

APPROVED MINUTES of the Regular Meeting of the City Council of the City of Rye held in City Hall on April 3, 2013 at 8:00 P.M.

PRESENT:

DOUGLAS FRENCH Mayor
LAURA BRETT
RICHARD FILIPPI (Left at 10:05 p.m.)
PETER JOVANOVICH
JULIE KILLIAN
CATHERINE F. PARKER
JOSEPH A. SACK
Councilmembers

ABSENT: None

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. Recognition of Rye Recreation All Star Basketball Team

Mayor French congratulated the Rye Recreation 5th and 6th Grade All Star Basketball Team on their victory in the Westchester County Basketball Tournament. He presented proclamations for the players, their coaches and their Recreation Department Supervisor, who included: Chad Antico, Cameron Coleman, Troy Egan, Quinn Kelly, Brian Latkany, Matt McCarthy, Jack Neave, Sam Poole, Jack Tartaglia, Skylar Twyman, Parker Vanamee, Robby Angilletta, Josh Kirsch, Rashidi Lewis and Doug Scott.

4. General Announcements

Announcements are made regarding upcoming events or meetings in the community.

5. Draft unapproved minutes of the regular meeting of the City Council held March 20, 2013

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 March 20, 2013.

6. Mayor's Management Report

- Update from the Landmarks Advisory Committee

Jack Zahringer, the Chair of the Landmarks Committee, said that the Committee wants to report more fully at a later date, but they have had two experts come to examine the milestones regarding preserving them. They also want to talk to the Council about adopting the "Ithaca Law" and are working on preserving historic sites in the downtown area.

- Capital Projects Update

City Manager Pickup reported:

The Central Avenue Bridge – There is a lot of activity on site and things are moving along. There is siltation and stormwater control at the site, which will be part of the ongoing maintenance by the engineers. The project is on target.

The Sluice Gate – The next set of acceptance tests to be performed will be to use all of the on-site capabilities. In order to test elevation levels, false elevations will have to be created to make the system react. This should be the last set of tests.

Central Business District Projects – There are some drafts and the goal is to bring something to the Council before the summer. Due to the timing of other projects, it will be difficult to do this work during the summer.

Safe Routes to Schools Projects – These projects and the timing for them will be discussed at the joint meeting with the School District.

- Legal Update

Corporation Counsel Wilson reported:

Silvester v. City of Rye, et al – There are now eight defendants in this action involving a resident who walked into a plank of wood that was suspended from Highland Hall to a dumpster. Plaintiff has moved to strike many of the defendants' answers. Ms. Wilson and the County have been working closely on an argument for a motion to dismiss the matter.

New York State is changing the point system for Vehicle & Traffic Law violations and what prosecutors can plead matters down to, plus adding surcharges to other violations. This may impact the amount of money the City receives through the Court.

- Police Arbitration Decision

Councilman Jovanovich asked what the next step would be following the decision on the Police/City negotiations. City Manager Pickup said that the scope has been ruled on by PERB and briefs have been submitted by both sides. The panel will meet and hammer out the agreement and a decision could be received by late summer. That decision will be binding.

7. Resolution to amend the City of Rye's FOIL procedures

Corporation Counsel Wilson summarized the two proposed amendments to the current procedures: there will be one Records Access Officer (the City Clerk); and the City Manager would be the FOIL Appeals Officer. There is also a plan for the implementation of an electronic FOIL tracking system. Ms. Wilson said that she had spoken with Bob Freeman of the Committee on Open Government about the question raised at the previous meeting of designating someone outside of the City's employ as the FOIL Appeals Officer and he was not aware of any municipality that has done this. Mr. Freeman shared Ms. Wilson's concern that if the Appeals Officer is a body such as the Council, it would be subject to the Open Meetings Law in order to comply with the statutory 10-day appeals determination requirement, and his suggestion was to designate a person rather than a body.

There was a discussion among the Council regarding aspects of the tracking system and who should serve as the FOIL appeals officer other than the City Manager. The Council indicated a preference for the appeals process returning to them and considered the merits of having the entire Council serve as the Appellate body or just three members of the board. The consensus was that the entire Council should consider any appeals.

Councilwoman Brett made a motion, seconded by Councilwoman Killian to amend the City's FOIL procedures to read as follows:

Procedures for Public Access to the Records of the City of Rye

Section 1. Purpose and Scope

- (a) These regulations are established pursuant to Article 6 of the Public Officers Law, known as the Freedom of Information Law.
- (b) These regulations provide the procedures by which records of the City of Rye may be obtained.
- (c) Personnel of the City of Rye shall furnish to the public the information and records required by law and those which were furnished to the public prior to the enactment of the Freedom of Information Law, subject to the conditions contained in subdivision 2 of Section 87 of the Freedom of Information Law, or other provisions of Law.

Section 2. Designation of records access officer.

- (a) The City Clerk shall be the Records Access Officer responsible for assuring compliance with the FOIL regulations.
- (b) The records access officer shall be responsible for assuring appropriate responses to public requests for access to records. The records access officer shall assure that

appropriate personnel are adequately instructed in and properly perform the functions described in Sections 6 and 7 of these regulations and shall supervise the administration of these regulations.

Section 3. Designation of fiscal officer.

The City Comptroller is designated the fiscal officer, who shall certify the payroll and respond to requests for an itemized record setting forth the name, address, title and salary of every officer or employee of the City of Rye.

Section 4. Location.

Records shall be available for public inspection and copying at the office of the records access officer at City Hall, Boston Post Road, Rye, New York, or at the location where they are kept.

Section 5. Hours for public inspection.

Requests for public access to records shall be accepted and records produced during all hours City Hall is regularly open for business except that all records must be returned to their proper custodian at least 30 minutes before closing time.

Section 6. Request for public access to records.

- (a) Requests for records shall be in writing (hard copy or electronically) in accordance with New York Public Officers Law. The custodian of the records has discretion to waive the requirement for written requests in appropriate circumstances.
- (b) If records are maintained on the internet, the requestor shall be informed that the records are accessible via the internet and in printed form either on paper or other information storage medium.
- (c) Officials shall respond to a request for records no more than five (5) business days after receipt of the request. This response will acknowledge receipt of request and indicate that the requestor will receive a response within twenty (20) business days unless otherwise noted. Any electronic requests received after 5:00 P.M. will be considered received by the City on the next business day.
- (d) A request for access to records should be sufficiently detailed to identify the records. Where possible, the requestor should supply information regarding dates, titles, file designations or other information which may help identify the records.
- (e) 1. A current list, by subject matter, of all records produced and retained in accordance with the Department of Education's State Archives Schedule MU-1, shall be maintained by the City Clerk and shall be available for public inspection and copying. The list shall be sufficiently detailed to permit the requestor to identify the file category of the records sought.

2. The subject matter list shall be updated periodically and the date of the most recent updating shall appear on the first page. The updating of the subject matter list shall not be less than semiannual.
 3. A duplicate copy of such current subject matter list shall be filed by each department with the City Clerk who shall consolidate and maintain all such current lists.
- (f) Appropriate personnel of the City of Rye shall assist the requestor in identifying requested records.
- (g) Upon locating the requested records, the appropriate personnel of the City of Rye shall, as promptly as possible, and within the time limits set in subsection (b) above, either:
- (1) Make the records available by either, (i) indicating a time and date when the records are available for review and inspection, or (ii) send the records electronically if the request was for electronic copies and the records can be sent electronically, or
 - (2) Deny access in whole or in part, and explain in writing the reasons therefore.
- (h) Upon failure to locate records, the appropriate official shall certify that:
1. The City of Rye is not the legal custodian of the requested records; or,
 2. The requested records, after diligent search, cannot be found.

Section 7. Inspection and copying of records.

- (a) A person who has requested access to the public records of the City of Rye shall be given full opportunity to see and inspect such records unless access is denied as provided in Section 8 herein.
- (b) The requestor may also make a copy of the records he/she inspects. No record may be removed from the office where it is located without written permission of the person in charge of the office at that time.
- (c) Upon request and payment of the established fee, if any, the appropriate officer or employee shall prepare and deliver a transcript of such records.
- (d) Upon request and payment of the established fee, if any, an appropriate official of the City of Rye shall certify as correct a transcript prepared by the custodian of the records.

Section 8. Denial of access to records.

- (a) Denial of access to records shall be in writing stating the reason(s) therefore and advising the requestor of the right to appeal to the City Council within ten (10) business days of the denial. Appeals heard by the City Council are final determinations.

- (b) If requested records are not provided promptly, as required in Section 6 (c) of these regulations, such failure shall also be deemed a denial of access. In such cases, appeals must be filed within thirty (30) days of the date by which the records were to be made available.
- (c) The time for deciding an appeal by the City Council shall commence upon receipt of a written appeal identifying:
 - 1. The date of the appeal.
 - 2. The date and location of the original record request.
 - 3. The records to which the requestor was denied access.
 - 4. Whether the denial of access was in writing or by failing to provide records in accordance with the applicable time periods.
 - 5. A copy of the written denial, if any.
 - 6. The name and return address (or email address) of the requestor.
- (d) The appeal shall be determined by the City Council within ten (10) business days of the receipt of the appeal. If the appeal is submitted via email, any emails received after 5:00 P.M. will be considered received on the next business day. Written notice of the determination shall be served upon the person requesting the record and the Committee on Open Government.
- (e) A person requesting an exception from disclosure, or an agency denying access to record, shall in all appeal proceedings have the burden of proving entitlement to the exception.
- (f) A proceeding to review an adverse determination upon appeal may be commenced pursuant to Article 78 of the Civil Practice Law and Rules in accordance with all applicable provisions of the law.

Section 9. Fees.

- (a) Except as otherwise specifically authorized by law, or by established practice prior to September 1, 1974, there shall be no fee charged for:
 - 1. Inspection of records;
 - 2. Search for records;
 - 3. Any certification pursuant to this part.
- (b) The fee for a photocopy transcript of records shall be 25 cents per single sided page for pages not exceeding 9 by 14 inches. The City has the authority to redact portions of a paper record in accordance with the Public Officers Law and does so prior to the disclosure of the record by making a photocopy from which the proper redactions are made.
- (c) The fee for photocopies of records exceeding 9 by 14 inches per page or any non-paper format (such as computer disk, microfilm, etc.) shall be the actual costs of reproduction, which shall be deemed to be the average unit cost for making such a photocopy,

excluding fixed costs such as operator salaries, except when a different rate is otherwise prescribed by statute.

- (d) The fee for a transcript that is typed, handwritten, or otherwise prepared by hand shall cover the clerical time involved in making the transcript, including comparison for accuracy.
- (e) The fee the City may charge for a copy of any other record is based on the actual cost of reproduction and may include only the following:
 - (1) an amount equal to the hourly salary attributed to the lowest paid employee who has the necessary skill required to prepare a copy of the requested record, but only when more than two hours of the employee's time is necessary to do so; and
 - (2) the actual cost of the storage devices or media provided to the person making the request in complying with such request; or
 - (3) the actual cost to the agency of engaging an outside professional service to prepare a copy of a record, but only when an agency's information technology equipment is inadequate to prepare a copy, and if such service is used to prepare the copy.
- (f) The City shall inform a person requesting a record of the estimated cost of preparing a copy of the record if more than two hours of an agency employee's time is needed, or if it is necessary to retain an outside professional service to prepare a copy of the record.
- (g) A person requesting a record shall pay the City the required fee for copying or reproducing the record in advance of the City preparing such copy.

Section 10. Public Notice.

A notice containing the job title or name and business address of the records officer and the appeal body shall be posted in the Office of the City Clerk. A copy of these rules will be kept in the custody of the records officer and be made available for inspection upon request.

Section 11. Severability.

If any provision of these regulations or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of these regulations or the application thereof to other persons and circumstances.

ROLL CALL:

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

The Resolution was adopted by 4 votes in favor, 2 votes against and 1 abstention. The new procedures will go into effect on May 1, 2013.

8. Discussion of the “Development and Planning Standards” Intermunicipal Agreement Compliance for the Flood Mitigation Project at the Blind Brook Dam

City Manager Pickup said that part of the approval process to receive funding from the County for the Sluice Gate project is the adoption of the County standards for flood mitigation. He suggested that the Council seek input from some of the land use boards and the Flood Advisory Committee prior to taking action. Mr. Pickup noted that the City’s current Wetlands Law already addresses the majority of the issues raised and in some instances is more stringent than the regulations provided by the County.

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

RESOLVED, that the City Council of the City of Rye hereby refers the Development and Planning Standards of the Westchester County Flood Action Task Force to the Conservation Commission/Advisory Council (CC/AC), the Planning Commission and Flood Advisory Committee for their review and comment.

9. Resolution to transfer additional funds from the Contingency account to fund legal services for a Council investigation pursuant to Article 6, Section C6-3 of the City Charter entitled “Investigations”
Roll Call.

Corporation Counsel Wilson said that this will cover the bills submitted by Brune & Richard for a period covering the last week of February through March. There was a discussion among the Council regarding whether the costs of the report had been covered in a previous transfer of funds and a requirement for obtaining authorization prior to any additional work being done.

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

WHEREAS, City staff has determined that the amounts required for the cost of legal services performed in February and March 2013 in connection with the investigation into the Rye Golf Club were not anticipated and were not provided for in the adopted 2013 budget by \$21,200; and

WHEREAS, the General Fund Contingent Account has a balance of \$186,000; now, therefore, be it

RESOLVED, that the City Comptroller is authorized to transfer \$21,200 from the General Fund Contingent Account to the City Council Legal Services Account.

ROLL CALL:

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

The Resolution was adopted by a 6-1 vote

10. Adoption of the 2013 County property tax rates

Councilwoman Brett made a motion, seconded by Councilman Jovanovich, 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, 2013, shall be as follows:

<u>Westchester County</u>	
Levy	\$23,954,938
Taxable Assessed Value	137,815,445
Taxable Rate per \$1,000 Assessed Value	173.819
<u>Blind Brook Sewer District</u>	
Levy	\$3,270,120
Taxable Assessed Value	140,772,398
Taxable Rate per \$1,000 Assessed Value	23.230
<u>Mamaroneck Valley Sewer District</u>	
Levy	\$561,392
Taxable Assessed Value	19,108,381
Taxable Rate per \$1,000 Assessed Value	29.379
<u>Refuse Disposal District No. 1</u>	
Levy	\$2,381,827
Taxable Assessed Value	140,279,179
Taxable Rate per \$1,000 Assessed Value	16.979

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 2013 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,
Killian, Parker and Sack
NAYS: None
ABSENT: None

The Resolution was adopted by a 7-0 vote

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

Jim Amico asked about the status of additional crossing guards and spoke about issues relating to the use of longboard skateboards on City streets.

John Duffy, Chairman of the Golf Commission, spoke about issues related to the Golf Club, including giving the Commission more power and oversight in the running of the Club. There was a discussion about placing a discussion on increasing the powers and oversight of the Golf Commission on a future City Council agenda.

Peter Marshall, Chairman of the temporary Rye Golf Club Strategic Committee, provided an update on the progress of the Committee and said that they hoped to have an interim report for the Council this month.

Deirdre Curran said she has been told that after she spoke against the Sustainable Playland plan for running Playland at the last Council meeting, an email was sent out about her by a Councilmember with nonfactual information about her. Councilwoman Killian apologized to Ms. Curran for not getting in touch with her before the email was sent and for not knowing her name. She added that she would forward Ms. Curran the email; clarified that Ms. Curran had not received or read the email; and suggested that the contents of the email were misrepresented.

Leon Sculti spoke about several issues including the Golf Club, the Maximus Study, the City Manager, and FOIL requests.

12. Consideration of a request by Jim Amico of Rye Station Garage for the use of City streets for a 10th Anniversary celebration on Sunday, May 19, 2013 from 12:00 p.m. to 4:00 p.m.

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

RESOLVED, that the City Council of the City of Rye hereby approves the request of Jim Amico of Rye Station Garage for the use of City streets on Sunday, May 19, 2013 from 10:00 a.m. to 4:00 p.m. for a 10th Anniversary celebration.

13. Designation of the Chairman of the Rye Playland Advisory Committee by the Mayor

Mayor French designated Garrick Gelinis to serve as Chairman of the Rye Playland Advisory Committee.

14. One appointment to the Rye Cable and Communications Committee for a three-year term expiring on January 1, 2016, by the Mayor with Council approval

Mayor French made a motion, seconded by Councilwoman Parker and unanimously carried, to appoint Kate Conn to the Rye Cable and Communications Committee for a three-year term expiring on January 1, 2016.

15. Miscellaneous Communications and Reports

City Manager Pickup said that Councilman Sack had asked for additional information regarding dredging at the Boat Basin and it will be available prior to the April 17th meeting.

16. Old Business

There was nothing discussed under this topic.

17. New Business

There was nothing discussed under this topic.

18. Adjournment

There being no further business to discuss Councilman Jovanovich made a motion, seconded by Councilwoman Killian and unanimously carried, to adjourn into executive session to discuss the Golf Club Investigation and personnel issues related to the City Manager's office and not return into regular session at 10:25 p.m.

Respectfully submitted,

Dawn F. Nodarse
City Clerk