

APPROVED MINUTES of the Regular Meeting of the City Council of the City of Rye held in City Hall on January 26, 2011 at 8:00 P.M.

PRESENT:

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

ABSENT: None

The Council convened at 7:33 p.m. Mayor French made a motion, seconded by Councilman Jovanovich and unanimously carried, to immediately adjourn into Executive Session to discuss personnel matters. Councilman Jovanovich made a motion, seconded by Councilwoman Gamache and unanimously carried, to adjourn the Executive Session at 8:14 p.m. The regular meeting convened at 8:18 p.m.

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

Residents were encouraged to go to the City website to sign up for the “No Knock Registry.” Additionally, announcements were made by Councilmembers regarding upcoming meetings, events and activities of various Boards, Committees and organizations.

4. Draft unapproved minutes of the regular meeting of the City Council held January 12, 2011

Councilman Jovanovich made a motion, seconded by Councilman Fillipi and unanimously carried, to approve the minutes of the regular meeting of the City Council held on January 12, 2011, as amended.

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

John Carolin, 66 Milton Road, spoke about moorings off the pier that were utilized by the owner of the Tiki Bar at Playland. He said he understood that the City of Rye has control over the water and did not believe that any fees for the moorings were paid by the owner to the City. He suggested the City look into this for the next season. Councilwoman Parker said she believed that approximately \$40,000 had been paid for the moorings, but was not sure what went to the County and what went to the City.

Jim Amico, 350 Midland Avenue, spoke about pedestrian safety issues, saying the City was not making enough progress. He suggested the Council look into:

- Police Department issues - (The Department is doing well. Enforcement statistics are up; arrest rates on the number of cases cleared are incredible. There may be individual morale issues but they are not issues related to the operation of the Department. The priority of the Department is on patrol.)
- Lack of snow removal - (The City is doing an excellent job in removing snow and there is not much more that can be done without causing budget issues.)
- Problems with construction company policies - (The Traffic and Pedestrian Safety Committee (TPS) is looking into the issue of construction policies and feel that the requirements contained in the building permit and State regulations currently regulate the issue and there are limitations as to what can be enforced.)
- The stop sign on Midland Avenue that he has asked for - (Until the City is fully reimbursed for the Stimulus Projects, the City is unable to do any modifications to the work that was authorized.)
- Crossing guards - (A crossing guard analysis will be done in the Spring when a larger number of people walk and bike. TPS is discussing options.)

Julie Killian, 42 Forest Avenue, said that she was against the Council increasing the gross receipts tax.

Jordan Glass, an attorney representing Raymond Tartaglione and HealthHarbor.com, spoke about issues related to Hen Island and a recent decision issued by the Supreme Court, Westchester County in connection with the matter *HealthHarbor.com v. City of Rye, et al.* He said the Court disagreed with the City's contention that Section 161-1 of the City Code regarding inspection of private sewer systems was no longer in effect. The Court also stated that even though the County has enacted regulations regarding sewer systems, it has not usurped the rights of local municipalities to pass their own regulations regarding private sewer systems. He said based on this decision the Council is entitled to act under the authority of Sections 161-1 and 161-3 of the City Code. He said the financial responsibility of repairing any violations would fall on the owners of the properties on Hen Island. He suggested that the Council place the matter on a Council agenda.

6. Mayor's Manager Report

- Update on Snow Removal: Practice and Responsibilities

City Manager Pickup said that the State is looking at the opportunity to file for a Federal Declaration for the December 26th snow storm. Information will be submitted to SEMO this week to see if it meets the criteria to receive financial relief. The DPW has ordered about 90% of its annual salt order quantity based on NY State contract. The next order may put it over the budget line. Going forward, staff may have to come back to the Council and ask for additional appropriation for the salt budget. Anything more than 20% over the ordered amount is subject to higher costs than the contracted amount. He said the City is getting the roads cleaned. He said he understands that some people are upset by snow piles at intersections but the practice has been to try to maintain the commuting areas and school areas as the two principle areas to be cleaned after the principle and secondary roads are open. The City has modified it plan to include the eight staffed crossings to make sure they are clear for students. If the City were to try to clear every intersection with a crosswalk it would have to clear 72 crosswalks, which would add about \$15,000 to \$16,000 to the cost of an average storm. This is not something the City can do with current budget conditions.

Questions and comments:

- Could sand be mixed with the salt? (The City tries to minimize the use of sand because of the clean up that is involved, but it can be done if necessary.)
- Could DPW look at ways to spread salt more evenly at intersections and look at ways to spread out the snow along the street rather than piling it at street corners?
- Are there environmental impacts to the salt used? (The City uses NY State contract salt which is based on NYS specs. While not great for all plants along the roads, there is no significant environmental damage.)
- People such as seniors, the handicapped or those on fixed incomes, who have difficulty clearing snow from their sidewalk, can contact Rye Youth Employment for a list of names of teens, who are willing to shovel snow for \$10 per hour. The Seniors organizations in Rye are also looking to set up a liaison process with Rye Youth Employment.
- The City might be compelled to look at snow removal in a different way and should be clearing all the crosswalks because it is the right thing to do.
- The City Manager should provide information about how much of the 2011 snow budget has already been used.

Jim Amico, Charmain Neary and Robert Zahm offered the following comments:

- The City could do a better job of cleaning the snow. The law is not specific about who is responsible for clearing crosswalks and should be rewritten.
- It is unfair that some people do not clear a wide enough path on their sidewalks for people to travel easily.
- Clearing snow near the schools should be the first priority, not the train station.
- The area near bus stops should also be cleared.

Rye Town Park

City Comptroller Jean Gribbins made a brief report on information recently received from the Town of Rye regarding an increase in the amount of loss for the Park from \$50,000 to

\$142,000. She said that she and City Manager Pickup would be meeting with the Town of Rye on January 28th and plan to address the issue of the difference in the preliminary results issued in December and the preliminary results issued in January, including the high unemployment costs, interest costs and salary costs. She said the City does not remit payment to the Rye Town Park Commission until after audited financial information is received. The City budgeted \$25,000 for its share and based on the new figures the City's share would be an additional \$44,000 for a total of \$69,000. She said it was disturbing to see an increase this large on an operation that has been closed for months. Councilman Sack said that if the Rye Town Park Commission had known that the budget shortfalls were accumulating during the year, something could have been done to make adjustments. He added that it was a record revenue year for the Park and suggested that a process should be accelerated whereby the City takes over the management of the Park. Mayor French said that part of the costs involved are outside of what is looked at by the Rye Town Park Commission, such as interest costs related to the roof project; the self-insurance of unemployment claims by the Town of Rye; and overruns on wages. He said he has spoken to the other Mayors and Supervisors who sit on the Commission and they want to make immediate changes to the operation including: having the security force report to the Rye Police Commissioner; the City's Finance person having co-accountability with the Park's Finance person; and, coordinating the capital improvement plans of the City and the Park. He said he has asked for an immediate audit of the books by the City's Comptroller and Rye Citizens Finance Committee. He and Councilman Sack have previously focused on policy changes and now will be focusing on the operation of the Park. He said that the Park should be treated as a Department whose staff reports to the Council. Councilman Sack also noted that the Council may have to have a policy and budget discussion because in order to implement an automated parking system, the City may have to front the start-up costs. Mayor French asked Comptroller Gribbins to report back to the Council after the meeting with Rye Town.

- Legal Update

Corporation Counsel Kristen Wilson reported on the following matters:

- Osborn: On Monday the matter was closed when money was exchanged between the parties.
- Beaver Swamp Brook: Harrison has submitted to Department of Environmental Conservation (DEC) staff a Noise and Visual Impact Update. They are still waiting for an updated Traffic Study, which is estimated to be completed by the end of February. She said that the DEC is not addressing flood storage issues that have been raised by the City.
- HealtheHarbor.com v. Rye: A decision was received granting the City's Motion to Dismiss, stating that the petitioners failed to state a cause of action. Judge Zambelli found that it is within the City's discretion to determine how to enforce provisions that are in the City Code and that she would not force the City's hand.

Chuck Pateman spoke about the HealtheHarbor decision. He said the Court made it clear that the City has the authority to have laws that supersede or are in conjunction with County Health laws. He urged the Council to enforce its laws to protect Milton Harbor.

7. Discussion on 2011 Home Rule Legislation

City Manager Pickup said that the State Representatives would like to have Home Rule issues in Albany in February, prior to budget deliberations. Councilmembers commented on the following topics for Home Rule legislation:

Gross Receipts Tax

- It is a regressive tax that is passed on to consumers and is not a good idea.
- The legislation would give the City the right to increase the tax up to 3%.
- The tax is based on the amount of consumption of a utility.
- It is inappropriate to raise taxes mid-year.
- The City should seek the authority to impose the tax but should not do so unless it is part of the public discussion of the 2012 Budget.
- It is a consumption tax that is spread across a larger user base than property taxes.
- It could be used for capital improvements rather than increasing property taxes.
- The City must consider all revenue sources.
- This is not the time to impose an additional tax. It could be reconsidered next year.
- It is similar to a user fee imposed on programs.
- People can opt out of participating in programs – they can't opt out of paying utility bills.
- The Westchester Municipal Officials asked that the State go forward with this as another option for municipalities to utilize to increase revenue.

Members of the public commenting included *Robert Zahm and Charmain Neary*. Their comments included:

- This is a way around a commitment to control taxes and it not transparent.
- It is more efficient to raise property taxes because they can be deducted.
- The 1% already in effect should be repealed.
- Once the permission is received it will become easier to impose the tax.
- The School Board studied the idea and decided it did not make sense.
- Once taxes are imposed they never go away.

Changing the Vehicle & Traffic Laws (Stopping in Crosswalks and Red light cameras)

- The Traffic and Pedestrian Safety Committee (TPS) recommended against seeking Home Rule for changing traffic laws regarding yielding vs. stopping for pedestrians in crosswalks.
- TPS advised that many issues have arisen across the country regarding red light cameras. Maybe this should be investigated further.
- The City should pursue red light cameras because there are potential residual benefits such as increasing enforcement and engendering compliance.
- Even though Rye is a small city it should be able to do this because it has roads that are used by many people outside of the City.

City Manager Pickup said staff had concerns about red light cameras because there have been issues regarding the vendors who install the equipment and issue the tickets; because the cameras generate ill will in the community; and because some people believe them to be an

invasion of privacy. He said that the authority to utilize red light cameras has only been given to cities with populations of 100,000 or larger.

- What do red light cameras cost? (Instillation and on-going maintenance costs similar to Complus. There would have to be certain traffic volumes for it to be worthwhile for a vendor.)
- There is no privacy right to running through a red light.

Members of the public commenting included *Robert Zahm, Charmaine Neary and Jim Amico*. Their comments included:

- Traffic cameras are the equivalent to have a policeman sitting at the light.
- Contact Assemblyman Latimer, because he has not been optimistic about the ability of getting red light camera legislation passed.
- The only place where cameras would be valuable would be on the Boston Post Road and Playland Parkway.
- The City should start building its case for cameras.
- TPS is right about yielding vs. stopping in crosswalks. Stop signs should be put up at crosswalks instead.

Mayor French said that a vote on which items should be put forward for Home Rule legislation would be taken at the next meeting.

8. Resolution by the Council consenting to Spectrum, NYLCP, and HarbourVest Partners acquiring a non-controlling, minority ownership interest in Yankee Metro Acquisition, LLC

Corporation Counsel Wilson said the City previously executed an Assumption Agreement transferring control of a Franchise Agreement with NEON Optica. An attorney for Spectrum said this was a minority ownership interest and as part of the Assumption Agreement it hit the threshold for City consent. She advised that there was no reason for the City not to approve the request.

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

RESOLVED that the City Council hereby consents to Spectrum, NYLCP, and HarbourVest Partners acquiring a non-controlling, minority ownership interest in Yankee Metro Acquisition, LLC.

ROLL CALL:

AYES:	Mayor French, Councilmembers Filippi, Gamache, Jovanovich, Keith, Parker and Sack
NAYS:	None
ABSENT:	None

The Resolution was adopted by a 7-0 vote.

9. Resolution to adopt a Legal Case Management Committee

Mayor French suggested that the Council discuss the draft he has circulated as well as Councilman Sack's ideas that had been forwarded earlier in the day. Mayor French said that his proposal was to lay out a process to formalize the auditing of legal bills signed off on by the Corporation Counsel or City Manager. Councilman Sack said he believed it was the City Council's fiduciary responsibility to review all legal bills. If the Committee is created it should look at bills as they come in, not after they are paid. He said he believed the Resolution establishing the Committee should simply indicate that the Committee was being formed to review legal bills. City Manager Pickup said that when the Council sets the budget each year, it is the responsibility of the staff to manage within those budgets. He said it was his belief the idea of the proposed Committee was to take a periodic strategic look at litigation. Mayor French agreed that it would look at the management of cases but not from the standpoint of legal strategy.

Council comment included:

- The Council already meets to discuss legal strategy on a fairly regular basis.
- An audit subcommittee is a good idea.
- It is a good way to determine if the money being spent is worth it.
- It could be given a try before formalizing the Committee.
- Is Councilman Sack suggesting that all legal bills should be reviewed prior to payment? (Yes, since most of the bills are paid to the Corporation Counsel's firm. Also, most legal bills in the private sector are cut down before they are paid.) (City Manager Pickup noted that in insurance cases after the first \$50,000 is paid, the review of legal bills is an insurance company issue because that is the point where they become responsible for payment.)
- It is a useful concept.

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

WHEREAS, it is the responsibility of the City of Rye ("the City") Council to oversee and direct the activities of the Law Department and Corporation Counsel and,

WHEREAS, the Corporation Counsel, whether as an employee of the City or a retained independent contractor, serves at the pleasure of the City Council and,

WHEREAS, it is the responsibility of the Corporation Counsel to supervise and direct the legal affairs of the City on any matter affecting the interest of the City, and

WHEREAS, one of the responsibilities of the Corporation Counsel is to review and approve all legal services invoices on behalf of the City on all matters including those handled by insurance carriers and outside legal service providers.

THEREFORE be it resolved that the City Council shall establish the Rye City Council Legal and Case Management Audit Sub-Committee (“the Committee”).

The Committee shall conduct a semi-annual audit of all City legal invoices, accounts and fiscal affairs of the Law Department to include dollars, budget estimates and billable hours, and may provide for more frequent audits or reports as any Councilmember deems necessary.

The Committee shall report back to the Council a summary of its findings, part or all of which may be released to the public based on confidentiality.

Further, Be It Resolved that the Committee shall be comprised of the Mayor, the City Manager, and one Councilmember appointed annually by the Mayor with all meetings open to any and all Councilmembers.

ROLL CALL:

AYES: Mayor French, Councilmembers Filippi, Gamache, Jovanovich,
Keith and Parker
NAYS: Councilman Sack
ABSENT: None

The Resolution was adopted by a 6-1 vote.

10. Two appointments to the Board of Appeals for a three-year term, by the Mayor with Council approval

Councilwoman Keith made a motion, seconded by Councilwoman Gamache and unanimously approved, to reappoint Scott Beechert and Alan Wiener to the Board of Appeals for three-year terms expiring on January 1, 2014.

11. Three appointments to the Board of Architectural Review, one for a one-year term, one for a two-year term and one for a three-year term, by the Mayor with Council approval

Councilman Filippi made a motion, seconded by Councilwoman Keith to reappoint Carmen Aguilar to the Board of Architectural Review for a one-year term expiring on January 1, 2012; Roberta Downing to the Board of Architectural Review for a two-year term, expiring on January 1, 2013; and Robin Jovanovich to the Board of Architectural Review for a three-year term expiring on January 1, 2014

12. Designation of the Chairman of the Board of Architectural Review by the Mayor

Mayor French designated Carmen Aguilar as Chairman of the Board of Architectural Review.

13. Two appointments to the Conservation Commission/Advisory Council for a three-year term, by the Mayor with Council approval

Councilman Filippi made a motion, seconded by Councilwoman Keith and unanimously carried, to reappoint Paul Berte and Jim Nash to the Conservation Commission/Advisory Council for three-year terms, expiring on January 1, 2014.

14. Two appointments to the Finance Committee for a three-year term, by the Mayor with Council approval

Councilwoman Gamache made a motion, seconded by Councilman Filippi and unanimously carried to reappoint Laura Leach and Stephen Myers to the Finance Committee for three-year terms, expiring on January 1, 2014.

15. Two appointments to the Landmarks Advisory Committee for a three-year term, by the Mayor with Council approval

Councilwoman Gamache made a motion, seconded by Councilman Filippi and unanimously approved, to reappoint Richard Hourahan and Daniel Kelly to the Landmarks Advisory Committee for three-year terms, expiring on January 1, 2014.

16. Two appointments to the Planning Commission for a three-year term, by the Mayor with Council approval

Councilman Filippi made a motion, seconded by Councilwoman Keith and unanimously approved, to reappoint Hugh Greechan and Peter Larr to the Planning Commission for three-year terms, expiring on January 1, 2014.

17. Designation of the Chairman of the Planning Commission, by the Mayor

Mayor French designated Nicholas Everett as Chairman of the Planning Commission.

18. Two appointments to the Recreation Commission for a three-year term, by the Mayor with Council approval

Councilwoman Keith made a motion, seconded by Councilman Filippi and unanimously approved, to reappoint Caroline Surhoff and appoint Timothy Muccia to the Recreation Commission for three-year terms, expiring on January 1, 2014.

19. Two appointments to the Rye Cable and Communications Committee for a three-year term, by the Mayor with Council approval

Councilman Jovanovich made a motion, seconded by Councilman Filippi and unanimously carried, to reappoint Mark DelliColli and Susan Olsen to the Rye Cable and Communications Committee for three-year terms, expiring on January 1, 2014.

20. Four appointments to the Rye Playland Advisory Committee for a three-year term, by the Mayor with Council approval

Councilman Filippi made a motion, seconded by Councilman Jovanovich and unanimously carried, to reappoint Mack Cunningham, Lloyd Emanuel, Lucinda McKinnon and Ellen Slater to the Rye Playland Advisory Committee for three-year terms, expiring on January 1, 2014.

21. Two appointments to the Rye Town Park Advisory Committee for a three-year term, by the Mayor with Council approval

Councilwoman Keith made a motion, seconded by Councilman Filippi and unanimously carried, to reappoint Stephanie Vroom and Elinore White to the Rye Town Park Advisory Committee for three-year terms, expiring on January 1, 2014.

22. Three appointments to the Traffic and Pedestrian Safety Committee for a three-year term, by the Mayor with Council approval

Councilwoman Keith made a motion, seconded by Councilman Jovanovich and unanimously carried, to reappoint James Burke, Stacy Koenig and Ben Stack to the Traffic and Pedestrian Safety Committee for three-year terms, expiring on January 1, 2014.

- 22A. Two appointments to the Government Policy and Research Committee for a three-year term, by the Mayor with Council approval

Councilman Filippi made a motion, seconded by Councilwoman Gamache and unanimously carried, to reappoint Robert Cypher and appoint Lizza Reyes Clark to the Government Policy and Research Committee for three-year terms, expiring on January 1, 2014.

- 22B. One Appointment to the Board of Ethics for a three-year term, by the Mayor with Council approval

Councilwoman Gamache made a motion, seconded by Councilman Jovanovich and unanimously carried, to reappoint Elizabeth Griffin Matthews to the Board of Ethics for a three-year term, expiring on January 1, 2014.

23. Designation of the City Council Liaisons by the Mayor

Mayor French designated City Council Liaisons as follows:

Councilwoman Gamache – Rye Free Reading Room; Finance Committee and Audit Committee
Councilman Sack – Rye Town Park Commission and Board of Appeals

Councilwoman Parker – Playland Advisory Committee; Chamber of Commerce and EMS
Councilwoman Keith – Rye Cable & Communications and Traffic & Pedestrian Safety
Councilman Filippi – Conservation Commission/Advisory Council
Councilman Jovanovich – Government Policy & Research; Planning Commission and Audit Committee
Mayor French – Rye Town Park Commission and Board of Education and Audit Committee

24. Miscellaneous Communications and Reports

Mayor French reported on a Safe Routes to School meeting held on January 25th. He said they are speaking with the School Board about doing more training in the classrooms on pedestrian safety. He also said that Steve Mochel from Fresh Green Light has offered to lead a community workshop on distracted driving and compliance sometime in March. The Mayor said this would also be a topic of discussion at the joint meeting with the School Board in April.

25. Old Business

Councilman Jovanovich said that the most recent information received from Police Commissioner Connors is a good report on enforcement figures and should be made public quarterly.

Councilwoman Keith said that the Traffic and Pedestrian Safety Committee had looked at the idea of requirements for contractors working in the City. She said that the Committee's recommendation was that there are already State regulations and requirements contained in the building permit that regulate this issue and there are limitations to what can be enforced. They suggested that the only possible change would be to strengthen language in the building permit requirements. Mayor French suggested putting out a value statement about what is expected of contractors who are working in Rye. City Manager Pickup said there issues that come up on a case by case basis regarding access. He said the Building Department is aware of the Council's concerns and has been reinforcing them with the contractors. *Jim Amico* suggested that there should be penalties enacted that would shut down contractors who blatantly violate construction regulations. City Manager Pickup said there must be a reasonable expectation of the Council if they want residents in Rye to improve and maintain the assessed value of their homes.

Councilman Filippi asked if the Pedestrian Safety and Shared Roadways groups could become involved in the planning process for new sewer districts such as the Kirby Lane Extension District that was approved at the last Council meeting. City Manager Pickup said the Council must determine what corridors they believe are important because there are issues in every right-of-way that would require significant investment.

Councilwoman Keith thanked the City Manager for posting information on the website about the Theodore Fremd Avenue Retaining Wall project. Councilwoman Parker asked that additional information about Councilmembers be put on the website.

Councilman Sack asked if there was a policy about what organizations would be charged for police overtime costs in connection with their events. He said he had told the Rye Little League that they would not be charged. City Manager Pickup said there has been historic

precedence and as new events come up, the Council is asked what their preference is regarding imposing these costs.

26. New Business

Councilwoman Gamache said that she and Mayor French met with the Executive Committee of the Library Board to discuss the future relationship between the Library and the City. The Library Board is looking for a way to create a more stable funding structure and have spoken to a consultant about a 414 Plan, but is also interested in other options. Since the City wants to be involved in upcoming labor negotiations, an alternative discussed was for the City to enter into a longer Agreement with the Library to run the length of the new labor agreement. She asked that an agenda item on library funding be added to the next meeting.

27. Adjournment

There being no further business to discuss Councilman Jovanovich made a motion, seconded by Councilman Sack and unanimously carried, to adjourn the meeting at 11:21 p.m.

Respectfully submitted,

Dawn F. Nodarse
City Clerk