

APPROVED MINUTES of the Regular Meeting of the City Council of the City of Rye held in City Hall on March 14, 2012 at 8:00 P.M.

PRESENT:

DOUGLAS FRENCH Mayor
LAURA BRETT
RICHARD FILIPPI
PETER JOVANOVIK
SUZANNA KEITH
CATHERINE F. PARKER
JOSEPH A. SACK
Councilmembers

ABSENT: None

The Council convened at 7:35 p.m. Councilwoman Keith made a motion, seconded by Councilman Filippi and unanimously carried to immediately adjourn into executive session to discuss real estate matters. Councilman Jovanovich made a motion, seconded by Councilwoman Brett and unanimously carried to adjourn the executive session at 8:05 p.m. The regular session began at 8:14 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

Announcements were made regarding various upcoming meetings and events.

4. Draft unapproved minutes of the regular meeting of the City Council held February 29, 2012

Councilman Jovanovich made a motion, seconded by Councilman Filippi and unanimously carried, to approve the minutes of the regular meeting of the City Council held on February 29, 2012, as submitted.

5. Mayor's Management Report
● Legal Update

Corporation Counsel Wilson reported on the following issues:

- 2 Central Avenue – The asbestos removal on the property will begin on March 16th. A Nixle alert will be sent out to residents within a quarter mile radius.
- *McKeever v. City of Rye* – A trial in this matter, that concerns a tree that fell on someone's property, was held in Rye City Court. The City argued that it was not on notice that the tree was in danger of falling. The Judge reserved decision.
- *People v. Schwartz* – The Court of Appeals dismissed the defendant's appeal for failure to prosecute.
- *Molloy v. City of Rye* – A matter is still pending in City Court. Petitioner's time to appeal in the Article 78 proceeding has expired. The City is working with the applicant to resolve the outstanding matter.

6. Review of the Forest Avenue Safe Streets Project

City Manager Pickup said the City is working on the implementation aspects of putting "sharrows" on Forest Avenue this year. City Planner Christian Miller and Assistant City Engineer Christopher Tallarini made a presentation on the project. Mr. Miller said there have been many Council discussions about enhancements to Forest Avenue and the June 2011 report by the Shared Roadways Committee identified possible enhancement, which include striping a ten foot to 12 foot travel lane in each direction and installing sharrows, which are shared lane markings that delineate that bikes share the roadway with vehicles. A benefit to the project is that the money is coming from a grant from the YMCA. The project will include the entire length of Forest Avenue with sharrows going in both directions. There will be a white line on the side of the road to delineate the width of the lane. A section of Forest Avenue from Cornel Place to Green Avenue is already scheduled to be paved this Summer; therefore, the sharrows will not be implemented until after the paving is complete. The spacing of the sharrows is every 200 to 250 feet as required by the New York State Uniform Traffic Control Device Manual, so there will be about 60 in each direction. There could also be some enhancements to existing crosswalks on Forest Avenue at Hewlett Avenue such as painting or additional signage, depending on availability of funding. City Manager Pickup said that individual notifications will not be made to residents, but information will be put on the website and the citizen committees could also be asked do some outreach to residents.

Jim Amico expressed concerns about enforcement with more pedestrian traffic and *John Carey* spoke about joggers and walkers being educated to walk against traffic and not with it.

7. Presentation by the EAGR Committee on proposed changes to the City of Rye Tree Ordinance Legislation

Mayor French said that it is the will of the Council that the City's Tree Ordinance should be changed, but the issue of how any changes will be accomplished relative to permitting and enforcement is critical.

Melissa Grieco of the Environmental Advocacy Group of Rye (EAGR) said the main intent behind the proposed changes to the tree ordinance was to curtail clear cutting of trees mostly on lots being prepared for construction projects. She made a presentation that: outlined the efforts of EAGR to date in connection with the issue; summarized the benefits of trees to the community; put forth reasons to pass a new tree ordinance; showed before and after photographs of tree removal in Rye; provided a snapshot of tree ordinances adopted by other communities; compared the proposed changes with what is currently in effect; and outlined the work of a proposed Tree Committee, which has been added to the draft law to offset the workload of staff.

City Manager Pickup said that extending the law to cover city-owned properties would impact projects especially those at the Nature Center. He also said that the City would have a problem with addressing challenges to the law by homeowners whose properties are impacted. City Planner Miller said that the creation of a Discretionary Review Board would make the process of obtaining a tree removal permit a more cumbersome and lengthy process and suggested that a staff administered process would be more efficient, with the possible assistance of a certified arborist, the cost of which would be born by the applicant. He also said that the mitigation aspect of the proposed law would create an additional burden to administrate because someone must make sure the mitigation takes place and that the trees planted survive for at least two years. He suggested making smaller changes to the law and then coming back in a couple of years to reevaluate the law. He also suggested that instead of creating a new board, established boards that currently look at land use applications such as the Board of Architectural Review (BAR) could take on some of this work. A suggestion was made that Mr. Miller provide a step-by-step plan that he thinks would be more beneficial. It was also suggested that the procedures could be changed to make it easier for a homeowner to remove a diseased, dangerous or invasive tree.

Members of the public commenting included *Carolyn Cunningham, Bill Lawyer, Linda and Irwin Lefkowitz, Robin Jovanovich and Joseph Latwin*. There comments included:

- It is important that the City be subject to the requirements of the law.
- By changing the law to include all trees on a property over 8" DBH (Diameter Breast Height) the issue of clear cutting is addressed.
- How much will it cost a homeowner to take down a diseased tree?
- The BAR would welcome a role in the tree ordinance.
- Why can't a resident do what he wants with the trees in his own backyard?
- Trees don't have constitutional rights, people do. Consider if this law will restrict people's freedom over their property.
- The new proposal will provide an incentive for people to take down trees smaller than the size required for a permit.

Revised language will come back to the Council in order for a public hearing to be set for the second meeting in April.

8. Discussion of a proposed change to Local Law Chapter 90 “Fences and Walls” to further define the “Division Line, Front” on corner lots

Corporation Counsel Wilson said that the proposed change to the fence law, which is an amendment to the definition of “Division Line, Front” stems from a litigated matter. Leo Napier, Esq. of the firm Friedman Harfenist Kraut & Perlstein, who represented the homeowners in the subject litigation, said the proposed law change is based on a the unique situation of a few properties along the Boston Post Road because the current regulations deem properties with corner lots to have two front yards, and therefore, does not allowed them to maintain a six foot fence along the Boston Post Road. The proposed law would deem the subject corner lot properties to only have one front yard.

Mayor French made a motion, seconded by Councilwoman Keith and unanimously carried, to adopt the following Resolution:

WHEREAS, the Council wishes to amend Chapter 90 “Fences and Walls” of the Code of the City of Rye to further define the “Division Line, Front” on corner lots; and

WHEREAS, it is now desired to call a public hearing on such proposed amendments to the law, now, therefore, be it

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

Section 1. Pursuant to Section 20 of the Municipal Home Rule Law and the Charter of the City of Rye, New York, a public hearing will be held by the Council of said City on April 4, 2012 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 such proposed local law.

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

**PUBLIC NOTICE
CITY OF RYE**

Notice of Public Hearing on a proposed local law to amend Chapter 90 “Fences and Walls” of the City Code of the City of Rye to further define “Division Line, Front” on corner lots.

Notice is hereby given that a public hearing will be held by the City Council of the City of Rye on the 4th day of April, 2012 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 a proposal to amend Chapter 90 "Fences and Walls" of the City Code of the City of Rye to further define "Division Line, Front" on corner lots.

Copies of said local law may be obtained from the office of the City Clerk.

Dawn F. Nodarse
City Clerk
Dated: March 26, 2012

9. Authorization for the City Manager to enter into an agreement with FPM Group, Ltd. to perform hydrology and environmental engineering services regarding the impact on flood storage analysis at the Project Home Run site
Roll Call.

This agenda item was deferred

10. Resolution to transfer funds from the Contingency account and the Building and Vehicles fund, to fund the position of City Engineer/Public Works Superintendent and upgrade the existing staff position to Assistant Civil Engineer
Roll Call.

City Manager Pickup said that with the list of capital projects getting more complex there is a need for on-staff professional engineering in order to complete projects. The Council asked to have this item deferred in order for staff to provide additional information regarding the long term costs associated with the position, where the money would come from and why the position was not anticipated in the 2012 budget.

11. Consideration of a request by the Milton Elementary School PTO to approve a parade to precede the Milton Elementary School Fair on Saturday, March 31, 2012 from 9:00 a.m. to 10:15 a.m.

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

RESOLVED, that the request made by the Milton Elementary School PTO to approve a parade to precede the Milton Elementary School Fair on Saturday, March 31, 2012 from 9:00 a.m. to 10:15 a.m., is hereby approved.

12. Residents may be heard on matters for Council consideration that do not appear on the agenda

Jim Amico, 350 Midland Avenue said that the City does not need a County permit to install a stop sign on Midland Avenue, a County-owned road. He said County Legislator Judy Myers had contacted a lawyer for the County Legislature to investigate the situation. He presented documents he had obtained as proof. Councilwoman Parker said that she had confirmed with Congresswoman Nita Lowey's office that the City must wait until the stimulus funds are received to go ahead with a stop sign test at Midland Avenue and Palisade Road. The City Manager and Corporation Counsel were asked to follow up with the County on the City's permit application and also to determine what the recourse would be if the permit is denied.

Anthony Piscionere, Boston Post Road, spoke about the most recent referral to the Board of Ethics concerning allegations made by a staff member. He said he did not believe the Board of Ethics was the appropriate venue for the investigation. He said that according to the City Code, the City Council, not the Board of Ethics, has the authority to conduct an investigation. He suggested that either the Council conduct an investigation into the claims or hire someone to conduct an investigation. A proper investigation would allow for confidence in the outcome. Mayor French said that the allegations were an employee matter and were being dealt with by the City's labor counsel and the complainant had asked that it be referred to the Board of Ethics. Mr. Piscionere said that if the Council wants the Board of Ethics to conduct investigations, the law should be changed to grant them that power.

There was a lengthy discussion among the Council regarding Mr. Piscionere's suggestions. A variety of opinions were stated by members of the Council including: a Council-led investigation is necessary; most people in the community do not care about the issues; it is more important to spend money on capital projects than outside attorneys' fees for an investigation; the Board of Ethics can review the issue and make recommendations to the City Council which can then be acted upon; since the allegations involve employee misconduct they should be treated confidentially; the Council is trying to find the best way to handle the issue; the complaint raised an ethical issue, and, therefore, was referred to the Board of Ethics for an advisory opinion; and the City needs legal advise on how to handle the employment aspect of the case in order to deal with liability issues. A suggestion was made that since this discussion involves a specific employee matter it should be continued in Executive Session and discussed confidentially.

Sis D'Angelo, Wappanocca Avenue, said the people in Rye are upset and don't believe what the Council says. She said it was the duty of the Council to "heal the City."

Ray Tartaglione, 600 Anderson Hill Road, Purchase spoke about a shift in code enforcement by the City and read a statement relating to recent charges brought against Mayor French in connection with property he owns on Richard Place. Mayor French said that he disagreed with everything that Mr. Tartaglione said and noted that he has been absolved of all the allegations brought against him.

13. Bid Award for Street Materials (Bid #1-12)
Roll Call.

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

RESOLVED, that Bid #1-12, Street Materials, is hereby awarded to Putnam Materials for crushed stone $\frac{3}{4}$ (Delivered) and graded processed stone; to Canal Asphalt for crushed stone $\frac{3}{4}$ (F.O.B.); to Peckham Materials for sub-base (recycled concrete); binder course Types 3 and 4, shim course Type 5, top course Types 6F and 7F, and asphaltic concrete curb mix, to Byram Concrete LLC for Class for Class A Concrete and Dakota Supply for K-Krete, as the bidders offering the lowest price.

ROLL CALL:

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

The Resolution was adopted by a 7-0 vote.

See bid tab on following page.

14. Resolution to authorize expenditure of police donation funds for the purchase of police boots or shoes
Roll Call.

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

WHEREAS, the City Manager and Police Commissioner have approved a request of the Rye Police Association (“RPA”) dated February 27, 2012 to purchase dress boots/shoes in the amount of \$3,500 for the Rye Police Department with funds available in the police donations account, and,

WHEREAS, sufficient funds exist in the police donations account to comply with the aforementioned request of the RPA; now therefore be it,

RESOLVED, that the City Comptroller is authorized to transfer \$2,106.83 from the police donations account to increase 2012 General Fund appropriations for Police uniforms.

ROLL CALL:

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

The Resolution was adopted by a 7-0 vote

15. Consideration of proposed revision of the Rules and Regulations of the City of Rye Police Department: General Order# 121.04

Mayor French said that before voting on this issue, the Council would like to have a presentation by the Police Commissioner and the Cable Committee.

16. Miscellaneous Communications and Reports

Councilwoman Parker said that Bob Clyatt and Helen Gates had presented the proposal for a sculpture exhibit on Purchase Street to the Chamber of Commerce. Sally Wright of the Chamber will walk with Mr. Clyatt, City Manager Pickup and herself to see where the sculptures will be placed. The owners of the businesses where sculptures will be placed will be asked to sign off on the locations. Ms. Parker also asked why the lockdown at the schools earlier in the week was lifted before the person the police were looking for was still in Rye.

17. Old Business

Councilman Filippi asked if the City's contractor could be asked to come back to fix the cracked sidewalks on Osborn Road earlier than normal due to the mild weather.

Councilwoman Parker said that she and Councilman Jovanovich were supposed to meet with Deputy County Executive Kevin Plunkett regarding the issue of the #76 bus route to see if the County had asked Liberty Lines for a cost estimate for restoring service to Milton Point, but the meeting was cancelled and has not yet been rescheduled. Ms. Parker also asked for an update on liens on properties with outstanding property taxes.

Councilwoman Brett asked for an update on the Sluice Gate project. City Manager Pickup said that the specs are out to bid and a pre-bid meeting was held with over 20 contractors. He added that a minor modification will be issued to the bid specs based on questions from the contractors and the bids are due back next week.

18. New Business

Mayor French asked when the Council would receive a financial update on the end of 2011. City Manager Pickup said that staff will work on it.

19. Adjournment

There being no further business to discuss Councilwoman Keith made a motion, seconded by Councilman Filippi and unanimously carried, to adjourn the regular meeting at 11:07 p.m.

Councilwoman Brett made a motion, seconded by Councilwoman Parker and unanimously carried, to adjourn into executive session to discuss a personnel/employment matter at 11:07 p.m. Councilwoman Brett made a motion, seconded by Councilman Filippi and unanimously carried, to adjourn the executive session at 11:25 p.m.

Respectfully submitted,

Dawn F. Nodarse
City Clerk