

***APPROVED MINUTES*** of the Regular Meeting of the City Council of the City of Rye held in City Hall on May 19, 2010, 2010 at 8:00 P.M.

PRESENT:

DOUGLAS FRENCH Mayor  
PAULA J. GAMACHE  
PETER JOVANOVIH  
SUZANNA KEITH  
CATHERINE F. PARKER  
JOSEPH A. SACK  
Councilmembers

ABSENT: RICHARD FILIPPI

1. Pledge of Allegiance

Mayor French called the meeting to order and invited the Council to join in the Pledge of Allegiance.

2. Roll Call

Mayor French asked the City Clerk to call the roll; a quorum was present to conduct official city business.

3. General Announcements

- The City Council has conducted interviews with the top six candidates out of the 60 applications received for the City Manager position. Interviews will continue into June.
- The City Clerk's Office will be offering 15 permits for summer commuter parking. Details are available on the City website.
- The Mayor can be contacted at the following email address: [mayor@ryeny.gov](mailto:mayor@ryeny.gov).
- A meeting was held with representatives of the Director and Operations Manager of Playland regarding plans for this season. Additional meetings will be held in July and October.

In addition, announcements were made regarding various events, programs and ceremonies that were held or are being held by local organizations.

4. Draft unapproved minutes of the regular meeting of the City Council held May 5, 2010

Councilwoman Keith made a motion, seconded by Councilwoman Parker and unanimously carried, to approve the minutes of the regular meeting of the City Council held on May 5, 2010, as amended.

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

*Bill Lawyer, 15 Hillside Place*, said that an event would be held at Rye Town Park on Sunday, May 23rd featuring paintings of local artists. There will also be a dedication ceremony of a new mural at the park.

*Jim Amico, 350 Midland Avenue*, asked what response time to expect for emails sent to the Mayor's email address. Mayor French said that response time would be dictated by the matter because it would be routed to the proper office for staff response. Mr. Amico said he has sent emails to the City requesting information on when sidewalk work would be done on Midland Avenue and had not received a response. City Manager Culross said that the contractor has begun working on the sidewalks. City Engineer George Mottarella said that the current list should be completed in about two months.

6. Mayor's Management Report

- Presentation of the City of Rye Stormwater Management Program 2009 Annual Report

City Engineer George Mottarella and Mike Ritchie from the firm of Dolf Rotfeld Engineering presented the City's Annual Stormwater Report which is required to be submitted to the Department of Environmental Conservation by June 1. In order to maintain its permit, the City must report each year on certain measures and what it has done to implement its Stormwater Plan during the year in each of the following categories:

- Public Education and Participation – Westchester County obtained a grant to assist 34 communities in the public education requirements that cover such things as public service announcements about water quality, pet waste disposal bags, banners, videos and numerous handouts. Information is also available on the City website.
- Illicit Discharges – The City has an obligation to conduct inspections of all 68 of the outfalls from the City system that discharge water into waters of the United States. There were no indications of problems observed during the inspections.
- Construction Site Management – For any area under construction in the City of one acre of land disturbance or greater, the applicant or developer must submit a Stormwater Pollution Prevention Plan for the site that covers sediment runoff and discharge from the site while the land is disturbed and unable to handle the stormwater naturally. There was nothing to be reported this year.
- Post-Construction Stormwater Management – A new requirement for a two-year permit. It is the responsibility of the Building Department and City Engineer to compile a list of Best Management Practices (BMP's). The City may have to add legislation that would add inspection and self-certification requirements to previously existing BMP's in order

to report to the State that measures previously taken are functioning the way they were designed to function.

- Stormwater Management for Municipal Operations (Good Housekeeping) – The City is required to report on street sweeping and catch basin cleaning. The expectation is that there is a strategic plan to deal with run-off from parking lots and streets. The City is required to maintain a training program for staff regarding detection of illicit discharges and how to deal with them. There will be additional requirements for the City to consider “green legislation” in connection with subdivision or residential and commercial development.

Council comments and questions included:

- Does the City have requirements that are stricter than the one acre and above requirement? (Chapter 173 of the City Code has stricter requirements)
- What is an illicit discharge? (Such things as paint, oil or pet waste improperly disposed of in a stormwater system or a septic system leaking into a water body.)
- Is the City in the process of applying for a new permit? (The City is covered by a permit that runs for the next five years as long as it continues to implement the Stormwater Program and report annually.)
- What are the trends in Rye regarding compliance with the minimum measures? (City staff does a good job with the resources they have available.)
- How much does it cost the City to comply with State-imposed mandates? (The time spent by staff on inspections, training sessions, working on community outreach. The cost of maintenance or repair to infrastructure that may be required to eliminate illicit discharges. The mandates are a result of the Federal Clean Water Act legislation of 1972 that is enforced by the State.)
- How often are inspections performed? (Annually in dry weather, unless there is a complaint.)
- Litigation Update by Corporation Counsel

Interim Corporation Counsel Kristen Wilson reported on two matters:

- Beaver Swamp Brook Administrative Process: The Town of Harrison will be responding to questions from the DEC staff based on their most recent permit application. The responses are due on or before May 28<sup>th</sup>.
- RB Conway vs. City of Rye: Depositions in the matter were completed this week. There is a schedule for submitting pre-trial motions in the next two months.

7. Continuation of Public Hearing to change the City of Rye Zoning Code to include “child-care facilities” as a use in the B-1 District

Mayor French said that the public hearing remained open from the last meeting. Linda Whitehead, Esq., the attorney who represents the petitioner that requested the proposed zoning amendment, summarized a letter she provided the Counsel that provided additional operation

information for child-care facilities and addressed questions raised by the Council at the prior meeting. She said the primary goal in operating a child-care facility is the safety of the children. Children are never unattended; they are never outside of the facility except when a parent or responsible adult brings them in or out; play areas are fenced by State regulation and the proposal calls for the area to be screened with access directly from the building. The idea would be to protect the children and keep them separate from any adjoining uses. She said she also provided information regarding parking and traffic, which she said would differ from a nursery school where all the children were dropped off and picked up at the about the same time. Although day-care facilities have been permitted in B-4 and B-5 districts since 1989, there is only one facility in operation and the zoning change resulted from a petition. She maintains that the B-1 or Neighborhood Business District is an appropriate zone for child-care uses. If the Council adopts the zoning change to allow for the use in B-1 districts, the Planning Commission will review each application on a site-by-site basis.

Councilman Jovanovich, who serves as the Council representative on the Planning Commission, reported on the deliberations of the Planning Commission on the issue and why they recommend that the City Council amend the Zoning Code to allow for child-care centers in B-1 districts in order to meet a community need. He said the view of the Planning Commission is that the Code for B-1 districts is anachronistic because it was developed at a time when there were no child-care facilities and that B-1 districts are ideal for these facilities because they are adjacent to residential areas. The Commission discussed the petitioner and the site in question and urges the Council not to conflate the policy issue of allowing child-care facilities in B-1 district with the suitability of locating a facility at 180 Theodore Fremd Avenue. The Planning Commission would take steps to certify that a site would be environmentally safe prior to voting on an application. Traffic issues would also be taken into consideration prior to approval.

Public comment:

Members of the public commenting included *Greg Faughnam* and *Jim Amico*. Their comments included:

- The request is reasonable and would serve the public. Businesses should be encouraged.
- When considering the application the lack of sidewalks in the area should not be overlooked. All safety issues should be considered
- The facility would be a great addition to the neighborhood.
- If facilities were allowed to be larger than 10,000 square feet they could accommodate more children.

Council comment included:

- What are the reasons behind the limits on size, parking and number of children included in the proposed law? Are they the correct numbers?
- There is a need for child-care in Rye. The Council must look at concept and determine the best way to apply it.
- The concept of allowing day-care facilities in B-1 districts makes sense.

- The City Planner could be asked to speak on the rational of the suggested limits at the next Council meeting.

The public hearing was kept open until the next meeting.

8. Public hearing for the establishment of the Kirby Lane Extension Sanitary Sewer Special Assessment District

Councilwoman Keith made a motion seconded by Councilwoman Gamache and unanimously carried, to open the public hearing.

City Engineer George Mottarella offered an overview of the project. A petition was forwarded to the City requesting the construction of sewers on South Kirby Lane. The district would include the area from the Mill Pond up to Grace Church Street. Over two-thirds of the residents in the proposed district have signed the petition indicating they are in favor of the project as required by the City Code. The proposed project would use individual, low pressure sewer ejector pumps and a common force main. Under County law once two separately owned homes are tied into a single pipe, the pipe must be owned and maintained by the local municipality. A duplex pumping system would be required. The systems are designed with a minimum of a 1,000 gallon back up tank in case power is lost. A stationary back up generator could also be used if the power failed. The approximate cost, based on an assumption that at least 75% of the sewer trench area is rock, is at least \$600,000. This would break down to about \$26,000 per house but does not include the cost of the lateral to the home. The depth of the trench would only be about four feet and the size of the force main depends on the number of pumps connected to it. The District pays for the connection point to the common sewer in the roadway and the lateral up to the property line where a valve is placed, with the remainder of the cost to hook up to the home paid by the homeowner. If the project goes forward the City will engage a firm to survey the area and do test pits and rock borings. When the project is designed, it will be forwarded to the County Health Department for approval and then put out to bid for construction. Upon completion of the entire project, the City Comptroller will assign the final costs to the properties in the district.

Public Comment:

Residents in the proposed district who wished to comment included *Margot and Gregory Reesa, 80 Kirby Lane; Gene McGuire, 7 Kirby Lane; Michael Roth, 9 Kirby Lane; Diane Beveridge, 30 Kirby Lane; Gerry Seitz, 141 Kirby Lane; Julian Allen, 130 Kirby Lane and Joan Schwartz, 100 Kirby Lane.* Their comments and questions included:

- Septic systems can fail at any time and are very expensive to repair or replace.
- It is a good time to do this project because construction costs may be lower.
- It is critical to protect water quality. Properties on both sides of the street boarder on water that will drain into Long Island Sound.
- The last time the project was proposed, the residents of South Kirby Lane did not want it. Septic systems work.

- It is unlikely that the project can be completed for \$600,000 and imposing the cost on a few properties is totally unfair.
- Construction could have a negative affect on property values.
- Leaking septic systems could have an environmental impact, which could be a Clean Water Act violation.
- Sewers would benefit property values.
- It would be prudent to at least get a contractor's bid on the cost to determine if the project should go forward. (Once the City Council votes to establish the district, all costs will be assessed to the district.)
- Will more burden be placed on the pumps located at the homes located at the lowest point? (There will be more pressure on the lower end.)
- How long will it take to build the project? (More subsurface information is needed, but it could be approximately one year.)
- The petition represented that it was solely for information purposes not as a commitment for all costs associated with the project. Petitioners need more information before going forward. (Until the district is created, a design cannot be prepared. If the group decides to stop the project, the costs incurred up to that point would have to be born by the homes in the district.)
- The district should be formed, so the design and contract can proceed. If the price is too high the Council does not have to approve the contracts. It makes sense to go forward to investigate the costs.
- The petition was worded as a "feasibility study". Those who signed the petition should be asked if they are prepared to pay for the preliminary costs. (A meeting could be held for those living in the proposed district to answer their questions on the project prior to voting on the district.)
- Once the sewer is in place no one is required to hook up to it. Homeowners can continue to use their septic system.
- Is there a way for only those who want the sewer to pay for it and then if people subsequently decide they want it, they would be assessed for it then? (It is more costly when people do that because the financing runs from when the bonds are issued.)

Council questions and comments included:

- How does the cash flow on this type of project work? (All costs associated with the project are a cost of the district. The households in the district are not assessed until the entire project is completed. The City could fund it out of cash or issue short term bonding until the project is completed. Homeowners will then have the option to pay their share of the entire project or pay the City back over time for bonds issued.)
- How much experience is there with the type of system suggested in Rye or in other communities? (There are over 50 of these types of pumps in operation in Rye now, without problem.)
- How did the Upper Dogwood Sewer bid numbers come in relative to the original estimates? (The bids came in under the engineering estimate.)

The public hearing was held open in order that an information meeting could be held for potential members of the district as well as those who might want to be added to the district.

9. Resolution to transfer \$25,000 from Capital Projects Forest Avenue to the Boston Post Road project and discussion of Boston Post Road Diet recommendation

Assistant City Manager Pickup offered a brief overview. Issues relating to pedestrian safety in this area have been discussed at joint meetings with the School Board in February and April. As a result of those discussions, Collins Engineers was directed to incorporate solutions that were recommended into the design. The issue has been discussed twice by the Transportation and Pedestrian Safety Committee, who recommended the implementation of the Diet at Oakland Beach Avenue and Boston Post Road with additional enhancements at Sonn Drive. The Plans were also presented at an Osborn School PTO meeting. The basic plan design calls for incorporating the separation between the pedestrian walking areas on the Post Road and encouraging people who enter the Post Road from Sonn Drive to walk to the controlled intersection at Oakland Beach Avenue to cross the street. All of the recommended changes have been incorporated into the plans including: additional pavement markings in the school zone; movements to control backed up traffic going into the driveways in the afternoon into a somewhat protected area; an additional sidewalk and crossings at the Sonn Drive intersection; additionally, a landing area has been incorporated into the crosswalk area at Oakland Beach Avenue. There will be an eight foot separation from the travel zone to the sidewalk. There will also be modifications made to the traffic signal. If the Council approves the transfer of funds, the project will proceed to bid, but, if it is broken into three phases it might be able to be done with quotes rather than bids. The basic cost will include the \$44,000 carried forward from the prior year's budget as well as an additional \$25,000 of money that was originally budgeted for a study of the Forest Avenue corridor. Mr. Pickup added that one of the goals of the project is also to achieve speed reduction in the area.

Council comments and questions included:

- This project has been a good cooperative effort with the Board of Education.
- More work must be done on easement issues on Forest Avenue before the study that was budgeted can be done.
- Will a left turn into the school parking lot still be allowed? (Yes. The traffic studies indicate that the volume of cars making a left turn do not warrant a change.)
- Will the School District add a ramp at the corner of Osborn Road and Boston Post Road? (According to the Facilities Committee, it is not funded in the current school budget.)

Members of the public commenting included *Happy Mullooly* and *Laura Christopher*. Their comments included:

- The work done by everyone in connection with this issue is appreciated.
- The plan presented will address the safety issues and improve conditions for walking to the school.
- This project should be prioritized above others because it is near a school.

- Thanks to the Council for working with the concerned parents in the area.
- The Council should approve the project, but should restrict left turns into the parking lot.

Former City Councilman Mack Cunningham raised several points regarding aspects of the project as well as the transfer of funds to this project from funds previously allocated to a study on the Forest Avenue corridor. He said the Council should consider others who access the Osborn campus by including a crosswalk at Old Post Road and Boston Post Road and urging the County, through Legislator Judy Myers, to put and maintain a sidewalk at the overpass bridge at Playland Parkway. Mr. Cunningham also asked if the Midland P.T.O.'s had been consulted about transferring funds from the Forest Avenue project and suggested the project not be approved until they had a chance to comment. He further suggested that the funds could be taken from a non safe routes project.

Council comments and questions included:

- The Council relies on the recommendations of its professional staff and the recommendation from staff was to take the money needed to complete the Osborn School project from the Forest Avenue project
- The Council could allocate funds for the Forest Avenue study in the future.
- Issues related to schools have been publically vetted.
- Some of the concerns of Midland School will be addressed with the stimulus project at Midland and Palisade Road.
- Getting the approval of the Midland P.T.O. is a good idea.
- The City is trying to do what it can with a limited amount of money. After this project is done the Council can look to find more money in the budget for the Forest Avenue study.
- Are there other places where the money could be taken from to pay for this project? (City Manager Culross said there was no other project to take the money from because money for every other study in the 2010 budget had been frozen. Assistant City Manager Pickup said that further discussion of deferred projects can be held at the special meeting schedule for June.)

Councilman Jovanovich made a motion, seconded by Councilwoman Keith to adopt the following Resolution:

**WHEREAS**, the City Council has authorized the implementation of the Boston Post Road Diet changes at Sonn Drive, and

**WHEREAS**, the funds previously earmarked for the Forest Avenue Capital Project will be repurposed for this new project, now, therefore, be it

**RESOLVED**, that the City Comptroller is authorized to transfer \$25,000 from Capital Projects to the Engineering Department for the Boston Post Road Diet/ Sonn Drive project.

ROLL CALL:

AYES: Mayor French, Councilmembers Gamache, Jovanovich, Keith, Parker and Sack

NAYS:                   None  
ABSENT:                Councilman Filippi

The Resolution was adopted by a 6-0 vote.

10.    Discussion of 151 Purchase Street Associates, LLC and tenancy lease terms

      This item was moved to the end of the agenda.

11.    Discussion of Resolution to establish a Rye Town Park Advisory Committee

      Mayor French said that the establishment of this Committee was raised with the Rye Town Park Commission and they would like to provide additional comments on the make up of the Commission prior to voting on it. He suggested that the agenda item be adjourned to the next meeting.

12.    One appointment to the Conservation Commission/Advisory Council for a three-year term, and one appointment to fill out a term expiring on January 1, 2011, by the Mayor with Council approval

      Councilwoman Keith made a motion, seconded by Councilman Jovanovich and unanimously carried, to make the following appointments to the Conservation Commission/Advisory Council: Mimi Bateman for a three-year term expiring on January 1, 2013 and Paul Berte to fill out a term expiring on January 1, 2011.

13.    Three appointments to the Governmental Policy and Research Committee for three-year terms, two appointments for two-year terms, and two appointments for one-year terms, by the Mayor with Council approval

      Councilwoman Keith made a motion, seconded by Councilwoman Parker and unanimously carried, to appoint Susan Jansen, Patrick McGunagle and Terence Stack to the Governmental Policy and Research Committee for three-year terms expiring on January 1, 2013.

      Councilwoman Gamache made a motion, seconded by Councilwoman Parker and unanimously carried, to appoint Matthew Thomas and Andrew Walker to the Governmental Policy and Research Committee for two- terms expiring on January 1, 2012.

      Councilwoman Keith made a motion, seconded by Councilwoman Gamache and unanimously carried, to appoint Robert Cypher to the Governmental Policy and Research Committee for a one-year term expiring on January 1, 2011.

14.    Miscellaneous communications and reports

      Councilwoman Keith reported the following:

- She represented the City at the YMCA’s Activate America Coalition meeting for the current school year. They discussed the group’s accomplishments and identified priorities for 2010-11, which include continuing with walking and biking initiatives and working with the County to undertake a “Safe Routes Part II Workshop”, exploring teen wellness issues, nutrition programs in the schools and continuing to expand recreation opportunities.
- There will be Eye on Rye programs on: the current Stimulus Traffic Project; the work of the Joint Task Force; and Safe Routes to Schools.
- The Sustainability Committee is working on a draft outline of a plan, which has been reviewed by the CC/AC. It will be forwarded to the Council and City staff shortly for direction.
- The City will not proceed with a Climate Smart Resolution until a grant opportunity can be found.
- The Pedestrian Safety and Biking Master Plan team had a kick-off meeting and they hope to spend the next several months analyzing plans of other communities, past work in Rye and to set goals and objectives.

15. Old Business

There was no old business to report.

16. New Business

Councilwoman Parker reported that she, Mayor French and Councilman Sack had met with George Oros and Christine Sculty on issues pertinent to Rye. She said she inquired about the long-range plan for Playland. She wants to put together a group that will work with the County on this. Mayor French said that with Councilwoman Parker as liaison to the Playland Advisory Committee a three or four person Planning Committee will be set up to vet ideas. Councilman Jovanovich said he felt that the new County Administration would provide an opportunity to explore new ideas about the operation of Playland. The Mayor said that he believed a next step to the meeting with County officials was to speak with Legislator Myers about Rye’s priorities.

Councilwoman Keith reported that the Traffic and Pedestrian Safety Committee (TPS) wants to bring the issue of beach parking to the Council. There have been concerns voiced by parents of High School students who have been ticketed for parking in the beach parking zone. Alternatives suggested to deal with the situation include: redrawing the map to exclude Midland Avenue and a part of Apawamis Avenue from the district or, changing the dates that the beach season goes into effect in that area. City Manager Culross said the issues could be looked into but nothing could be done to make the change for this year.

Agenda Item 10 was moved to this portion in the meeting.

10. Discussion of 151 Purchase Street Associates, LLC and tenancy lease terms

Mayor French said that since this item concerned litigation, the Council would adjourn into Executive Session to discuss it. A member of the audience who was a named defendant in the litigation was invited to participate in the session. Doug Carey of 131 Purchase Street, who said he represented the Highland Hall Tenants Organization, asked to participate in the discussion. Interim Corporation Counsel Wilson advised that since Mr. Carey was not a named defendant in the litigation it would not be appropriate for him to participate in the executive session.

Councilman Jovanovich made a motion, seconded by Councilwoman Parker and unanimously carried, to adjourn into Executive Session at 10:55 p.m. to discuss litigation relative to 151 Purchase Street Associates, LLC. Councilman Jovanovich made a motion seconded by Councilwoman Parker and unanimously carried to adjourn the Executive Session at 11:52. No action was taken on this agenda item.

17. Adjournment

There being no further business to discuss, Councilman Jovanovich made a motion, seconded by Councilwoman Parker and unanimously carried, to adjourn the meeting at 11:54 p.m.

Respectfully submitted,

Dawn F. Nodarse  
City Clerk