of the household are hereby abated.

**§ 177-73. Exception; deductions.**

- A. The tax abatement provided under this article shall not be granted if the combined income of all members of the household for the income tax year immediately preceding the making of an application under this article exceeds the amount listed in section B below; provided that, when the head of household retires or becomes disabled before commencement of such year and the date of filing the application, the income of such year may be adjusted by excluding salary or earning and projecting the retirement income over the entire period of such year.
- B. Maximum allowable income pursuant to the real Property Tax Law § 467-b shall be \$29,000.
- C. Upon issuance of a tax abatement certificate as hereinafter provided, the amount of increase in maximum rent or legal regulated rent set forth in said

certificate shall be deducted from the legal maximum rent or legal regulated rent chargeable for a dwelling unit of head of the household.

**§ 177-74. Application for certificate.**

The head of the household must apply before January 29 of each year to the Office of Rent Administration, Division of Housing and Community Renewal, of the State of New York (the "Office of Rent Administration"), for a tax abatement certificate on a form prescribed by said office. A tax abatement certificate setting forth an amount not in excess of the increase in maximum rent or legal regulated rent for the taxable period shall be issued by said office to each head of the household who is found to be eligible under the article. Copies of such certificate shall be issued to the owner of the real property containing the dwelling unit of the head of the household and to the City Clerk of the City of Rye.

**§ 177-74. Eligibility.**

Eligibility shall be determined as of the date of receipt in the Office or Rent Administration of a properly completed form.

**§ 177-75. Portion of taxes deducted or remitted.**

- A. The portion of the increase in maximum rent or legal regulated rent for the taxable period set forth in a tax abatement certificate shall be deducted from the local taxes levied by the City of Rye on real property containing one dwelling unit of a head of the household to whom the certificate has been issued, effected the beginning of the next fiscal year after the application has been filed, provided that the application has been filed before the City's taxable status date.
- B. Upon the vacancy of a dwelling for which an abatement certificate has been issued, the owner thereof shall remit a pro rata portion of the tax abatement to the City, and any amount due by reason of such vacancy shall be a lien upon the property on and after the date of such vacancy.

**§ 177-76.**

Where a tax abatement certificate has been issued to a head of the household as authorized by this article and the landlord collects the increase in the maximum or legal regulated rent for a dwelling unit occupied by such head of the household, the amount of such abatement shall be deemed a rent overcharge under the applicable rent control or rent regulation law.

**Section 2. Severability**

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

**Section 3.**

This local law shall 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

5. Public hearing to amend Chapter 191 Vehicles and Traffic” by amending Article IV  
“Removal and Storage of Vehicles” to the City Code of the City of Rye

Corporation Counsel Plunkett said that the proposed local law adds a provision that is not currently in the City Code. Section 1224 of the State Vehicle and Traffic law is currently applicable which requires that a ticket for a traffic violation must be issued for a vehicle before the 48-hour time period can commence in order to remove a vehicle. Mayor Otis opened the public hearing.

Council questions and comment included:

- This could apply to areas of the City where the summer parking restrictions apply as well as for the winter parking restrictions that apply to most of the community.
- It is evident that this statute is aimed at a particular situation -- wouldn't it be better to restrict parking of vehicles with "advertising" away from areas near churches and homes by limiting it to the Central Business District.
- The purpose of the law is to deal with an ambiguity in State law that was pointed out by the Police Commissioner, regarding towing a vehicle. Other communities allow towing within 24 hours.
- This legislation has an unintended affect on some residents such as those who routinely park in front of their homes, commuters who walk to the train station or people who must be out of town for longer than 48 hours.
- Enforcement would be difficult.

The Mayor said that because a majority of the Council did not seem to be in favor of the proposed local law, he would table the issue.

The only member of the public wishing to comment was *Ray Tartaglione*, who said he believed the law was pointed at him and indicated that he would not have the "Floatie" car parked on City streets if the Council enforced laws on Hen Island. Mayor Otis replied that the

City does enforce its laws and again suggested that if Mr. Tartaglione has an issue with the County enforcing its laws, he bring his concerns to their meetings.

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

There were no residents wishing to speak on topics not on the agenda.

7. Authorization for City Manager to enter into a Memorandum of Understanding for the purchase of the Bird Property located at 600 Milton Road and adopt a resolution to amend the 2009 Adopted Budget for Buildings and Vehicles

Mayor Otis began by providing background on the proposed purchase of the property, calling it an opportunity to save an historic property with County, State and Federal funds, at no cost to the taxpayer. Approximately three years ago the family of John Erikson indicated they were interested in putting the house on the market, which resulted in the creation of the Save the Bird Homestead Committee (the Committee), a not-for-profit corporation, with the goal of raising funds through grants and donations to purchase the property. It was determined that the City would be the better applicant than the Committee to apply for grant money for the project. The purchase price of the property is \$1,250,000 payable as follows: \$1 million to be covered by grants to be reimbursed to the City over the next few months and \$250,000 plus closing costs to be absorbed by the Committee. Sources of grants include: New York State Office of Parks Recreation and Historic Preservation (\$350,000), which has received the support of Governor Patterson, Senator Oppenheimer and Commissioner Carol Ash; The New York State Strategic Investment Program through Assemblyman George Latimer (\$250,000); a Federal grant through the Long Island Sound Stewardship Program that is administered by the New York State Department of Environmental Conservation (DEC) (\$200,000), which was supported by Congresswoman Lowey, Governor Patterson, Senator Oppenheimer and Commissioner Grannis of the DEC as well as Audubon New York and the Westchester Lane Trust; and, a Westchester County Legacy Program Grant (\$200,000), which was supported by County Executive Spano, County Planning Commissioner Mulligan, County Recreation Commissioner Stout and County Legislator Myers. He added that Audubon of Connecticut also supports the project. The Mayor also offered his thanks to Corporation Counsel Kevin Plunkett, Deputy Corporation Counsel Kristen Wilson and City Manager Frank Culross for their work on the project. The Committee has already paid \$164,000 toward the acquisition price and has been maintaining the property and covering its costs since November 2009. They will take over the management and restoration of the property. The closing should be held within the next few days. The Memorandum of Agreement (MOU) between the City and the Committee will cover reimbursement to the City for any money being put out by the City at the closing as well as for any interest that would have been earned on that money. It also deals with responsibilities and rights relative to the purchase of the property as well as the long-term use of the property.

*Anne Stillman*, the President of the Committee, thanked the City Council and other officials mentioned by the Mayor for their support. She also expressed her thanks to the late John Erikson and his family for their patience in waiting for the Committee to assemble the funding, and the private donors who contributed in challenging economic times. She also offered her thanks to the other members of the Committee Margo Burgheimer, Doug Carey and Aaron Griffiths and their Advisory Council Tom Anderson of Westchester Land Trust, Alison

Beall of the Marshlands Conservancy, John Hannan of Audubon Connecticut, Pamela McGuire of PepsiCo, Anna Roosevelt, Ph.D. of the University of Illinois and John Wible, Ph.D. of the Carnegie Museum of Natural History. She said the Bird property is an authentic link to Rye's past that has great environmental importance. The Committee intends to restore the historic buildings and make the Bird Homestead a premier educational site for school children and the public.

Comments from Councilmembers included:

- The Rye taxpayer is being asked to bankroll the purchase. The City is not a bank and there is no real assurance that the City will get the money back, which makes the risk too great to the City.
- The City should not be in the real estate business and the property will come off the tax rolls.
- There may be strings attached to the grant money, such as allowing kayak access through the property.
- The process has been rushed. The MOU is still being modified.
- This is a good idea but the risk is too great if the grants do not come through because the Committee does not have the money to reimburse the City.
- The special meeting/workshop was not televised and only the interested parties were present. The general public has not had an opportunity to speak on the issue. (The City was prepared to televise the special meeting/workshop but was told it was not policy to televise workshops.)
- The Council has taken action on this project in the past.
- Is it standard procedure for the City to advance money prior to receiving grant funds? (In some circumstances the City is reimbursed for projects after they are completed, such as street repaving.)
- The City is looking for a way to keep open space and this property will become parkland and remain parkland.
- It is a discretionary project but not only recreational. It will increase access to the waterfront and is both educational and preservational because it offers a fleeting opportunity to save the property.
- Four grants have been approved and the process has begun to get the money. Two grantors require the MOU in order to accelerate the process. If the grants disappear, the not-for-profit Committee will make up the difference.
- There have been two recent opportunities to obtain waterfront property, the Durland property and the Bird property. The Durland property opportunity fell through because the seller's terms were extreme. This is a unique opportunity to own a property in an historic area that will become parkland and provide educational opportunities and waterfront access.
- Preserving the property will prevent it from being subdivided, which might increase flooding in the area.
- Acquiring this property is consistent with goals set forth in the 1985 Planning Commission Master Plan.

*John Carey*, legal counsel to Committee member Doug Carey, said that the Committee is not slated to have any ownership in the property although they originally thought it would be divided 80/20 relative to the ratio of funds raised. He said the City should take title at the closing without involving the Committee. He said it did not make sense for the Committee to be responsible for the closing costs or to reimburse the City for any grant money not received. He added that he believed the Committee should assign it rights of title under the contract to the City at or before the closing.

Mayor Otis made a motion, seconded by Councilwoman Gamache, to adopt the following Resolution:

**RESOLVED**, that the City Manager is authorized to execute any and all closing documents and other documents in furtherance of the acquisition of the property located at 600 Milton Road in accordance with the terms and conditions of the Memorandum of Understanding between the City of Rye and the Committee to Save the Bird Homestead, Inc.

ROLL CALL

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

Mayor Otis made a motion, seconded by Councilwoman Gamache, to adopt the following Resolution:

**WHEREAS**, the City will be entering into an agreement to purchase the buildings and property located at 600 Milton Road, Rye, New York; and

**WHEREAS**, the cost of the purchase, including all closing costs and costs necessary to acquire the building and property are estimated to be \$1,125,000; and

**WHEREAS**, the City expects to receive grants and donations from various organizations to fund the purchase of the buildings and property; and

**WHEREAS**, there are sufficient funds available for spending in the General Fund; and

**WHEREAS**, the General Fund will be replenished by the aforementioned grants and donations when they are received by the City;

**NOW, THEREFORE, BE IT**

**RESOLVED**, that the 2009 Adopted Budget be amended as follows:

Increase B&V Fund Bird House Grants & Donations (Revenue) \$1,125,000  
Increase B&V Fund Bird House Building Acquisitions (Expenditures) \$1,125,000.

**ROLL CALL**

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

**NAYS:** Councilman Sack

**ABSENT** None

8. Discussion of federal award for the City of Rye Sidewalk/Pedestrian improvements

Mayor Otis said that this item involved \$695,000 of Federal stimulus money the City will receive to handle some of the trailways and safe routes to schools initiatives that the City has been working on for a number of years. He noted that transportation funds are the most difficult to receive because the project must be on the Regional Transportation Planning list and comply with Federal Transportation requirements in order to be eligible for funds. Assistant City Manager Scott Pickup said that City staff has been working with the State Department of Transportation (DOT) on this process and were notified in July that the City is in the next phase of the process. The next step would be authorization from Governor Patterson, and the local projects group would release contracts to the City. The City will then have a one year period of time to expend the money. The five identified projects (all of which are referred to in the CIP) are: (1) pedestrian improvements at Library Lane; (2) sidewalk on Boston Post Road from Johnson Place to the Mamaroneck line; (3) improvements to Oakland Beach Avenue in the area between Disbrow Park and the bridge; (4) work on the intersection of Playland Parkway and Forest Avenue; and (5) work on the intersection of Midland Avenue and Palisade Road. In September the project agreements from DOT should come before the Council for formal acceptance of the federal grant so that bids can go out.

Council questions and comments included:

- Can stimulus money only be used for construction? (Yes, but out of pocket costs will be done in house or have already been designed.)
- Will the sidewalk on the Boston Post Road be wide enough? (It should be a five foot standard width. The area has been staked. The biggest issue may be elevation changes and it will not be in a straight line.)
- If a sidewalk is put in on Oakland Beach Avenue, there is no curbing so a strong definition between curb and sidewalk will be necessary.
- When is the 12 month period? (It is dated from when the City signs the contracts.)
- The City has been serious in pursuing safe routes to schools funding. (The work that had previously been done by the Trailways group and Safe Routes to School group was very favorable for the City in the review process.)

- All of the items on this list except the improvements at Library Lane had been “wish list” items.

9. Consideration to set a public hearing on September 16, 2009 regarding the proposed improvements to the Theodore Fremd Retaining Wall

Assistant Manager Pickup said that the majority of the money from the Theodore Fremd Retaining Wall project came from the DOT Emergency Relief funds. As part of the approval process to receive the funds the City must hold a public meeting where a presentation on the project will be made and the public will have a chance to comment.

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

**WHEREAS**, the New York State Department of Transportation requires that a public meeting be held on the proposed improvements to the Theodore Fremd Avenue Retaining Wall in order for the City of Rye to receive Emergency Relief Funds to make said improvements; and

**WHEREAS**, it is now desired to call a public meeting on such proposed improvements, now, therefore, be it

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

Section 1. A public meeting will be held by the Council of said City on September 16, 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 the proposed improvements to the Theodore Fremd Avenue Retaining Wall.

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

**PUBLIC NOTICE  
CITY OF RYE**

**Notice of Public Meeting on the proposed improvements to the Theodore Fremd Avenue Retaining Wall.**

Notice is hereby given that a public meeting will be held by the City Council of the City of Rye on the 16th day of September, 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 the proposed improvements to the Theodore Fremd Avenue Retaining Wall.

Dawn F. Nodarse  
City Clerk  
Dated: September 4, 2009

10. Resolution allowing use of funds collected under Parking administration to be allocated for improvements to the Central Business District  
Roll Call.

Councilman Cunningham said that in the 1980's an "In Lieu of Parking" fund was set up to pool money received from applicants who came before the Planning Commission and did not meet the parking requirements. It was intended to be used to build additional parking spaces downtown. The fund was eliminated in 1989. There is currently \$76,000 in the fund. He said he believed the City should be allowed to use the money that remains in the fund for other improvements in the Central Business District (CBD). Councilwoman Parker said she believed it made sense to use the money to enhance pedestrian safety in the CBD. Councilman Sack said that the proposed change would just expand the restrictions on the use of the money in the fund and that the Council would decide on the use at a future date.

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

**WHEREAS**, in 1985 a local law entitled "Section 197-27 – Payment in lieu of parking requirements" established a mechanism for applicants who did not have an adequate number of off-street parking places to make a payment in lieu of providing the requisite number of places; and

**WHEREAS**, Section 197-27 required the City Comptroller to place the money in a special trust fund, to be used exclusively for public parking space purposes to benefit the A & B districts; and

**WHEREAS**, in 1989, Section 197-27 of the Rye City Code was repealed; and

**WHEREAS**, in 2002 the special trust fund was eliminated; and

**WHEREAS**, there currently remains the sum of \$76,282.82 in the general fund; and

**WHEREAS**, the City Council has been requested to permit the use of the parking funds for improvements in the Central Business District ("CBD") to improve pedestrian and vehicle movements and for safety improvements in addition to the use of parking funds for public parking space purposes; and

**WHEREAS**, the City Council is desirous of using the parking funds to improve pedestrian and vehicle movements and for safety improvements in the CBD;

**NOW THEREFORE, BE IT**

**RESOLVED**, that the parking funds heretofore designated exclusively for public parking space purposes pursuant to repealed Section 197-27 are authorized to be utilized to improve pedestrian and vehicle movements and to make safety improvements in the CBD; and be it further

**RESOLVED**, that the use of said parking funds for such improvements requires a majority vote of the City Council; and be it further

**RESOLVED**, that upon the majority vote of the City Council to authorize the use of said parking funds, the Comptroller is authorized to release such parking funds for such approved purpose.

ROLL CALL

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

NAYS: None

ABSENT None

11. Resolution to transfer funds donated to the September 11<sup>th</sup> Memorial Fund to Rye September 11, 2001 Memorial, Inc  
Roll Call.

Mayor Otis said the funds were originally collected by the City because the Rye September 11, 2001 Memorial, Inc. had not yet received their not-for-profit status. Corporation Counsel Plunkett said the City has received a formal request from the now established not-for-profit requesting that the money be released to them, so that it can be used for the approved Memorial Gazebo project.

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

**WHEREAS**, on October 20, 2004, the City Council adopted a Resolution to accept donations for a September 11, 2001 Memorial; and

**WHEREAS**, the Resolution was at the request of several city residents who were forming a not-for-profit corporation for purposes of creating a fitting September 11<sup>th</sup> Memorial; and

**WHEREAS**, the City was asked by the residents to serve as a facilitator and temporary custodian of donations to be made to the September 11<sup>th</sup> Memorial while the residents were creating a not-for-profit corporation; and

**WHEREAS**, residents and other individuals have made donations to the City on behalf of The September 11<sup>th</sup> Memorial project; and

**WHEREAS**, as of this date the donations amount to \$202,699.13 (“the donations”); and

**WHEREAS**, there are no City monies of any source which are a part of the donations; and

**WHEREAS**, The Rye September 11<sup>th</sup>, 2001 Memorial, Inc. not-for-profit corporation was established by City residents under the laws of the State of New York on October 22, 2005 as a domestic not-for-profit corporation (“The September 11<sup>th</sup> Corporation”); and

**WHEREAS**, the September 11<sup>th</sup> Corporation has requested in writing that the City turn over to it the donations in order that The September 11<sup>th</sup> Corporation can construct a fitting memorial to commemorate the tragedy of September 11, 2001; and

**WHEREAS**, the Corporation Counsel has approved the turn over of the donations from the City to The September 11<sup>th</sup> Corporation; now therefore be it

**RESOLVED**, that the City Comptroller is authorized to turn over to the president of The September 11<sup>th</sup> Corporation the donations and; be it further

**RESOLVED**, that the City Council continues to support The September 11<sup>th</sup> Corporation in its efforts to appropriately memorialize those who perished in the September 11, 2001 attack

**ROLL CALL**

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

**NAYS:** None

**ABSENT** None

12. Authorization for DelBello, Donnellan, Weingarten, Wise and Wiederkehr, LLP to defend the City of Rye in the suit commenced by R.B. Conway & Sons, Inc  
Roll Call.

Mayor Otis said that the matter was a contract dispute with the City and one of its vendors. At this point only a notice of claim has been filed. Since it is outside litigation that does not come under the general duties of the Corporation Counsel, the Council must choose an attorney to handle it. Corporation Counsel Plunkett stated that he is a partner in the firm of DelBello, Donnellan, Weingarten, Wise and Wiederkehr, LLP. He added that the notice of claim was forwarded to the City’s insurance carrier but because it is a breach of contract action they have issued a disclaimer letter indicating they will neither indemnify nor defend the City.

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

**RESOLVED**, that the law firm of DelBello, Donnellan, Weingarten, Wise and Wiederkehr, LLP is hereby authorized to defend the City in connection with the notice of claim filed by R.B. Conway & Sons.

ROLL CALL

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

NAYS: None

ABSENT None

13. Adoption of the 2009/2010 tax levy and tax rate for the Rye Neck Union Free School District.  
Roll Call.

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

**WHEREAS**, the Rye Neck Union Free School District (District) has certified to the City of Rye Comptroller taxes in the amount of \$9,527,824 to be raised on property within the District located in the City of Rye, with the established tax rates of \$646.587732 per \$1,000 of taxable assessed value on homestead property and \$836.221378 per \$1,000 taxable assessed value on non-homestead property, for the fiscal year beginning July 1, 2009 and ending June 30, 2010, now, therefore, be it

**RESOLVED**, that in accordance with the provisions of the City Charter, the City Comptroller is commanded to levy and collect said taxes, subject to any further amendments or approvals required by the Rye Neck Union Free School District.

ROLL CALL

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

NAYS: None

ABSENT None

14. Consideration of request for permission to close a section of Purchase Street for the 57th annual celebration of the Halloween Window Painting Contest

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

**RESOLVED**, the City Council hereby approves the request of the Recreation Department for permission to close a section of Purchase Street for the 57<sup>th</sup> Annual Halloween Window Painting Contest on Sunday October 18, 2008 (rain date October 25) from 8:00 A.M. to 3:00 P.M.

15. Authorize a date change for the regular City Council Meeting from September 9, 2009 to September 16, 2009

Mayor Otis made a motion, seconded by Councilwoman Parker and carried by voice vote with Councilman Sack voting no, to adopt the following Resolution:

**RESOLVED**, that the date for the regular City Council Meeting for the month of September is hereby changed from September 9, 2009 to September 16, 2009.

16. Miscellaneous communications and reports

Councilwoman Parker said that when she had recently spoken with the Director of Operations for Playland to inquire about how the “pay one price” plan was going, she was told that they were instituting a type of “stimulus” package whereby visitors to the park on Monday through Friday could go on four rides for \$12, without having to pay the \$3 to enter the park.

17. Old Business

Councilman Cunningham said that he supported Councilman Sack’s suggestion that City Council workshops be televised but asked if something could be done to improve the audio so the informal setting of a workshop could be maintained while allowing the audience to hear the discussion. Other Council members were also supportive of this proposal, if it were feasible.

18. New Business

There was no new business.

19. Draft unapproved minutes of the regular meeting of the City Council held July 15, 2009 and the Special Meeting/Rye City Council Workshop held August 4, 2009

Mayor Otis made a motion, seconded by Councilwoman Gamache and unanimously carried, to approve the minutes of the regular meeting of the City Council held on July 15, 2009.

Councilman Cunningham made a motion, seconded by Councilman Pratt and unanimously carried, to approve the minutes of the Special Meeting/Workshop held on August 4, 2009.

20. 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 12:00 a.m.

Respectfully submitted,

Dawn F. Nodarse  
City Clerk