

APPROVED MINUTES of the Regular Meeting of the City Council of the City of Rye held in City Hall on December 4, 2013 at 8:00 P.M.

PRESENT:

DOUGLAS FRENCH Mayor
RICHARD FILIPPI
PETER JOVANOVICH
JULIE KILLIAN
CATHERINE F. PARKER
JOSEPH A. SACK
Councilmembers

ABSENT: LAURA BRETT, Councilwoman

The Council convened at 7:05 p.m. Councilwoman Killian made a motion, seconded by Councilman Jovanovich and unanimously carried to immediately adjourn into executive session to discuss attorney/client matters related to contract negotiations. Councilman Filippi made a motion, seconded by Councilman Jovanovich and unanimously carried, to adjourn the executive session at 8:10 p.m. The regular meeting convened at 8:15 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 events and topics that may be of interest to residents.

4. Draft unapproved minutes of the Budget Workshop held November 18, 2013, the Regular Meeting/Budget Workshop held November 20, 2013, and the Special Meeting of the City Council held November 25, 2013

Councilman Filippi made a motion, seconded by Councilwoman Killian and unanimously carried, to approve the minutes of the Budget Workshop held on November 18, 2013, as amended.

Councilman Jovanovich made a motion, seconded by Councilwoman Killian and unanimously carried, to approve the minutes of the Regular Meeting/Budget Workshop held on November 20, 2013, as amended. Councilman Sack asked for an explanation of the relationship between the Police Department and Vincent's Service station in connection with an item in the minutes of this meeting.

Councilman Filippi made a motion, seconded by Councilwoman Killian and unanimously carried, to approve the minutes of the Special Meeting of the City Council held on November 25, 2013.

5. Mayor's Management Report

- Update on General Code Revision Project

City Manager Pickup said that the suggested revisions to the Code provided by General Code that deal with functionality within the Code, language updates and consistency have been circulated to the departments. Corporation Counsel Wilson reported that she and the City Clerk have been meeting with Department Heads regarding specific Chapters. The general questions are: (1) keep the provisions as they are; (2) consolidate Chapters; and, (3) deleting Chapters in their entirety if they are obsolete or no longer applicable. There will also be substantive changes that will make it easier for the City to enforce certain provisions. Mr. Pickup said the draft will then go back to General Code for them to incorporate our revisions into their current draft, which will come back to the Council for an initial discussion and further revision, and will ultimately come back to the Council for approval and adoption. Ms. Wilson said this revision does not include any substantive changes to the City Charter.

- Flood Mitigation Update

Mayor French said that a central theme of the Flood Mitigation Plan has been the Airport. There have been higher levels in the Brook due to airport runoff and the City would like the County to retain more water at the Airport. A meeting was held with County officials and there is funding in the 2014 budget to start design plans to increase the capacity of two catch basins and for a potential third basin. City Manager Pickup said the County has a Master Plan for the Airport which includes detaining the water on site. The problem is that off site water is increasing. The City's goal is to work with the County's engineering data and come up with a downstream alternative, which will fit within the perimeters of discussions with SUNY Purchase for additional detention on their campus. There was a brief discussion about construction at Brunswick Academy in Connection and its effect on the pattern of runoff at the Airport. Councilwoman Parker said that Bob Funnicello, the representative from the County who chaired the meeting, is not included in the County's Planning Budget for 2014 and she suggested that the City should send a letter to the County Executive supporting keeping this position.

- Capital Projects Update

City Manager Pickup reported on the following projects:

Old Milton Road Drain – The City work on the project has been completed. An updated Easement Agreement for utilities in the City’s right-of-ways is being worked on and will come back to the Council.

Safe Routes to Schools Projects – The City received \$150,000 as part of the PILOT payment and will begin design work in order to have the designs available for the City and School Board to look at in April at the joint meeting. It is hoped the project can be approved and put out to bid in order to do the work over the summer.

Summer 2014 Projects - Paving projects will have to be fit in during the summer along with the next phase of the CBD improvements.

- Legal Update

Corporation Counsel Wilson reported on the following items:

Caspi – The motions for summary judgment is fully submitted and a decision is awaited. When a decision comes back the Council must consider the strategy for moving forward with the matter.

American Leisure – A lawsuit has been commenced against the City. The City’s insurance carrier denied coverage because it is a breach of contract claim. An Answer and Counterclaim were submitted this week.

SPI (Sustainable Playland) – A letter was sent to the County.

Rye Golf Club – Councilman Sack has requested information on the costs of a couple of potential options for moving forward with a civil lawsuit against entities and individuals and whether there would be insurance coverage for the City costs; whether it makes sense to commence a lawsuit; or if there is an option to get a Tolling Agreement. Without such an agreement it would be her recommendation to pursue a civil lawsuit.

Rye Town Park Tax Case – The City has filed a Notice of Appeal but has not perfected the appeal and has about two months left to do so. The Council needs to vote on whether it wants to perfect the appeal at some point. The appeal stays the repayment of taxes.

The Ives – The City is waiting for an appraisal on the property. The litigation is pending.

Kirby Lane Sewer Mediation – It is hoped that a first meeting with the mediator and both parties will be held in mid-January. This is an attempt to resolve the issues but the mediation is non-binding.

Beaver Swamp Mediation – A phone call was held with the proposed ALJ who would act as a mediator to resolve the discovery issues. Not all the parties have consented to mediation at this point.

6. Mayor and Council amendments to the proposed 2014 City of Rye Budget
Roll Call.

Deputy Comptroller Fazzino explained the impact on the Budget of the Payment in Lieu of Taxes (PILOT) arrangement recently entered into with Rye Manor, which will provide a new source of revenue. The \$30,000 PILOT will decrease the tax rate to 2.38% from the 2.52% originally budgeted for. It does not change the Tax Cap number because the PILOT offsets the Tax Levy increase. City Manager Pickup said that he and Deputy Controller Fazzino have made recommendations that will drive the current proposed tax rate down to 1.99%. Sales tax projections have been increased from \$1,975,000 to \$2 million and Building Permit fees have been increased by \$55,000 to \$1,350,000. With the proposed changes the budget will be under the tax cap limit by a little over \$117,000.

A proposal was discussed to reallocate the \$1,250,000 originally put into the Capital Projects Budget for the Police/Courthouse project and split it between the project at the Police/Courthouse (\$1 Million) and improvements to the City of Rye owned portion of the train station parking lot area (\$250,000). There was a discussion about the merits of both projects. It was the consensus of the Council to fund the allocation for the train station parking lot but not to fund the Police/Courthouse project in the 2014 budget.

Councilman Sack asked when the budget would be adjusted to account for the two 3% raises awarded to the Police Department for 2009 and 2010 in the recent Arbitration Award. Deputy Comptroller Fazzino explained that the City has been budgeting all along for a 2% increase in each year's budget since 2009 assuming there would be raises granted. If the City had not done this there would have been a major tax increase and use of Fund Balance to cover the increases. He also recommended moving money saved in health insurance costs due to the award into salaries to provide an additional cushion for potential increases for 2011, 2012 and 2013. Mr. Sack said he thought the accrued amounts should be listed separately in the budget.

There was a discussion on possible additions to the budget in the areas of clerical support, televising the meetings of additional boards, cleaning the downtown, the Smart 911 Program, seed money for CERT and IT Security.

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

RESOLVED that the City Council of the City of Rye hereby adopts the following changes to the 2014 Proposed Budget which will result in a tax rate of 1.99%:

Increase Revenues by \$30,000 due to the Rye Manor PILOT Agreement;
Increase Sales Tax revenues by \$25,000;
Increase Building Permit revenues by \$55,000;
Remove \$1 Million funding for the Police/Court renovations and return it to Fund Balance;

Authorize \$250,000 for paving work on the City-owned portion of the Rye Train Station.

ROLL CALL:

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

The Resolution was adopted by a 6-0 vote.

7. Public hearing on the proposed 2014 Budget

Councilman Filippi made a motion, seconded by Councilman Jovanovich and unanimously carried, to open the public hearing on the proposed 2014 Budget.

Members of the Public who spoke included *Bertrand de Frondville* who suggested that the budget should include three years of actual audited numbers and that the amount in the Fund Balance could be lowered and *David Schwartz-Leeper* who spoke about issues related to the School District.

Councilwoman Parker made a motion, seconded by Councilman Filippi and unanimously carried to keep the public hearing open until the December 18th meeting.

8. Continuation of Public Hearing to amend local law Chapter 197, Zoning, of the Rye City Code, Section §197-1, "Definitions and Usage", to amend the definition of "STORY, HALF", and Section §197-43.2, Subsection B, "Attics" to amend the Calculation of Attics in Gross Floor Area

City Planner Miller summarized what was discussed at the workshop held on November 19th in connection with the proposed local law. He outlined the four areas of discussion as: aesthetics; creation of non-conforming properties; economic issues; and alternative strategies. He said the revised law that is presently before the Council would apply to all properties and focuses on closing the "loophole" in the 2003 law regarding the way roof heights are measured in attics and makes it consistent with the New York State Building Code. All other aspects of the attic law remain the same.

Several people spoke at the public hearing. *Paul Benowitz* agreed that the loophole must be closed but didn't think the proposed law should include existing houses and that attics that meet "habitable space" under the NYS Building Code should be counted in the F.A.R. *Stanislav Kotyza* said that if the law is enacted people will go elsewhere to get the big houses they want. *John Mayo Smith* referred people to the website zoningplan.org. *David Toriano* said the revised law takes a step in the right direction to not promote third stories. *Nick Everett*, Chairman of the Planning Commission, said he was in favor of the proposed law.

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

9. Continuation of Public Hearing to adopt a local law to amend Chapter 197 Article IV “Use Regulations” and Article VI “Appeals” to establish regulations regarding outdoor fire pits and outdoor kitchens

Corporation Counsel Wilson said that she would like to have a member of the Board of Architectural Review attend a meeting to comment on the proposed local law before the Council votes.

Councilman Jovanovich made a motion, seconded by Councilman Filippi and unanimously carried, to hold the public hearing open until the December 18th City Council meeting.

State Senator George Latimer spoke about the following matters:

- (1) The Council should discuss any possible Home Rule matters soon so they can be worked on for submission in the State Legislative Session that begins in January.
- (2) The Deadline to re-register for the STAR Program is December 31st.
- (3) There will be Bills coming up in the Legislative Session that will deal with relief of mandates that affect municipal governments and the Council may want to support them.

This Agenda item was taken before Agenda Item 9.

10. Continuation of Public Hearing to add a new article to the Rye City Code to provide tax exemptions for improvements to historic properties

The only member of the public who spoke on the proposed local law was *Maurio Sax* of the Landmarks Committee who spoke about the economic and social importance of creating historic districts.

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

11. Authorization for the City Manager to enter into a Master Federal-Aid Local Project Agreement with the New York State Department of Transportation (NYSDOT) for the Rye City School District Pedestrian Improvements (SRTS) project under PIN 8761.10

City Manager Pickup explained that this is the next phase of the Safe Routes to Schools Projects.

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

Resolution authorizing the implementation, and the implementation, and funding in the first instance 100% of the federal-aid and State “Marchiselli” Program-aid eligible costs, of a transportation federal-aid project, and appropriating funds therefore.

WHEREAS, a Project for the **Rye City School District Pedestrian Improvements in the City of Rye, Westchester County, PIN 8761.10** (the “Project”) is eligible for funding under Title 23 U.S. Code, as amended, that calls for the apportionment of the costs such program to be borne at the ratio of 0% Federal funds and 100% non-federal funds; and

WHEREAS, the City of Rye desires to advance the Project by making a commitment of 100% of the non-federal share of the costs of preliminary engineering.

NOW, THEREFORE, the City of Rye duly convened does hereby;

RESOLVE, that the Rye City Council hereby approves the above-subject project; and it is hereby further;

RESOLVED, that the Rye City Council hereby authorizes the City of Rye to pay in the first instance 100% of the federal and non-federal share of the cost of preliminary engineering work for the Project or portions thereof; and it is further;

RESOLVED, that the sum of \$40,000 was appropriated pursuant to City Council Resolution at their meeting on October 9, 2013 and made available to cover the cost of participation in the above phase of the Project; and it is further;

RESOLVED, that in the event the full federal and non-federal share costs of the project exceeds the amount appropriated above, the Rye City Council shall convene as soon as possible to appropriate said excess amount immediately upon the notification by the City Manager, thereof, and it is further;

RESOLVED, that the Rye City Manager be and is hereby authorized to execute all necessary Agreements, certifications or reimbursement requests for Federal Aid and/or applicable Marchiselli Aid on behalf of the City of Rye with the New York State Department of Transportation in connection with the advancement or approval of the Project and providing for the administration of the Project and the municipality’s first instance funding of project costs and permanent funding of the local share of federal-aid and state-aid eligible Project costs and all Project costs within appropriations therefore that are not so eligible; and it is further;

RESOLVED, that in addition to the City Manager, the following municipal titles: Mayor, City Engineer, and City Comptroller are also hereby authorized to execute any necessary Agreements or certifications on behalf of the Municipality, with NYSDOT in connection with the advancement or approval of the project identified in the State/Local Agreement;

RESOLVED, that a certified copy of this resolution be filed with the New York State Commissioner of Transportation by attaching it to any necessary Agreement in connection with the Project, and it is further;

RESOLVED, this Resolution shall take effect immediately.

ROLL CALL:

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

The Resolution was adopted by a 6-0 vote.

12. Acceptance of Grant Award from the Westchester County District Attorney's Office in the amount of \$3,130 to purchase equipment for the video recording of statements
Roll Call

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

RESOLVED, that the City Council of the City of Rye hereby authorizes the acceptance of a Grant Award from the Westchester County District Attorney's Office in the amount of \$3,130 to purchase equipment for the video recording of statements.

ROLL CALL:

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

The Resolution was adopted by a 6-0 vote.

13. Consideration of a request by the Westchester County chapter of the National Alliance on Mental Illness (NAMI) to have a ribbon initiative in the Central Business District during the month of May 2014

This agenda item was deferred.

14. One appointment to the Conservation Commission/Advisory Council for a three-year term, by the Mayor with Council approval

Mayor French made a motion, seconded by Councilman Jovanovich and unanimously carried, to approve the appointment of Birgit Townley to the Conservation Commission/Advisory Council for a three-year term expiring on January 1, 2016.

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

Mack Cunningham spoke asked about a letter Corporation Counsel Wilson sent to the County requesting that the City be engaged in the SPI process. Corporation Counsel Wilson said that the letter sets out the City's primary issues with the Playland Improvement Plan and makes it clear that the City believes it is an involved agency and any County action without further input from the City is premature. *Mr. Cunningham* also expressed his concerns about approving a structure to be built in a flood plane without New York adopting FEMA recommendations. Councilwoman Parker reported that she met with County Executive Astorino and he told her the County does not want to move forward without Rye being part of the process. Ms. Parker said she asked that representatives from the County come to Rye and believes that the County will abide by the City's environmental laws. *Mr. Cunningham* also asked about employee rights to health benefits and pension when an employee is accused of a crime. City Manager Pickup said that the party, a former employee, does not have health benefits from the City and the State would have to make a determination regarding pension benefits.

16. Miscellaneous communications and reports

There was nothing discussed under this agenda item

17. Old Business

- Update the City's Resolution to Televis

Mayor French said there was a suggestion to televise the Rye Golf Club Commission meetings and he believed that meetings of additional boards should also be televised. Councilwoman Parker suggested that land use boards should be televised. The members of the Council were asked to provide any suggested changes to the Mayor before the next meeting and the City Manager was asked to provide the Council with the original Resolution that was adopted regarding televising meetings and to provide information for what it would cost to televise meetings that are not held at City Hall.

18. New Business

- Discussion on process to fill two City Council vacancies

Corporation Counsel Wilson said that the appointments will be made by the Mayor and a majority of the Council that is seated at that time for confirmation. On January 1st there will only be five Councilmembers so only three votes would be needed to fill a vacancy. Councilman (Mayor-Elect) Sack said that anyone interested in being appointed could contact him.

18A. Appeal of denial of FOIL requests by Timothy Chittenden

Corporation Counsel Wilson said that three appeals had been submitted:

Appeal #1 – “Copies of all requests for time off submitted by Officer Incalcaterra and Compagnone in their careers”. Officer Incalcaterra’s records were provided previously and there were no additional records found for her since the time of the original request and the subsequent request. Documentation was provided for Officer Compagnone. The subject of the appeal is that the requestor believes there are more records for Officer Incalcaterra and only “Time Owed” requests were provided for Officer Compagnone. Mr. Chittenden has this information based on other records that he has been previously provided.

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

RESOLVED, that the City Council of the City of Rye hereby denies the appeal of the response to the FOIL request submitted by Timothy Chittenden for “Copies of all requests for time off submitted by Officer Incalcaterra and Compagnone in their careers” because he has been provided all the documents requested..

ROLL CALL:

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

The Resolution was adopted by a vote of 5 in favor and 1 abstention.

Appeal #2 – “All records, including but not limited to, all cad dispatch reports, all incident reports, all accident reports, all arrest reports, all domestic violence reports, all vehicle and traffic summonses issued related to 255 Theodore Fremd Avenue, Steve Burke of that same address or John Burke of that same address since January 1, 2011”. Corporation Counsel Wilson said Mr. Chittenden has requested these records previously and was denied because the case was under active investigation and was denied at this time because the file has been sealed by Court Order. The appeal asks for a copy of the Court Order that the denial is subject to, which the City does not possess at this time. Ms. Wilson said she does not believe this is an Appealable issue since the Court Order had not been requested. It was the consensus of the Council that Mr. Chittenden be advised that this appeal would not be considered because the document requested

in his appeal is not in the possession of the City and had not previously been the subject of a FOIL request

Appeal #3 – “all restraining orders, orders of protections and all other court orders filed against Lt. Robert Falk of the Rye Police Department including but not limited to one filed by his brother”. Corporation Counsel Wilson said that the City was not in possession of documents that would fall under this request. If an Order of Protection was issued it would have been filed in the Court that issued it.

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

RESOLVED, that the City Council of the City of Rye hereby denies the appeal of the response to the FOIL request submitted by Timothy Chittenden for “all restraining orders, orders of protections and all other court orders filed against Lt. Robert Falk of the Rye Police Department including but not limited to one filed by his brother” because, if the document exists, the City of Rye is not in possession of it.

ROLL CALL:

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

The Resolution was adopted by a 6-0 vote.

19. Adjournment

There being no further business to discuss Councilman Filippi made a motion, seconded by Mayor French and unanimously carried, to adjourn the meeting at 11:30 p.m.

Respectfully submitted,

Dawn F. Nodarse
City Clerk