

***APPROVED MINUTES*** of the Regular Meeting of the City Council of the City of Rye held in City Hall on April 4, 2012 at 8:00 P.M.

PRESENT:

DOUGLAS FRENCH Mayor  
LAURA BRETT  
RICHARD FILIPPI  
PETER JOVANOVIH (left the meeting at 10:55 p.m.)  
SUZANNA KEITH  
CATHERINE F. PARKER  
JOSEPH A. SACK  
Councilmembers

ABSENT: None

The Council convened at 7:32 p.m. Councilman Jovanovich made a motion, seconded by Councilwoman Keith and unanimously carried to immediately adjourn into executive session to discuss collective bargaining issues, legal matters and real estate matters related to the sale of 1037 Boston Post Road. Councilman Sack arrived at 8:00 p.m. Councilman Filippi made a motion, seconded by Councilwoman Parker and unanimously carried to adjourn the executive session at 8:30 p.m. The regular session began at 8:35 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

- The League of Women's Voters will host a discussion on unfunded state mandates on April 26<sup>th</sup> at 7:30 p.m. at the Rye Middle School.
- The Sustainability Committee received the EPA's 2012 Environmental Quality Award for their work on the reusable bag campaign.

4. Draft unapproved minutes of the regular meeting of the City Council held March 28, 2012

Councilman Jovanovich made a motion, seconded by Councilwoman Keith and unanimously carried to adopt the minutes of the regular meeting of the City Council held on March 28, 2012, as amended.

5. Mayor's Management Report  
• Legal Update

Corporation Counsel Wilson reported on the following item:

- *Shew v. City of Rye* – This suit claimed defamation and breach of contract. The City won in the lower court and an appeal was filed with the Appellate Division, Second Department. A settlement has been negotiated, which provides for Mayor French to provide a letter of recommendation for Mr. Shew based on his experiences with him when the Mayor was Chairman of the Recreation Commission. A Stipulation of Discontinuance with Prejudice will be filed withdrawing the appeal. Ms. Wilson has been asked to sign on behalf of the City.

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

**RESOLVED**, that Corporation Counsel Kristen Wilson is authorized to execute a Stipulation of Discontinuance with Prejudice in connection with the matter *Shew v. City of Rye*.

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

6. Presentation by the Government Policy & Research Committee on Prevailing Wage Standards

Andrew Curtin, representing the Government Policy & Research Committee, said that a Prevailing Wage Statute has been adopted by 38 states and the federal government and dates back to the 1930's. It mandates the payment of prevailing wage, which essentially means union wages in a particular location, in connection with Public Works or Public Construction Projects and requires the contractor to provide a certified payroll detailing hours and wages paid to laborers, workmen and mechanics. Classifications determine the wages and supplementary payments that municipalities are required to pay to workers and the workers must be properly classified in the documents provided by the contractor. Wages are determined by the trade in the location where the work is to be performed. Public Works projects are defined as projects that are intended to serve the public interest such as public buildings, roads, bridges, water or sewer

works. The Department of Labor determines the rate by looking at collective bargaining agreements within an area and rates are available on the Department's website. An Independent Impact Assessment was conducted in 2008 for the New York State Economic Development Counsel that assessed the cost of construction in New York State by comparing the market wage with the prevailing wage. Key findings indicate that prevailing wage rates are higher than market rates in the "downstate area" of New York which translate to higher construction costs by about 76%. City Manager Pickup said that the threshold for construction costs that require prevailing wage is currently \$50,000 for downstate projects. He also said that he has not been able to find any proof that the requirement to pay prevailing wage produces a better project. Mayor French said that the Mayors in New York State urged mandate relief in connection with the tax cap legislation and one of the points raised was to raise the threshold of a project that would require prevailing wage.

7. Public Hearing to amend Local Law Chapter 90 "Fences and Walls" to further define the "Front Division Line" on corner lots

Corporation Counsel Wilson summarized the proposed law as a change to a definition in Chapter 90 that effects three or four properties and allows for taller fences on corner properties that essentially have two front yards.

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

Leo Napier, Esq. of the firm Friedman Harfenist Kraut & Perlstein spoke on behalf of Neil and Elizabeth Townsend, the proponents of the proposed legislation, and said that the request is due to the unique layout of a few corner properties along the Boston Post Road that front on a side street and have a side yard along the Boston Post Road.

Additionally, an email from Timothy Chittenden was provided to the Council at their places on the dais that suggested the new law should be extended to apply to all residents in Rye who have corner lots and wish to put up a six foot fence and not just to a limited section along the Boston Post Road.

Councilman Sack said he believed the proposed legislation to be an example of spot zoning.

Councilman Jovanovich made a motion seconded by Councilman Filippi and unanimously carried, to close the public hearing.

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

**CITY OF RYE  
LOCAL LAW NO. 3 OF 2012**

**A Local Law to amend Chapter 90 “Fences and Walls” to the City Code of the City of Rye  
to further define “Front Division Line”**

**Be it enacted by the Rye City Council as follows:**

**Section 1. Chapter 90 Fences and Walls**

**§ 90-2. Definitions.**

When used in this chapter, the following words shall have the meaning stated here. Words used in this chapter which are not defined here shall have the meaning defined by Chapter 197. Words not defined by this chapter or by Chapter 197 shall have the meaning established by common usage.

**DIVISION LINE, FRONT**

In the case of a lot abutting upon only one street, the property boundary line separating the lot from the street; in the case of a lot abutting more than one street, other than a corner lot, any such property boundary for the area which has been previously designated by the lot owner, pursuant to Chapter 197, as being the front yard or which has been irrevocably designated by the lot owner, pursuant to this chapter, as being the front division line. Each lot may have only one front division line unless it is a corner lot, as defined by Chapter 197 (§ 197-1), which would have two front division lines. For the purposes of Chapter 90 only and notwithstanding the foregoing, in the case of a corner lot on Boston Post Road between the northern end of Old Post Road and Osborn Road where an existing residence does not front on Boston Post Road, such property shall be deemed to have only one front division line, that being the property boundary line separating the lot from the street upon which the residence faces.

**Section 2.** This local law will take effect immediately upon filing in the Office of the Secretary of State.

**ROLL CALL:**

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

The local law was adopted by a 6-1 vote

8. Consideration to set a Public Hearing for April 18, 2012 to amend Chapter 187, “Trees” of the City Code regarding the legislation of trees

City Planner Christian Miller summarized a new draft of the proposed Tree law that he prepared as a result of discussions held at the March 14<sup>th</sup> meeting. Included in the draft law:

- Removal of all trees over 8” DBH will require a permit.
- The permitting process will be administered with existing resources.
- City properties will be subject to the same tree removal permit process as privately owned properties.
- There is a new list of prohibited trees in the City.
- There are new provisions regarding the City and utility providers regarding maintaining trees.
- The fines for violating the ordinance have been increased from \$250 to \$500.
- The purposes section of the law was expanded.

The use of a discretionary review board was not included. Instead, the Board of Architectural review is designated to become involved in the review of tree removal when there is a proposal to remove four or more trees at one time. This change will impact the processing and time of the applications and there is concern about the ability of staff to administer the new process. Mr. Miller suggested that the Council consider amending the requirement for review of an application for removal of four or more trees to take property size into consideration. The idea of mandated mitigation was not included in the new draft due to the challenges to the staff to administer it. The criteria standards for determining when a tree can be removed were not changed from the existing law.

There was a discussion about the issue of mitigation. A suggestion was made about the value of including a requirement due to the value of trees in flood mitigation. It was noted that although trees impact flood mitigation, the storm water retention requirements for properties may mitigate more flooding than trees. Mr. Miller said that he would rather wait to impose this regulation, which can be revisited by the Council at a later date. He said that the enforcement section of the law that deals with replacement trees was modified to specify the size of trees and to include contributions to a tree fund.

Members of the Council offered suggested changes to the draft law that included:

- Add dead trees as a basis for removal of a tree in addition to diseased or dying.
- Add a provision for removal of a tree if it could cause danger.
- Add a provision allowing for removal of a tree in an emergency event not related to a storm.
- Change the provision about the number of trees that can be removed from a property and base it on lot size.
- Include invasive insect infestation in a tree as a basis for removal.
- Review what other municipalities are doing regarding mitigation.
- If a change is made regarding lot size, go back to the three trees or more requirement for BAR review.

Carolyn Cunningham, a representative of the EAGR Group, urged the Council not to take the mitigation requirements out of the law; bring the number of trees that would require approval

by the Board of Architectural Review before a removal permit is granted back to three; and, apply the requirement for City properties to follow the law to all properties except for right-of-ways.

Pat McCarthy said that he objects to the requirement that a permit be obtained for removal of any tree greater than 8" in diameter because is it a breach of private property rights and urged the Council to not even consider holding a public hearing.

Sis D'Angelo asked the Council to stop people from disposing of chipped trees in Blind Brook.

A revised draft will be prepared and sent back to the Council for review before a public hearing will be set.

9. Discussion of proposed changes to amend local law Chapter 180, "Taxicabs", Section 14, Payment of Fares, of the Code of the City of Rye to increase taxi fares

City Manager Pickup said that a letter was received from a taxi company requesting a fare increase. There has not been an increase in taxi fares since 2002. A proposal for increases of \$3.00 based on the three zones in the City is before the Council for discussion. It was suggested that although there should be an increase, the amount of the increase is the question. There has also been a request to limit the number of taxi companies that can operate in the City to six. The City Clerk explained that there are six stalls at the train station designated for taxi use and the current six companies rotate use of these stalls during the year as a result of a lottery held in December each year. She also explained that she has met with representatives of the six taxi companies and they indicated they are not opposed to giving a \$1.00 discount off any increased rates to seniors who utilize a voucher system that currently subsidizes taxi fares by \$4.00. Some members of the Council raised concerns about the amount of the increase, especially to the Milton Point zone that recently lost access to a bus route.

Frank Kabadebo of Purchase Street Taxi said he can understand that \$3.00 sounds like a large increase but fares have not been increased in ten years. He added that the average taxi driver in Nassau, Rockland and Putnam counties earns \$29,000 per year. He said there are only 35 drivers in the City of Rye and the Council must decide what amount of increase they believe is fair. He added that many communities have a \$5 minimum and some have meters with a minimum, plus additional charges which add up to more than \$5. He said the request was made to limit the number of companies to six because it corresponds to the number of stalls at the train station.

The item will be brought back for further discussion in May.

10. Discussion of parking permit procedures in the City lots located at the Rye Arts Center and Highland Hall

City Manager Pickup said that the purpose of this discussion was to inform the Council about issues that both lots share because the City tries to accommodate the parking needs of

residents in apartment buildings nearby. An issue has arisen in connection with the Rye Arts Center parking lot because the option for residents of Blind Brook Lodge to park at the Methodist Church will end in June. An increase in requests for All Day/All Night parking permits for the winter months is anticipated. Information has been provided about the current permit fees and the number of permits sold in these lots so the Council can look at making adjustments with the changing needs. The Highland/Cedar lot is impacted by commuter needs and the Rye Art Center lot is impacted by their programming needs. As the allotted number of All Day/All Night permits are sold, residents become upset that there are no other parking alternatives that the City can offer them. Mr. Pickup has met with the Board of Blind Brook Lodge and they will be working on proposals to expand parking on their property, but that is not expected to happen by the upcoming winter parking season. Councilwoman Parker suggested using the lot behind the tennis courts at Rye Rec for the residents of Blind Brook Lodge but Mr. Pickup said that this has been suggested as a possibility for the winter months but did not receive a positive reaction from the Blind Brook Lodge Board. He said the major parking problem in the Arts Center lot is when there are residents parking there and both the Arts Center and Recreation Department have programs going on. Staff is working on proposals which will be brought back to the Council.

11. Discussion of the position of City Engineer and Public Works Superintendent and the upgrade of an existing staff position to Assistant Civil Engineer

City Manager Pickup said additional information has been provided to the Council regarding this agenda item. An issue that must be addressed is the impact on specific programs the Engineer is responsible for such as maintenance of the eight pump stations; mandated stormwater management permitting requirements; and maintenance of all City buildings and the liability issues for the City if they are not maintained by a Professional Engineer. The City does hire consultants to work with the City to manage major projects, but routine projects are designed and managed by the City Engineer. The Engineer also works with the Planning Commission in connection with drainage issues. The discussion of the position of City Engineer was begun with the work of the Recession Task Force in 2009-10. Potential positions were identified for reduction and the position of Engineer was one identified. A decision was made to retain a staff position and a consultant position to see if it could meet the City's needs. It is becoming apparent that due to the complexity of the environment and as regulatory requirements imposed on the City increase, a full-time on-staff Engineer is required.

In discussing the proposal the members of the Councilmembers said that:

- Sometimes it is important to invest in infrastructure; authorizing the position could save money in the long term.
- The Council cut too deep when the Engineer position was eliminated and now must reevaluate that decision and fill an essential position.
- Sometimes it is good to use consultants, but the City is an operating system and an Engineer is necessary.
- It is important to have someone to supervise the Department of Public Works.

There was also a discussion of where the money to pay for the position was coming from. City Manager Pickup said that there was only \$50,000 appropriated in the Operating General Fund Budget for the consultant position. \$25,000 of that appropriation will be applied to this position. Additionally, there is a request to transfer \$70,000 from the Contingent Account and an additional \$35,000 will be taken from a Building and Vehicle project that was under spent as determined by the City's auditors.

The discussion of the position of Assistant Civil Engineer was deferred.

12. 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 Assistant Civil Engineer  
Roll Call.

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

**WHEREAS**, City staff has determined that the amount required for the position of City Engineer/Public Works Superintendent requires a change in the adopted 2012 budget by \$105,000, 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 \$70,000 from the General Fund Contingent Account to the Engineering Department, and

**WHEREAS**, \$35,000 of the \$602,000 transferred from the General Fund to the Building and Vehicle Fund for 2009 DPW Vehicle & Equipment Projects has not been spent due to vehicles and equipment costing less than budgeted,

**RESOLVED**, that the City Comptroller is authorized to transfer \$35,000 from the Building & Vehicle Fund to the General Fund Engineering Department.

**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

13. Consideration to amend local law Chapter 31, "Police Pension Fund", Section 9, Accrual and Payment of Pensions, to increase the payment amount for the sole recipient of the fund

City Manager Pickup said that based on conversations with Councilwoman Parker, additional work must be done on this item and it will be deferred to the April 18<sup>th</sup> meeting. Councilwoman Parker noted that there was only one widow currently receiving funds who has not received an increase in over ten years and distributions will cease upon her death. Ms. Parker said the item should wait until additional information is received from the person in the City who deals with the widow.

14. Adoption of the 2012 County property tax rates

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

**RESOLVED**, that the tax rates for the amounts of Westchester County, Blind Brook Sewer District, Mamaroneck Valley Sewer District and Refuse Disposal District charges for the fiscal year beginning January 1, 2012, shall be as follows:

<u>Westchester County</u>	
Levy	\$22,292,710
Taxable Assessed Value	137,504,707
Taxable Rate per \$1,000 Assessed Value	162.123
<u>Blind Brook Sewer District</u>	
Levy	\$3,139,266
Taxable Assessed Value	140,639,672
Taxable Rate per \$1,000 Assessed Value	22.321
<u>Mamaroneck Valley Sewer District</u>	
Levy	\$548,756
Taxable Assessed Value	19,076,781
Taxable Rate per \$1,000 Assessed Value	28.766
<u>Refuse Disposal District No. 1</u>	
Levy	\$2,217,086
Taxable Assessed Value	140,114,853
Taxable Rate per \$1,000 Assessed Value	15.823

And be it further

**RESOLVED**, that the Council does hereby certify to the City Comptroller the above stated levies and tax rates for Westchester County, Blind Brook Sewer District, Mamaroneck Valley Sewer District and Refuse Disposal District No. 1 charges, and the City Comptroller is hereby directed to apportion and extend against each taxable property listed upon the assessment roll of the City of Rye for 2012 at the rates specified, the amount of taxes required to produce the total sums certified and to render tax notices for, and receive and collect, the several sums computed and determined, and, it is further

**RESOLVED**, that the tax warrant of Westchester County be signed by the Mayor and directed to the City Comptroller to collect the amount of said taxes with interest as provided by law and any special assessment heretofore authorized and approved.

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. 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.

City Manager Pickup said this relates to the ongoing administrative proceedings relating to Harrison's Project Home Run development proposal. The City would like the engineering firm FPM Group, Ltd. to look at potential mitigation analysis that could be suggested to Harrison in order to assist with flood storage, flood retention and other mitigation options for the Beaver Swamp Brook area. The City is not anticipating engaging the services of Laura Tessier at this time because the issues are more hydrology related and Ms. Tessier is a wetlands specialist.

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

**RESOLVED**, that the City Council of the City of Rye hereby authorizes 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 and mitigation.

ROLL CALL:

AYES: Mayor French, Councilmembers Brett, Filippi, Jovanovich, Keith  
and Parker

NAYS: Councilman Sack

ABSENT: Councilman Jovanovich

The Resolution was adopted by a 5-1 vote

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

*Ray Tartaglione, 600 Anderson Hill Road, Purchase*, spoke against the settlement of the *Shew v. City of Rye* lawsuit and read a prepared statement about the powers and duties of the Board of Ethics meeting. He said that when the Board delivers its advice to the Council, the Council needs to make a determination based on the Board's advice. He said that scenario was not followed in connection with the recent charges brought before the Board of Ethics regarding the Mayor's property at 13 Richard Place. Mr. Tartaglione asked what would be done to rectify this. Mayor French said he has made statements to the public regarding the matter and would not comment further.

*Jim Amico, 350 Midland Avenue*, asked for an update on the installation of a stop sign at Midland Avenue and Palisade Road. City Manager Pickup said that field work and mark outs have been done in the area and that representatives of the County will come out and review them. Based on indications they have given, the City will then be in a position to go forward with the test. An application for a permit is still pending before the County Department of Public Works. Councilwoman Parker said Mr. Amico had advised her that the solar speeding indicator on Midland Avenue is not working properly. City Manager Pickup said that the Engineering Department is looking into it.

17. Miscellaneous Communications and Reports

City Manager Pickup reported that the Engineer on the Bowman Avenue Resizing Project will be on site starting the survey work and will start soil sampling on April 10<sup>th</sup> and rock boring on April 11<sup>th</sup>. He hopes to have the data back for Council discussion in May.

Councilwoman Parker said that Bob Clyatt has provided a list of eight spots along Purchase Street to be used for the upcoming sculpture exhibit. She and Sally Wright went to all but one of the locations and spoke with the owners/managers about the event. She said the response was very positive.

Councilwoman Keith said the Capstone meeting with the Wagner Graduate School on a Complete Streets module will be held on April 13<sup>th</sup>. Their recommendations will be brought back to the Council by the Shared Roadways Committee. She thanked Police Commissioner Connors for putting up a "No Texting While Driving" sign downtown. She also said there are "Apps" for phones that will not allow texting while driving. She said that April 23<sup>rd</sup> is "No Idling Day" in Rye. Many of the schools are preparing awareness activities.

Councilwoman Parker said the YMCA would be holding a "Walk or Ride Your Bike to the Y" day on Sunday, May 20<sup>th</sup> and said the Chamber of Commerce may do a "Walk or Ride Your Bike to Work" day on May 21<sup>st</sup>. She asked if signs could be put up downtown indicating where bike racks are located.

18. Old Business

Councilwoman Keith asked if the “No Idling” sign that the Sustainability Committee requested for the parking lot near the Library could be put up prior to “No Idling Day”. She asked what the next steps on the Forest Avenue “Sharrows” project were. City Manager Pickup said that a contractor will be hired and the work will be done after paving work is done on the road in July. She also asked for an update on the Black Bass Grill. Corporation Counsel Wilson said that the asbestos has been removed and the report must be filed and reviewed by Building Inspector Maureen Eckman before the demolition can take place. The application for a variance on the property was granted by the Zoning Board of Appeals with conditions and there is an application pending before the Planning Commission.

Councilwoman Parker said the Playland Advisory Committee will meet on April 12<sup>th</sup> to have a pre-season meeting. She said she has read that the County Executive will probably make an announcement about the RFP for Playland by the end of the summer.

19. New Business

Councilwoman Keith asked what additional work the City can look at in order to become more financially sustainable and save money. City Manager Pickup said the City is starting to look at fixed assets to determine if there are assets that are no longer needed and if so, what should be done with them. Mayor French said the Finance Committee is working on two presentations.

20. Adjournment

There being no further business to discuss Councilman Filippi made a motion, seconded by Councilwoman Keith and unanimously carried, to adjourn the regular meeting at 11:20 p.m. and to immediately adjourn into executive session to discuss a personnel matter related to the Production Coordinator. Councilwoman Keith made a motion, seconded by Councilwoman Brett and unanimously carried, to adjourn the executive session at 11:51 p.m.

Respectfully submitted,

Dawn F. Nodarse  
City Clerk