

APPROVED MINUTES of the Regular Meeting of the City Council of the City of Rye held in City Hall on February 9, 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 7:03 p.m. Mayor French made a motion, seconded by Councilman Sack and unanimously carried, to immediately adjourn into Executive Session to discuss real estate and attorney/client matters. Mayor French made a motion, seconded by Councilman Jovanovich and unanimously carried, to adjourn the Executive Session at 8:06 p.m. The regular meeting convened at 8:13 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

Councilman Sack noted the passing of two long-time residents, Joe Brendel and Bruno Turiano.

4. Draft unapproved minutes of the regular meeting of the City Council held January 26, 2011

Councilman Filippi made a motion, seconded by Councilwoman Gamache and unanimously carried, to approve the minutes of the regular meeting of the City Council held on January 26, 2011, as amended.

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

Sis D'Angelo, 110 Wappanocca Avenue, said the City should contact the MTA about repairing the wall under the railroad bridge on Purchase Street and said that if they don't want to fix it, the City should fix it and charge them. She also said that storeowners should be shoveling all of the sidewalks in front of their stores and that sandwich boards with balloons should not be allowed on street corners. It was noted that sandwich boards are illegal and the business owners using them should be notified.

Robert Schubert, 980 Forest Avenue, spoke about the situation with his pond, saying that the City is at fault for what has happened to his property. The Mayor advised Mr. Schubert that since there is pending litigation regarding the case, the Council would not comment.

Robert Zahm, Ridgewood Drive, asked if the Council was still considering a Home Rule request to increase the gross receipts tax, and, if not, they should consider repealing the 1% that is already charged.

6. Mayor's Manager Report

- Highlights of the 2011 Governor's Budget

There is a proposal to cut AIM funding by 2%, which would equal a \$25,000 cut to the City, but CHIPs funding will remain flat. The Westchester Municipal Officials Association has put forth legislative priorities regarding the proposed tax cap, which include mandate relief.

- Grant Awards for Bird Homestead Property Acquisition

The City has received \$450,000 for two of the grants. Everything is in place for the \$350,000 Parks and Historic Preservation Grant and the City is waiting for the Grant Disbursement Agreement. A closing must be set for the \$200,000 Westchester County Grant, which the County is talking about having before the end of February.

- Legal Update

Corporation Counsel Wilson reported on the following matters:

Schubert matters – the City is waiting for a decision from Judge Karas on its motion to dismiss in the Federal Civil Rights action and a decision on the Article 78 proceeding pending in Supreme Court, Westchester County. The City has recently been in communication with representatives of the Schuberts.

HealthHarbor.com v. City of Rye – Judge Zambelli found that Chapter 161 of the City Code is still on the books but the City has the discretion on whether or not to enforce the provisions. The City will be taking a close look at Chapter 161 and other existing provisions in the Code in order to determine what needs to be updated and what needs to be removed. She added that the City has been in recent communication with Westchester County and believes that the City can work cooperatively with the County moving forward.

Ray Tartaglione asked if the City's position had changed with regard to enforcement on Hen Island. Mayor French said the City believes that the County is the City's lead agency in regard to environmental and health matters. Mr. Tartaglione said that the Court has indicated the

City has the discretion to enforce laws on its books; that it should do so and that it is the Council's duty to do so.

Agenda Item 8 was taken out of order.

7. Presentation by the Government Policy & Research Committee on the Westchester County flood law

Susan Jansen, Matt Thomas and Elaine DiConstanzo representing the Government Policy & Research Committee gave a presentation on Storm water Management in Westchester County and proposed County Legislation Local Law 27-2010. Highlights of the presentation included:

- Increase in real estate development over the last 20 years is a leading cause of the increase in flooding.
- Flood mitigation projects are beyond the reach of individual municipalities and should be viewed from a perspective of “watershed districts.” This had led to the emergence of inter-municipal efforts such as the Flood Management Task Force and the Long Island Sound Watershed Inter-municipal Council (“LISWIC”).
- Flood mitigation projects initiated since 2007 have been limited and relied on individual municipal capital improvement funds or grants.
- The concept of LISWIC, which would be a new taxing entity, is problematic in the current political environment.
- The legislative intent of County Law 27-2010 is that local municipalities should not be solely responsible for storm water management. There should be cooperation among municipalities, the County, the State and Federal Government to come up with storm water management plans.
- The County should provide financial assistance to eligible municipalities for approved storm water projects that meet established criteria, subject to annual appropriations by the Board of Legislators.
- The County legislation would: require development of watershed-wide storm water management plans; create procedures to help fund municipal storm water projects; require development of a Reconnaissance Plan that will serve as the basis for the development of subsequent storm water management plans; create a Storm Water Advisory Board; create Basin-wide Watershed Advisory Boards; and comply with the requirements of the State Environmental Quality Review Act (“SEQRA”).
- If the City decides to participate in the process it would be required to: provide certification to the County that there is a flooding problem and that what is being proposed would not exacerbate flooding in the County; apply for Phase I funding to underwrite engineering projects regarding the nature of flood mitigation projects in Rye; apply for Phase II funding for the construction of storm water mitigation projects; and ongoing management of construction projects, compliance with Inter-municipal Agreements (IMA's) and monitoring of appropriations received from the County.
- The City would be financially responsible for 100% of the costs involved in the certification process; 50% of the costs of the projects and any budget overruns.
- County-wide mitigation projects will be prioritized.

- Negotiations and IMA's with other municipalities will be very important to getting projects done.

City Manager Pickup said the City has already spent a great deal of time and money proving it has flooding issues. He said he is concerned that the Army Corps of Engineers is missing from the County proposal because in order to receive federal money, a project must receive separate approvals from the Army Corps.

8. Presentation by the Playland Strategic Planning Committee on the recommendations for Playland

Charles Dorn, the Chair of the Playland Strategic Planning Committee gave a summary of the work of the committee over the last few months prior to providing the Council with the Committee's recommendations of what they believe should be incorporated in a Resolution. He said the Committee learned there is no vision for the future of Playland included in the Request for Proposal (RFP). He said there were so many options discussed by the Committee that they could not come up with an idea that everyone agreed upon and, therefore, they were presenting a set of values and principles that are important to Rye. They include:

- Playland is a public resource for the use and enjoyment of all residents of Rye and Westchester County and any proposed use should insure public use of and access to open space, Long Island Sound and facilities.
- Any use of the Playland site must be sensitive to environmental considerations and sustainability and any future use to Playland should emphasize the improvement of the environmental impact to the site.
- A large portion of Playland is designated as a National Historic Landmark and any changes, removal or replacement of structures not landmarked should be consistent with the historic heart of Playland.
- Any proposal affecting the site must be examined to insure it is both financially responsible and sustainable and proposed uses that present opportunities to reduce costs or the portion of costs borne by the public should be given careful consideration.
- Any proposal affecting Playland should comply with existing Rye zoning ordinances.

Councilmembers expressed additional concerns such as stronger language regarding zoning; traffic and pedestrian safety; clarification of the jurisdiction and roles of the various involved parties; noise; the Children's Museum; no alienation of parkland, and the Tiki Bar. It was noted that the Tiki Bar has been excluded from the RFP process. It was also suggested that the City should not commit to standards that can be used against it and a simpler Resolution supporting anything that does not adversely affect the City might be more beneficial. The City Council must advocate for what is best for Rye. The City Manager noted that if Playland is open year round, the impact on morning school drop off must be evaluated. Mayor French asked Corporation Counsel Wilson to prepare a Resolution for discussion at the next meeting.

There was also a brief discussion of issues related to the operation of the Tiki Bar such as noise, utilization of space and security issues. Mr. Dorn said that many of the concerns have been addressed in the renegotiated contract with the County.

9. Presentation by the Traffic & Pedestrian Safety Committee on red light cameras

Brian Dempsey, Chairman of the Traffic and Pedestrian Safety Committee, said there are mixed opinions on the value of red light cameras. They are supported by the Federal Highway Administration; they reduce the number of people who run red lights, which is a major cause of serious accidents; they reduce right-angle accidents; but they increase the number of rear-end accidents and increase the total number of accidents at intersections. There are currently 26 states that allow red light cameras. There are six red light camera programs approved in New York, all in large cities or counties. In order to receive approval the City must show a need for them by showing there are locations with enough traffic and violators to warrant them. Companies that install and maintain the cameras may not be interested unless they can obtain sufficient revenue from them. New York State is in a four-year trial program regarding the currently approved locations and it is doubtful that they will permit any other installations during that period.

10. Discussion on establishing funding for the Rye Free Reading Room through a Chapter 414 vote

Debra Julian, Director of the Library Board, explained the Chapter 414 process, which is a way for libraries to gather petitions and go out for a vote on their budgets. The overall goal is to get sustainable funding for the Library in order to create a strategic plan to offer the best services to the community. A 414 Plan requires a significant amount of time for publicity and marketing to the community before getting on a ballot and is very costly. A 501 (c)(3) organization must be formed to fund the process, which could cost up to \$50,000. Councilwoman Gamache, the Council Liaison to the Library, noted that the turnout for library votes is usually small and they must go through the process every time they want to increase their funding. She added that the Library has agreed to work with the City's labor lawyer on their upcoming labor agreements and it might be a better idea to consider an agreement with the Library to provide a certain level of funding during the length of the contract. City Manager Pickup warned that if the State Legislature enacts a tax cap, a 414 Plan for the Library could be more beneficial to the City than a long-term agreement because the Library would be funded separate from the City budget.

Councilmembers expressed their belief that the Library provides an essential service to the community and needs sustainable funding. It was noted that there may not be the will in the community to support the idea of a 414, which would create another taxing authority. There was also support expressed for a 414 Plan because it would test community support for the Library. It was also noted that if the 414 vote was timed with local elections there would be a higher turnout. Mayor French said he believed it was the general sense of the Council to pursue the option of a multi-year agreement with the Library.

Robert Zahm said he believed that a 414 would actually reflect the will of the voters and suggested that if approved, the Council should commit to eliminate the money currently allocated for the Library from its budget or reallocate it to infrastructure improvements.

11. Discussion of a proposed Tree Ordinance by the Conservation Commission/Advisory Council

Councilman Filippi said there has been discussion about revising the City's Tree Ordinance for several years. City Planner Christian Miller has proposed amendments to the current law, which would make Rye more in line with surrounding communities in maintaining trees. Caroline Cunningham from the Planning Commission and Jim Nash from the Conservation Commission/Advisory Council (CC/AC) referred to a joint proposal from the Planning Commission and CC/AC that included seven conditions that should be included in an updated ordinance dealing with (1) applicability; (2) clear cutting; (3) removal criteria; (4) applicability to City property; (5) Planning Commission review; (6) Board of Architectural Review jurisdiction; and (7) consistency in the Code. Their main focus is to stop the loophole in the current law that permits clear cutting of trees prior to subdivision approval and removal of large numbers of trees. They believe there should be some entity that reviews tree clearing actions and pointed out that many other communities are strengthening their tree ordinances and requiring permits to take down trees.

City Manager Pickup said there are issues involved in the proposal to change the tree ordinance due to reductions in staff in the Department of Public Works and Building Department. He said the Council has to discuss how they expect the new law will be implemented; how it will physically operate; and how people will go out in the field and make it work, either by adding staff or hiring private parties to do the work and charging it back to homeowners. He said there should also be consideration regarding adding additional work for the Boards and Commissions and advised that there would also need to be an appellate process set up.

It was suggested that City Planner Miller be asked to look at an amendment to the law that would deal with only the worst problems that currently exist. There was also a suggestion to consider it as part of the overall Sustainability Plan for the City. Staff was asked to come back to the Council with a draft revision that dealt with the issues of clear cutting and multiple tree removal.

12. Resolution to transfer funds from contingency to the Public Works Department for costs pertaining to storm overtime and materials
Roll Call.

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

WHEREAS, City staff has determined that the amounts required for sale and overtime for storm coverage in fiscal 2011 will exceed the amounts provided for in the adopted 2011 budget by \$50,000; and

WHEREAS, the General Fund Contingent Account has a balance of \$300,000; now therefore be it

RESOLVED, that the City Comptroller is authorized to transfer \$50,000 from the General Fund Contingent Account to the Public Works Department.

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.

13. Authorize payment of the balance of the 2010/2011 Rye Neck Union Free School District taxes collected by the City to the School District
Roll Call.

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

RESOLVED that the City Council of the City of Rye hereby authorizes that payment of the balance of \$148,903.49 of unpaid Rye Neck U.F.S.D taxes, on property within the City of Rye as of December 31, 2010, be made to the Treasurer of the Rye Neck UFSD.

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.

14. Authorization for City Manager to enter into a license agreement with Mark C. and Bridget Davis, residing at 8 Upper Dogwood Lane and Conrad J. and Cynthia Wells DeSantis, residing at 12 Upper Dogwood Lane, Rye, New York, for the operation and maintenance of sanitary sewer service laterals and shut-off valves

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

RESOLVED, that the City Manager is hereby authorized to enter into license agreements with Mark C. and Bridget Davis, residing at 8 Upper Dogwood Lane (Sheet 139.18, Block 1, Lots 1.1 and 1.2 on the Tax Assessment

Map of the City of Rye) and Conrad J. and Cynthia Wells DeSantis, residing at 12 Upper Dogwood Lane (Sheet 139.18, Block 1, Lot 1.9 on the Tax Assessment Map of the City of Rye) for the operation and maintenance of sanitary sewer service laterals and shut-off valves.

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.

15. Appeal of denial of FOIL request by Timothy Chittenden

Corporation Counsel Wilson said that Mr. Chittenden, under the Freedom of Information Law (F.O.I.L.), has requested all transcripts from all court proceedings and depositions in connection with the *Michael Bassett v. City of Rye* lawsuit. She said it was a two part appeal. The first part deals with the request for the trial transcript. She was provided with the transcript that consists of approximately 400 pages, in paper form from the trial attorney's office and informed him of the cost of the document. Since that response, the City has obtained a scanner that is equipped to scan large documents and the document has been scanned and provided. The second part of the appeal deals with the deposition testimony. This was denied under Section 87-2(e) of the Public Officers Law. The depositions did not take place in public. The matter proceeded to trial and there are post-trial motions pending at the trial level. Ms. Wilson said that she has spoken with Bob Freeman of the Committee on Open Government and based on her conversations with him, he believes that 87-2(e) could be applicable as well as 87-2(a) and 2(b).

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

RESOLVED, that the appeal of the denial of a Freedom of Information Law (F.O.I.L.) request dealing with the method of producing the transcripts of the court proceedings in the *Michael Bassett v. City of Rye* lawsuit, is hereby denied.

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.

The Council then discussed the second part of the F.O.I.L. appeal – the denial of the request for deposition transcripts. Ms. Wilson said she had denied access to these records under Section 87-2(e) of the Public Officers Law that concerns documents that are compiled for law enforcement purposes, which would, if disclosed, interfere with law enforcement investigations or judicial proceedings.

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

RESOLVED, that the appeal of the denial of a Freedom of Information Law (F.O.I.L.) request for the deposition transcripts in connection with the *Michael Bassett v. City of Rye* lawsuit is hereby approved subject to redaction of all confidential information and charging the appropriate fees.

ROLL CALL:

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

The Resolution was defeated by a 6-1 vote.

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

RESOLVED, that the appeal of the denial of a Freedom of Information Law (F.O.I.L.) request for the deposition transcripts in connection with the *Michael Bassett v. City of Rye* lawsuit is hereby denied under sections 87-2(a), 87-2(b) and 87-2(e) of the New York State Public Officers Law.

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.

16. Miscellaneous Communications and Reports

Councilwoman Keith reported that the Sustainability Stakeholders Committee would be meeting on March 31st. The goal would be to listen to key stakeholders in town.

Councilwoman Parker announced that she would be holding a Town Hall meeting for children to talk about Playland on February 28th at 4:30.

17. Old Business

Councilman Filippi asked if a Home Rule request could be considered to allow the City to recoup fees expended in tax foreclosure actions. He also suggested discussing setting up a penalty structure for repeat offenders.

Councilwoman Keith asked for an update on two issues regarding the Tiki Bar – the moorings and if the property is taxable by the City. City Manager Pickup said it is believed that the moorings are in City jurisdiction and the owners of the Tiki Bar will be billed for them retroactively for 2010 and for 2011. He said that the Assessor is looking into the tax issue. Ms. Keith also asked if the Council was interested in passing a resolution endorsing the East Coast Greenway, similar to ones passed by Mamaroneck and Port Chester.

Councilman Sack said that the discussion of the Golf Club originally scheduled for the March 7th meeting, will be expanded to include other groups and, therefore, will be postponed to some time in April.

Mayor French asked that Police Commissioner Connors come to a meeting in March and provide an update on Coyotes. He also asked that Comptroller Gribbins come back to update the Council on Rye Town Park issues.

18. New Business

Councilwoman Keith said the residents can go to the MTA website to receive alerts when changes are made to schedules. City Manager Pickup said that the long-term fix for the MTA is to receive federal money through the Transportation Planning process.

Mayor French said that former Councilman Gerry Seitz would be making a presentation at the March 16th meeting regarding parking technology. The Mayor also asked staff to highlight issues that the Council should be looking at regarding the Model Ordinance proposal to deal with the affordable housing issue

19. Adjournment

There being no further business to discuss Councilman Sack made a motion, seconded by Councilman Filippi and unanimously carried, to adjourn the meeting at 12.13 a.m.

Respectfully submitted,

Dawn F. Nodarse
City Clerk