

APPROVED MINUTES of the Regular Meeting of the City Council of the City of Rye held in City Hall on September 16, 2009 at 8:00 P.M.

PRESENT:

STEVEN OTIS, Mayor
ANDREW C. BALL
PAULA J. GAMACHE
CATHERINE F. PARKER
GEORGE S. PRATT
JOSEPH A. SACK
Councilmembers

ABSENT: MACK CUNNINGHAM

The meeting convened at 7:57 p.m. Councilman Ball made a motion, seconded by Councilman Sack and unanimously carried, to adjourn into Executive Session for an update on the *Chittenden v. City of Rye, et al* litigation. Mayor Otis made a motion, seconded by Councilwoman Gamache and unanimously carried, to adjourn the Executive Session at 8:02 p.m. No decisions were made. 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 announced that the County Board of Legislators has approved the bonding for the first four flood mitigations projects that are being funded through County Flood Mitigation Assistance Fund. The City will receive \$1.2 million for the sluice gate project. The Mayor offered congratulations to all of the local school sports teams and wished them well for the year.

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

Patricia Pugh, 5034 Theall Road read from a letter she had sent to a local paper urging the City to work out a program to cull the local deer population under the guidelines of the Department of Environmental Conservation (DEC) Bureau of Wildlife. She said that deer culling is permitted with bows and arrows by marksmen during hunting season. Mayor Otis said that there is a DEC process involved in getting permission to cull the deer population. A few

years ago a survey of the local deer population was done but the numbers of deer did not substantiate the number required to qualify for that permission. He added that it may be time to do a new survey in order to qualify for DEC permission. Councilman Pratt added that technology is better now to get a more accurate count by utilizing motion-operated cameras. Councilman Ball said that Greenwich had allowed a bow hunt to occur in order to cull a deer herd and suggested that staff contact them to get feedback on their experience.

John Carolin, 66 Milton Road said that the area of Stuyvesant Avenue that had been the Durland Scout Center was overgrown and asked if the property owner could be told to clean it up. He also thanked Councilwoman Parker for her support on the maintenance of the memorial trees on Purchase Street.

Ray Tartaglione read from Rye City Code §108-25 regarding water supply and asked Councilman Sack why it was not being enforced in homes on Hen Island. Councilman Sack declined to comment saying he would consult with the City Manager first. Mayor Otis said the Building Inspector has been out to Hen Island and has issued violations that were deemed warranted. He added that the applicability of the section of the Code quoted by Mr. Tartaglione is a question for the Building Department and the City Manager. City Manager Culross said he would look into it.

4. Public Information meeting regarding the proposed improvements to the Theodore Fremd Retaining Wall

Mayor Otis said that part of the approval process to receive funding (approximately 80%) for the replacement of the Theodore Fremd Avenue Retaining Wall is that the City is required to hold a public information meeting to describe the design of the improvements for the project. David Weiss and Nicole Schutte were present, representing the engineering firm of WSP Sells (Sells). Ms. Schutte, the project engineer, made the presentation. She said that Sells had been hired by the City to restore the wall to a functioning structure and improve the site by creating a smoother alignment. The issues faced in the project included hydrology, private property easements, utilities (Con Edison, both gas and electric; Westchester County Trunk Sewer and United Water) and maintaining traffic flow. One of the main reasons the wall collapsed was because of the velocity of the water exiting the stream through the I-95/Metro North tunnel where it takes a sharp right turn at a 45 degree angle. A “no build” option was looked at but determined that it did not meet the project objectives and, therefore, is not a recommended course of action. Wall replacement is the option recommended by Sells for this project. A cast-in-place concrete wall is more suitable to withstanding the high stream velocity than pre-cast concrete. Relocating all utilities was not a viable option so an engineered revetment is proposed, which is a protective slope that will require little or no excavation to be installed. It is an articulated concrete block system composed of concrete units tied together with steel cables in order to withstand the high stream velocity. An alignment was chosen to smooth out the curve and lessen the impact of the stream flow. The rebuild option also includes scour countermeasures to protect the wall from being undermined, the stream channel will be cleaned out and new guide rail will be installed. The stream channel will be widened, which will reduce the velocity of water and impact on the wall and, hopefully, prevent this type of wall failure in the future. There should be no effect upstream or downstream from the installation of this wall. Con Edison will lower the gas line outside of the heating season and electric and water lines will

be relocated prior to the contractor beginning work. All services will be maintained throughout construction. Traffic will be shifted slightly to maintain one lane in either direction. Since federal money is involved, New York State Department of Transportation (DOT) procedures must be followed, which requires DOT to review and approve the project. Sells will submit the final design report for approval, acquire easements, obtain the necessary permits, advertise for and award bids and begin construction in Spring 2010.

Assistant City Manager Scott Pickup added to the presentation by saying that previous hydrology work done for the City by the Sells firm has helped with this project. The biggest issues have been the utility conflicts. The high pressure gas line is a major transmission line and necessitated three of four designs before coming up with the final design. Con Edison considers October through March as heating season and will not turn off gas during that time period but other site work can be done during that period, such as relocating water utilities. He also said that there are additional requirements on federal projects relative to right-of-way issues. There will be more action required by the Council during the next few months, including SEQRA and NEPA. The big issue is to satisfy all the requirements for the federal money, not only to receive FEMA money but DOT and Federal Highway money. The DOT has worked with the City and enabled the project to move forward more quickly. He added that the preferred design looks like it will fit within the existing allocation.

Council comments and questions included:

- Can the City do this project without approval for the money and get reimbursed? (FEMA funds are reimbursement based, but the DOT has strict guidelines for receiving Federal Highway money and they will not reimburse the City if work is done without their approval.)
- The timeline of the project has been dictated by the timeline of the process for getting approvals.
- What consideration has been given to improving the hydrology and utility issues? (The cause of the failure was looked at and the proposed project tried to reduce that impact without impacting the utility companies too heavily. The City also received information from the Elm Place Wall project that was helpful in the project.)
- Would the channel artificially narrow at the point where the reventment and slope goes back to vertical walls? (The sloping was done to eliminate the high pressure transmission main from going under the County Trunk sewer thereby satisfying the hydrology and utility needs.)

Members of the public commenting on the presentation included *John Carolin, 66 Milton Road*, and *Peter Jovanovich, 647 Milton Road*. Their questions included:

- Will the project relieve backup that occurred in the Highland parking area opposite Highland Hall? (This project will not change existing conditions up or down stream. This project is to repair the Theodore Fremd Avenue Retaining Wall and make it more sustainable in the future.)
- What type of construction will be used? (The proposed wall will be cast-in-place concrete and the reventment will be an engineered pre-cast concrete slope.)

- What type of guard rail system will be utilized? (Anything incorporated into the design specs must meet DOT standards; some are more aesthetically pleasing than others. Part of the area for the construction is contained in County plans for a bike path extension and there will be discussions with the County about how that will be incorporated into the final design.)

Consideration to set a public information meeting on October 7, 2009 regarding the replacement of the Central Avenue Bridge.

Mayor Otis announced that the City has received an approval letter from the Historic Preservation Unit of the New York State Office of Parks Recreation and Historic Preservation. With this approval the Department of Transportation (DOT) will be able to go forward and the City will, hopefully, received approval from them shortly.

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

WHEREAS, the New York State Department of Transportation requires that a public meeting be held to discuss the replacement of the Central Avenue Bridge 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 to discuss such replacement, 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 October 7, 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 replacement of the Central Avenue Bridge.

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

**PUBLIC NOTICE
CITY OF RYE**

Notice of Public Meeting to discuss the Replacement of the Central Avenue Bridge.

Notice is hereby given that a public meeting will be held by the City Council of the City of Rye on the 7th day of October, 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 replacement of the Central Avenue Bridge.

Dawn F. Nodarse
City Clerk
Dated: September 25, 2009

6. Report from the Corporation Counsel's Office regarding research on rent control legislation

Corporation Counsel Kevin Plunkett said this report was being made as a result of recent inquiries regarding the Emergency Tenant Protection Act (ETPA) in order to revisit the requirements of the law regarding adoption or amendment of ETPA. In February 2006, the City adopted ETPA and declared an emergency for certain buildings containing 50 or more dwelling units. There has recently been talk about amending that Resolution. He said he and Deputy Corporation Counsel Kristen Wilson researched the law and Ms. Wilson spoke with attorneys at the Division of Housing and Community Renewal (DHCR) and determined that there are no short cuts to expedite the process. If a community wishes to adopt or amend ETPA it must consider whether or not there is an emergency and follow the following steps: (1) conduct a survey or assessment of the housing accommodations in the City along with the vacancy rate for each type of housing accommodation; (2) after completing the survey the City can declare an emergency with respect to any classification of housing containing six or more units subject to the fact that the vacancy rate must be less than five percent; and (3) the City Council must hold a public hearing with 10 days notice prior to adopting a Resolution declaring an emergency. Mr. Plunkett pointed out that if a vacancy rate for a particular housing accommodation class exceeds five percent then the emergency must be declared at an end. He said there is a need from time to time for the City Council to revisit whether or not there is still a housing emergency for those units where the ETPA has been adopted. He also said that if a building owner is artificially creating vacancies in order to get above the five percent mark, they would not be considered true vacancies. He advised that if the City Council desires to expand ETPA, they must follow the procedures in the law. He said the basis of his report was strictly to update the Council about the process of ETPA and not for action to be taken. He advised that if the Council chose to act on expanding ETPA, any survey done should also include those units currently covered by ETPA.

Council questions included:

- Is there any information on the Memorandum of Understanding (MOU) among the property owners? (Four years ago there were three owners of five structures, two years ago there were two owners of four structures and currently there is one owner of three structures who has signed on, but there have been very few complaints in the years the agreements have been in effect.)
- Is doing a survey precedent to even having a discussion about expanding ETPA? (Yes, the Council must first determine that an emergency exists.)
- Wasn't there a rent element involved in the prior adoption of ETPA? (There was concern last time because in addition to the emergency aspect, an unknown owner was coming in and people were concerned about how much the rents could be raised. The rents are not part of the necessity for a survey for the emergency aspect of the law.)

- Is there a time period requirement to do a reassessment under ETPA? (No, but in order to comply with the spirit of the law that says ETPA becomes null and void if the vacancy rate goes above five percent, the community should take a look at the issue.)

Members of the public commenting included Roger Laurence, 12 Laurel Street, and Albert Annunziata, of The Building & Realty Institute:

- The Council should not hesitate to expand ETPA. It should be expanded to other buildings as a matter of fairness. (The Council cannot change the parameters of ETPA coverage just by motion. It must follow the procedures outlined by the Corporation Counsel.)
- The Council should reach out to the association that represents owners of buildings. Fairness goes both ways because investors deserve consideration as well.
- There can be fiscal effects when rents are regulated.
- Other communities have also successfully utilized voluntary agreements, which omit a layer of regulation in ETPA that makes it difficult to make capital improvements.
- There are several communities similar to Rye that have ETPA and have not suffered any consequences.

7. Consideration of a resolution to televise all public meetings of the City Council including regular meetings, special meetings, and workshops

Mayor Otis said that Councilmen Sack and Pratt have both drafted Resolutions regarding televising all public meetings of the City Council. Councilman Sack said that he had prepared and circulated his proposed Resolution to the Council and he hoped the Council would adopt it at this meeting. Councilman Pratt said that he had supported Councilman Sack's suggestion of expanding television coverage of Council meetings at the last meeting but proposed an alternate Resolution, which simplified the language.

The City Manager was asked about the economic consequences of the proposal. He said that it was viable because most extra meetings occur during budget season. He said there would be some additional cost involved for the part-time employee who works on an hourly rate. He added that the biggest concern from a staff perspective would be if meetings were scheduled with less than a week's notice. It was conceded that both proposed Resolutions ultimately sought the same result and a discussion ensued about which Resolution the majority of the Council preferred to adopt.

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

WHEREAS, All of the "regular" public meetings of the Rye City Council have always been televised on the Rye City government access cable television channel ("Rye TV") since that practice was adopted, and

WHEREAS, There are frequently "special" public meetings and "workshop" public meetings of the Rye City Council, which include discussions that are just

as much in the public interest as those discussions which take place at “regular” public meetings of the Rye City Council, and

WHEREAS, These “special” and “workshop” public meetings of the Rye City Council have not been televised on Rye TV, and

WHEREAS, There have recently been “special” and workshop” public meetings of the Rye City Council at which important public issues have been addressed, but these meetings have not been televised or recorded for public viewing, and

WHEREAS, the overwhelming majority of Rye City residents are unable to attend in person the live public meetings of the Rye City Council, due to the demands of busy family and professional lives, and thus rely upon either the live Rye TV broadcast or the subsequent taped Rye TV broadcasts of the public meetings of the Rye City Council, in order to obtain unfiltered information from the meetings, and

WHEREAS, the residents of the City of Rye deserve to have the opportunity to directly know and observe what is happening at all public meetings of the Rye City Council, and

WHEREAS, It is the intention of the City of Rye and the Rye City Council to take measures to promote and encourage public access to all open and public meetings of the Rye City government, therefore

BE IT RESOLVED, That henceforth all public meetings of the Rye City Council – “regular,” “special,” “workshop” or otherwise – be televised live on Rye TV and be recorded for subsequent rebroadcast on Rye TV, and for streaming on the Rye City website, and

BE IT FURTHER RESOLVED, That if in the sole determination of the Rye City Manager the necessary Rye City staff is unavailable to broadcast these public meetings on Rye TV, these public meetings will nonetheless be audiotaped by the Rye City Clerk, and the audiotape will then be played back on Rye TV and posted on the Rye City website, and will otherwise be available to the public for listening in the Rye City Clerk’s office, and

BE IT FURTHER RESOLVED, That Rye City staff will take the appropriate measures to place a microphone(s) in the City Council chambers, so as to not disrupt the “informal” setting of some public meetings that are not conducted with Council members seated on the dais.

Councilwoman Gamache, the liaison to the Cable Television Committee, pointed out that the Committee had not had a meeting since the proposal was made to expand television coverage. It was noted that former Mayor John Carey, who is a member of the Committee, had suggested that volunteers could tape the meetings if a staff member was not available. Councilman Pratt said that both he and Councilman Sack were proposing to codify what this

Council and future Council would do relative to televising meetings. Councilman Ball said that he could support Councilman Pratt's motion now or Councilman Sack's with some modifications.

Councilman Sack withdrew his motion to adopt his proposed Resolution and said he would support Councilman Pratt's Resolution.

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

WHEREAS, All of the "regular" public meetings of the Rye City Council have always been televised on the Rye City government access cable television channel ("Rye TV") since that practice was adopted, now, therefore,

BE IT RESOLVED it will be the policy of the City Council all regular meetings, workshops, and special meetings of the City Council, excluding executive sessions, will be televised live on RCTV and be recorded for subsequent rebroadcast on RCTV , and for streaming on the Rye City website and;

BE IT FURTHER RESOLVED, that, consistent with past practice, the staffing for broadcasting meetings will be determined by the City Manager subject to staff availability, and;

BE IT FURTHER RESOLVED, when staff is not available, the meetings will be audio taped and made available to the public through the same media as video recorded meetings.

ROLL CALL

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

8. Three appointments to the Boat Basin Commission, by the Council, for two-year terms expiring January 1, 2012

Mayor Otis made a motion, unanimously carried, to approve the appointments of Andrew Bodnar, George DeFilippo and Robert Rispoli to the Boat Basin Commission for two-year terms expiring on January 1, 2012.

9. Designation of one member to the Boat Basin Nominating Committee

Councilman Pratt made a motion, seconded by Councilman Ball and unanimously carried, to appoint Ford Winters to the 2010 Boat Basin Nominating Committee for a one-year term expiring on January 1, 2011.

10. Five appointments to the Rye Golf Club Commission by the Council: three appointments for three-year terms expiring January 1, 2013 and two appointments for a one-year term expiring January 1, 2011

Councilman Sack made a motion, seconded by Councilman Ball and unanimously carried, to approve the appointments to the Rye Golf Club Commission of Dan DeVito, Patrick Dooley and Tom Kennedy to three-year terms expiring on January 1, 2013 and Frank Adimari and Rich Verille to one-year terms expiring on January 1, 2011.

11. Designation of one member to the Rye Golf Club Nominating Committee

Mayor Otis made a motion, unanimously carried, to appoint Tom DeMarco to the 2010 Golf Commission Nominating Commission for a one-year term expiring on January 1, 2011.

12. Bid Award for the Brevoort Lane Pump Station Pump Retrofit (Contract #2009-05)
Roll Call.

City Manager Culross said that the pumps were last replaced in 1988 and staff recommends awarding the contract to the low bidder. City Engineer Mottarella said that this is a highly specialized field and there are not many companies who do this type of work.

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

RESOLVED, that Contract #2009-05, Brevoort Lane Pump Station Pump Retrofit, be awarded to Evergreen Mechanical, the low bidder meeting the City's specifications, for the amount of \$86,790.00.

ROLL CALL

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

CONTRACT # 2009-05
Brevoort Lane Pump Station Retrofit

BIDDER	BID AMOUNT
Evergreen Mechanical	\$86,790.00
Grupusso Plumbing	\$110,000.00

13. Bid Award for two Diesel Generators for the Department of Public Works (Bid #3-09)
Roll Call.

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

RESOLVED, that Bid #3-09, two (2) Diesel Generators for the Department of Public Works, be awarded to Kinsley Power, the low bidder meeting the City's specifications, for the amount of \$63,155.00.

ROLL CALL

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

BID #3-09
Two (2) Diesel Generators

BIDDER	BID AMOUNT
Kinsley Power Systems	\$63,155.00
Power Performances Ind.	\$95,200.00
K & G Power Systems	\$123,000.00

14. One appointment to the Traffic & Transportation Committee to fill a term ending January 1, 2012 by the Mayor with Council approval

Mayor Otis made a motion, unanimously carried, to approve the appointment of Alfred Vitiello to the Traffic & Transportation Committee to fill a term ending January 1, 2012.

15. Approval of the election of a new member to the Rye Fire Department

Mayor Otis made a motion, unanimously carried, to adopt the following Resolution:

RESOLVED, that the Council of the City of Rye hereby approves the election of Robert Orlando DelliPaoli to the Poningoe Engine and Hose Company approved at the August 2009 meeting of the Board of Fire Wardens.

16. Miscellaneous communications and reports

Councilman Pratt asked that the Mayor and City Manager consider moving the appointments of volunteers who serve in the Fire Department or on other City Boards and Commissions to earlier in the meeting.

Councilwoman Parker said that she had attended a Chamber of Commerce meeting (also known as the Rye Merchants' Association) and they have decided to move the Mistletoe Magic event back to the Sunday of Thanksgiving weekend.

17. Old Business

Councilman Sack asked for a report on a meeting Mayor Otis had with the Chief Judge about the Police/Court facility. He said that whenever a Councilmember interacts with another government official on an issue that affects the City, he would like to know about it. The Mayor said that there has been an ongoing dialogue between the City and the Office of Court Administration (OCA) regarding their requirements for space at the Courthouse and the City's obligations. The meeting Councilman Sack referred to was organized by the City Court Judges for Chief Judge Lipman to visit the City's Courthouse facility and Police Station and he and City Manager Culross were also invited to attend. The goal was to maximize the City's ability to try and access OCA funding for what must be done for renovation and expansion of the Courthouse facility. City Manager Culross said that the City must know what they want to do relative to the Police/Court facility before any application for funding can be made. He added that even though the Chief Judge indicated there might be some funds available, the OCA is in a position to direct the City to do certain things. Councilman Pratt suggested that since the issue of the court facility goes back several years and will continue into the future, it would be helpful to have the City Manager provide a history of the issue.

Councilman Pratt said that he has heard that the new business model for the management of Playland may become a political issue in the County. He said he is concerned about the lack of success in finding a business operating model that works for Playland and wonders what the taste is for Westchester to continue supporting a recreational vehicle that loses money. Councilwoman Parker said that she had been told by Dan McBride, the Deputy Commissioner of Westchester Parks, that Playland is the park least subsidized by Westchester residents. Mayor Otis added that he had been told by Dan McBride that this summer's weather would have to be factored in when they evaluate the new business model and said that the City could ask for a copy of that analysis.

18. New Business

There was no new business to be discussed.

19. Draft unapproved minutes of the regular meeting of the City Council held August 12, 2009

Mayor Otis made a motion, seconded by Councilman Ball and unanimously carried to approve the minutes of the regular meeting of the City Council held on August 12, 2009, as amended.

20. Adjournment

There being no further business to discuss, Mayor Otis made a motion, seconded by Councilman Pratt and unanimously carried, to adjourn the meeting at 10:52 p.m.

Respectfully submitted,

Dawn F. Nodarse
City Clerk