

***APPROVED MINUTES*** of the Regular Meeting of the City Council of the City of Rye held in City Hall on November 4, 2015 at 7:30 P.M.

PRESENT:

JOSEPH A. SACK Mayor  
LAURA BRETT  
KIRSTIN BUCCI  
JULIE KILLIAN  
TERRENCE McCARTNEY  
RICHARD MECCA  
RICHARD SLACK  
Councilmembers

ABSENT: None

The Council convened at 6:30 PM. Councilman Mecca made a motion, seconded by Councilman McCartney and unanimously carried to immediately adjourn into executive session to discuss litigation and personnel matters. Councilwoman Brett made a motion, seconded by Councilwoman Bucci and unanimously carried, to adjourn the executive session at 7:31 PM. The regular meeting convened at 7:40 PM.

1. Pledge of Allegiance.

Mayor Sack called the meeting to order and invited the Council to join in the Pledge of Allegiance.

2. Roll Call.

Mayor Sack asked the City Clerk to call the roll; a quorum was present to conduct official City business.

3. General Announcements.

Mayor Sack announced that the 2015 election results are in. He congratulated Councilman Richard Mecca for being re-elected to the City Council. He stated that the Council is very happy that Mr. Mecca would return for another term. He also acknowledged two brand new members of the City Council, Emily Hurd and Danielle Tagger-Epstein. He thanked the newly-elected members for being present for the meeting and stated that the Council is excited for them to join the group in January 2016 when Councilwoman Brett and Councilman Slack depart.

Councilwoman Killian noted that this will be the first time in Rye history that there will be a majority of women on the City Council.

Councilman Mecca stated that the Rye Chamber of Commerce had a meeting and reported that November 28, 2015 is Small Business Saturday. He also stated that Sunday,

November 29, 2015 is the Mistletoe Magic event in the City. Part of Purchase Street closed from 12:00 to 3:00pm for the event, which will feature family activities.

Councilman McCartney congratulated the Rye High School Girls Field Hockey team on a great season. Further, Councilman McCartney notified the community that there is a Rye High School football game Saturday, November 7, 2015 at 4:00PM at Arlington High School. The game will be played against Our Lady of Lourdes High School and will determine the section champion. He wished the team good luck and congratulated them on their season so far. He then reported that the Annual Turkey Run is November 28, 2015, and the Holiday Sing-Along is Sunday, December 6, 2015, sponsored by the PBA. Lastly, he notified the community that the next Rye Golf Club meeting is November 12, 2015 at 7:00PM. The golf course remains open, but the restaurant and bar are closed for the year, except for special events.

Mayor Slack reported that the Mayor of Harrison will be wearing a Rye football jersey at the next Harrison council meeting, due to the fact that Rye won the football game against Harrison on October 17, 2015. He thanked the coach at Rye High School for loaning the jersey which will be worn at the Harrison Council meeting on November 5, 2015.

4. Draft unapproved minutes of the regular meeting of the City Council held October 21, 2015.

Councilwoman Brett made a motion, seconded by Councilwoman Killian and unanimously carried to approve the minutes of the regular meeting of the City Council held on October 21, 2015. Councilman McCartney thanked the new City Clerk for drafting the minutes.

5. Issues Update/Old Business.

Mayor Sack reported that the Rock Chipping law (amendment to Rye City Code Chapter 133, "Noise") was filed with Secretary of State on November 3, 2015. By operation of law, the moratorium previously passed by the City Council expired when the new law took effect. Corporation Counsel Wilson stated there was no need to set a public hearing repealing the local law that initiated the moratorium.

Councilwoman Brett recognized the residents who spoke about the Osborn School traffic study at the October 21, 2015 City Council meeting. She clarified that a traffic study would be responsibility of the City, but improvements on school property would be the school's responsibility.

Councilwoman Killian stated that she would like the City Council to revisit the 25 miles per hour speed Home Rule issue.

Mayor Sack responded to Councilwoman Killian's comments and requested a traffic report on the 25 mile per hour speed proposal. He stated that data provided after a study may support the recommendation to lower the speed limit in the City. He stated his intention to move forward on this issue within the upcoming legislative session.

Councilwoman Killian suggested that the Council explore all avenues to slow down traffic.

Councilman McCartney reported, as liaison to the Golf Club, that negotiations are continuing with TKI (TessengerloKerley, Inc.) and their insurance carrier.

Councilwoman Killian added that terms of the traffic and pedestrian safety issues raised at Osborn School, general consensus among the school principal, police and community is that traffic flow with new dismissal policy has been working overall. City Manager Serrano agreed that the dismissal policy has been effective. Councilwoman Killian stated that the safety will be an ongoing discussion, but that it is the consensus that there cannot be a crosswalk at Sonn Drive.

City Manager Serrano stated that there is an upcoming meeting concerning the United Hospital site in Port Chester on Friday, November 13, 2015 with the New York State Department of Transportation, the City's traffic engineers, and the Port Chester traffic engineer.

Mayor Sack, in response to Mr. Serrano's comments, stated that the applicant seems receptive to our draft environmental impact station (DEIS) comments and the dialogue will continue concerning the United Hospital site proposals.

6. Presentation of the FY 2016 Budget by the City Manager.

City Manager Serrano thanked the City Council for the opportunity to work for the City, and also thanked the staff for its professionalism. He recognized Acting Comptroller, Joseph Fazzino, whose expertise and willingness to adapt to changes has been very impressive. He introduced a detailed presentation and summary that will be available to the community on the City website, [www.ryeny.gov](http://www.ryeny.gov). He stated that the 2016 proposed tax raise is 1.32%. The staff worked hard to stay below the 2% tax cap. He explained there has been a small increase of 1.02% in our assessed value, which is a good thing. The staff must always anticipate a downtrend in the economy. City Manager Serrano stated that projected appropriations will increase by \$518,000, with the bulk being salary and benefits. Most of those funds are health insurance and mandated salary increases. He stated that the staff will continue to control contractual costs as much as possible, and monitoring revenue trends is also important. For 2016, there is a decrease in revenues of approximately \$8,000 and the staff is proposing increases for this year to keep tax rates down. He reported that the NYS retirement system changed its system and added a new tier which limits overtime. The state has seen a stabilization in the retirement system, which is a decrease for the first time in many years. New employees must pay more for health benefits as well.

City Manager Serrano continued and stated he was concerned with upcoming capital projects, specifically with new State requirements with inflow and infiltration (I & I). Possible improvements to comply with these requirements would involve both storm and sanitary sewer systems. The Council and staff may consider a sewer district or imposing sewer fees in a public discussion.

City Manager Serrano also reminded the Council about the City's AAA policy and debt balance, in which there is a self-imposed debt limit. Mayor Sack agreed that we should explore these issues and take action without affecting the City's AAA rating.

City Manager Serrano introduced Acting Comptroller, Joseph Fazzino, and stated that it has been a pleasure to work with him noting that Mr. Fazzino has worked very hard in this process. Mr. Fazzino introduced a slideshow presentation on the highlights of the proposed 2016 budget.

Mayor Sack inquired about the City staffing level for 2016. City Manager Serrano responded and stated that there are no real changes.

Mr. Fazzino stated that while preparing for fiscal year 2016, it is always good to look back on 2015. In sum, there was a 1.7 million dollar loss for 2015, which was \$800,000 better than the City had planned. Some of the items accounting for the difference is mortgage tax, penalties and interest on property taxes police overtime reimbursements. Clerical and DPW salaries, part time/ seasonal salaries, and employee healthcare costs have all decreased. The 2016 proposed budget will include \$518,458 over 2015 adopted expenditures. The largest increase will be health insurance costs.

Councilman Slack inquired as to whether the City can do a financial outlook farther than 2016. He stated he felt it was important to start the discussion for the future to try to get some of these costs under control given the uncertainty and flatness of our revenues.

Mr. Fazzino responded to Councilman Slack's comments and stated that the staff can prepare a report with projections over a multiyear period. Councilwoman Killian stated that a multiyear report has been done in the past and it is helpful.

Councilwoman Bucci recognized the increase in healthcare costs and stated that longevity also adds to the cost.

Mr. Fazzino stated that workers compensation costs have increased for 2016, but not at the same rate as 2015. City Manager Serrano added that the Workers Compensation Board has changed the claims ratio. He felt it was important to discuss the implementation of policies and procedures to avoid future workers comp issues.

Mr. Fazzino stated that for third consecutive year, the retirement rates have gone down a total overall of \$187,000. This figure will likely stabilize. He then informed the Council that salaries and benefits are 63% of total City expenditures. At this time, the staff does not feel comfortable about proposing a raise in the major revenue projections.

Councilwoman Killian asked about the decrease in credit card fees of \$20,000. Mr. Fazzino responded the City budgeted high for 2015, but looking at the trends, the City was able to decrease the budgeted amount for 2016. He presented a slide to the Council regarding the formula to balance the budget with the City's use of its fund balance and raising the property tax levy.

Councilman Slack clarified that, in total, the City is proposing reducing the fund balance to \$2.9 million.

Mr. Fazzino introduced a list of capital projects proposed. City Manager Serrano added that any improvements will be subject to discussion by the City Council.

Mr. Fazzino reiterated that there is a proposed 1.32% increase in the tax rate. The property tax levy makes up 66% of the City's revenue. The proposed budget is \$26,000 under the tax cap.

Councilwoman Bucci inquired as to why the taxes for the City increased in 2003. Mr. Fazzino responded that the fund balance in 2003 became too low and as a result, taxes were raised.

Councilman Slack stated that he wanted to understand the long-term use of the fund balance.

Mr. Fazzino responded and stated that some of the fund balance is used for capital. The City may wish to discuss amending the City's debt limitations. He then introduced a slide to the Council with a breakdown of school, County and City tax. The diagram reflected that the school tax rate is highest, followed by the County, followed by City. City Manager Serrano remarked that it was the first municipality he had seen where the City's tax rate was lower than the County's tax rate.

Mr. Fazzino stated that it was important to have a fund balance policy.

City Manager Serrano stated that the City should consider meeting with a financial advisor and revisiting the self-imposed debt cap of 5%.

Mayor Sack recognized and thanked Mr. Fazzino for his fantastic presentation. He stated it gave a great framework for our budget season. He suggested that the Council hold off on questions until budget workshops.

Mr. Fazzino invited members of the City Council to send him questions and he would post the answers on the website for the public at [www.ryeny.gov](http://www.ryeny.gov).

City Manager Serrano reminded the community that the budget working session will take place on Monday, November 9, 2015 and Monday, November 16, 2015 at 7:30PM.

7. Consideration to set a Public Hearing on the 2016 Budget for December 2, 2015.

Councilwoman Brett, seconded by Councilwoman Killian, and unanimously carried, made a motion to set a public hearing on the 2016 Budget to take place on December 2, 2015 at the general meeting of the City Council at 7:30 PM.

ROLL CALL

AYES: Mayor Sack, Councilmembers Brett, Bucci, Killian, McCartney, Mecca and Slack  
NAYS: None  
ABSENT: None

8. Continuation of Public Hearing to amend local law Chapter 197, "Zoning", of the Rye City Code by amending Section §197-2, "Districts, A: Residence Districts" to change the zoning designation of a property at 120 Old Post Road from the B-4, Office Building, District to a New RA-6, Active Senior Residence, District; and amending Section §197-86, "Tables of Regulations: Table A, Residence Districts – Area Yard, Height and Miscellaneous Regulations" to add the proposed RA-6 zone.

Mayor Sack stated that this issue has been on our agenda for some time and asked City Manager Serrano to update the City Council.

Mr. Serrano stated that this Public Hearing was on the subject of whether to amend the zoning designation of the property located at 120 Old Post Road in the B-4 zoning district to reflect RA-6 zoning. He stated that the City has considered pedestrian traffic and recreation in its decision. There has been discussion of an impact fee which the City could use toward capital improvements or recreation activities.

Mayor Sack invited the applicant's representatives to make a statement to the City Council.

Jonathan Kraut, of Friedman Harfenist Kraut & Perlstein LLP on behalf of the applicant, stated that they have proposed some robust information which was summarized about traffic and vehicle issues. Upon reviewing the City's response, there have been some comments from residents and the City made a request that a traffic consultant look at the proposal on behalf of the City. The applicant provided information on improvements to the traffic consultant. The current proposal would require a change of use from an office building to residential, which would be result in a lesser impact. Mr. Kraut added that the applicant does, however, recognize that there are improvements that can be made. He stated the applicant would be amenable to zone text imposing an impact fee. This fee could be used for infrastructure improvements.

Mayor Sack felt that that the impact fee discussions were important and asked City Manager Serrano to facilitate conversations with the applicant to understand what the actual number might be. He asked the City Manager to provide an update on the traffic study results.

City Manager Serrano responded that the traffic engineer provided us with a draft. We have had questions and the engineer is finalizing the draft so that the staff can provide something to the council for the next meeting. There is a setback issue that needs to be determined, as well as the final number of units.

Mr. Kraut stated that his understanding is that there are two traffic/ impact issues: first, will there be any negative impacts from what has been proposed, and second, what are the results of the study of existing conditions. Mr. Kraut stated he is prepared to speak about that issue. He then addressed a letter from neighboring property located at the Osborn. That letter discussed concerns about traffic, stormwater issues, and setbacks. Currently, the zoning along the Post Road and the Osborn property requires setback of 100 feet of the principal structure from the center line of the road. Mr. Kraut then stated that The Osborn campus is a much larger parcel of property than the site at 120 Old Post Road. The applicant plans to also implement a landscaping plan along the post road. Mr. Kraut stated that in the proposed configuration of the building, the majority of the building is farther from the street than the setback.

Matthew Anderson, on behalf of the Osborn, addressed the City Council and made the following statement:

*“Mayor Sack and Members of the Rye City Council,*

*My name is Matthew Anderson and I am the Chief Operating Officer of The Osborn and I live at 149 Theall Road. I’m here tonight to convey the Osborn's observations concerning the proposed new RA-6 zone. As you know The Osborn owns the 54 acre property immediately adjacent and to the South of 120 Old Post Road. We have owned the property since it was first assembled and conveyed to us by John Sterling in the late 19th-century. In 1993 the City of Rye granted the Osborn site plan and zoning approval to create the continuum of care campus where about 420 elderly citizens reside today. The zoning was approved as an extension of an existing non-conforming welfare use in an R-2 zone.*

*The Osborn does not oppose the development of a facility for active adults on 120 Old Post Road. In fact we look forward to the opportunity to provide needed services to that population as it inevitably ages in place. We offer assisted-living, memory care, subacute and chronic skilled nursing care, outpatient rehabilitation and homecare; all of which will be needed by residents of 120 Old Post Road at some point in the future.*

*Our concerns have to do with three areas: traffic, storm water management, and setbacks. The concerns about traffic impact relate to the current unsafe conditions on the Playland Access Road and Old Post Road. We trust the City will address the traffic impact of this project on those conditions and require the developer to make needed improvements just as they did with the Osborn in 1993.*

*Our concerns about storm water management are those shared by all in our community given the recent tragic flooding that has occurred in Rye. To the best of our knowledge, storm water is not currently retained on the 120 Old Post Road site as is required of similar properties, including the Osborn. While we understand that the proposed development does not add to the amount of impermeable surface on the property, is this not an opportunity to take advantage of available technology to reduce the impact of storm water coming off the site by retaining it in a manner similar to what we are required to do at the Osborn?*

*Which brings me to our final concern and that is setbacks. The proposed setbacks are very minimal compared to those required of the Osborn. For example, we have a 160 foot setback requirement surrounding the property. So we have a 160 foot setback along the Old Post Road and Boston Post Road compared to the 40 foot proposed for the 120 Old Post Road. The Osborn’s rear setback along Theall Road is also 160 feet compared to the proposed 25 feet for 120 Old Post Road. The side yard setback is 160 feet compared to 40 feet with both sides limited in total to 100 feet.*

*We have a proposed remedy. Given the similarity of the uses of these two properties, we propose that the City impose the same setbacks for both properties. Thus the City could reduce the setbacks of the Osborn site to match the proposed RA-6 zone, or increase the setbacks on 120 Old Post Road to match the Osborn’s, or any combination of the two.*

*Thank you for allowing me the time this evening to express The Osborn’s views on this important project.”*

Mr. Kraut addressed the applicant and the City Council and stated that the sites have different characteristics. He stated that The Osborn site is larger and is also a thru site from Theall to Old Post Road. Concerning 120 Old Post Road, it is possible to achieve the front yard setback; it could be geometrically achieved, but it would be a less desirable visual picture. He stated the applicant was sent to the Planning Commission for review, and they are complying with the Planning Commission's recommendations. He felt they are confident that they could provide adequate screening and minimize the grading.

Mayor Sack encouraged that the parties to discuss the issues prior to returning for the next City Council meeting.

Councilwoman Brett recognized the need for the City Council to provide the applicant with feedback. She conveyed that she participated in the Planning Commission process and that she was not concerned with the front yard setback as it is consistent with zoning. However, she is concerned about the number of units in the facility as it would be the City's second largest facility and she questions whether the property has the space for the number of units being proposed. She stated she was also concerned about the 25 feet rear yard setback.

Mr. Kraut address Councilwoman Brett's concern and stated the rear year setback has been amended to 50 feet.

Councilwoman Brett stated that her next concern is the density as compared to other multifamily zoning districts, which ties into the number of units. She stated that the City Council must focus on the zone amendment at this point. By the next meeting, the traffic study will be completed.

Councilwoman Bucci asked the applicant to clarify the 100 foot setback, and Mr. Kraut explained that the proposed plan shows that only one point of the building is at 100 feet from the line, as the building is on an angle. Councilwoman Bucci stated that she is concerned about the future of the zoning change and future applicants.

Mr. Kraut stated that final approval is contingent upon planning board site plan approval and is a method of control that the Council may want to consider.

Councilwoman Bucci stated that it is important to contemplate the future, and Councilwoman Killian expressed concern for the property being sold in the future.

Mr. Kraut explained that with this type of rezoning, it is important to see the planning board as ultimate approval to protect the City. He stated that if it is the will of the Council to change the plan, it is possible to flip the building but it would not be as desirable.

Mr. Gerhard Schwalbe of Divney Tung Schwalbe, planner for the applicant, stated that if the building was flipped to instead be positioned along Boston Post Road, the position of the building would be horizontal instead of feathering it out on an angle. He stated that the proposed plan creates more of a buffer around the structure. He also expressed the applicant's need to meet the drainage requirements.

Councilwoman Brett asked if the applicant will be required to improve the drainage on site, and Mr. Schwalbe responded that they will need to meet the new stringent requirements of NYS and the City code.

Councilwoman Brett asked if the result of having the building going up with the grade would result in a taller building. Mr. Schwalbe responded by stating that the architecture has a significant role in how the roofline is created to soften the edge and create a residential look, as well as the implementation of trees and landscaping.



Councilwoman Brett then expressed concern about mass of the building to the viewer. Mr. Schwalbe responded that the applicant has tried to mitigate that concern by pulling the building back on the angle and creating open space.

Councilman Slack stated that the current Floor Area Ratio (FAR) for the zone is 0.3, and that the proposed zoning will amend the FAR to 0.8. The project proposal FAR will be 0.73 which will fit the proposed zoning. He asked the applicant if they considered the economic feasibility of lower densities.

Mr. Kraut responded that with regard to lowering density, the amenities of the facility of the size and caliber for a 55-and-older community require enough space. They did look at higher numbers, and as a result of conversations, they have reduced the proposed density. As a comparison, he compared the FAR for some other multifamily facilities in Rye/ Rye Manor. For example, he stated that the FAR for Highland Hall is 1.61 and Blind Brook Lodge is at 1.14. The proposal is only for an FAR of 0.73. He explained there is quite a bit of acreage for open space and landscaping. He stated that the applicant has managed to place the parking for the structure underground. He stated the applicant is trying to create a remarkable and unique housing opportunity.

Councilman Slack compared the proposal to the Ambassador in Scarsdale, where the FAR is 0.4. Mr. Kraut responded that there is a difference between the two properties, as the Ambassador is an assisted living facility. There is not much open space on that property with very little setback requirements.

Mayor Sack invited anyone from public to be heard. No one came forward to make a statement. Mayor Sack then announced that the traffic study for the project will be ready by the next meeting, November 18, 2015. On that day, the Council will decide on any changes if need be and then hopefully come to a consensus for the meeting on December 2, 2015 for a vote.

Councilwoman Brett made a motion, seconded by Councilman Slack, and unanimously carried, to adjourn the public hearing to November 18, 2015.

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

There was nothing discussed under this agenda item.

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

City Manager Serrano introduced the issue and stated that it is his recommendation to designate Carolyn D'Andrea, the new City Clerk, as the Freedom of Information Officer. It is typical procedure that the City clerk would hold this responsibility, and the current City Clerk has prior experience with FOIL.

Mayor Sack expressed a need to make sure the process was done correctly, and agreed with City Manager Serrano's recommendation based on the totality of the circumstances.

Councilwoman Brett agreed that the City should be using the new resource that the City Clerk brings in her new role.

Councilwoman Brett made a motion, seconded by Councilman Mecca, and unanimously carried to adopt the following policy designating the City Clerk as the Records Access Officer:

ROLL CALL

AYES: Mayor Sack, Councilmembers Brett, Bucci, Killian, McCartney, Mecca and Slack  
NAYS: None  
ABSENT: None

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 Manager within thirty (30) days of the denial. Appeals heard by the City Manager 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 Manager 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 Manager 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.

11. Appointment of a Marriage Officer for the City of Rye.

City Manager Serrano introduced the issue and stated that it is typical procedure for the City clerk to be the marriage officer in a municipality.

Councilwoman Brett made a motion, seconded by Councilwoman Killian and unanimously carried, to appoint Carolyn D'Andrea as a Marriage Officer for the City of Rye for a term of four years.

ROLL CALL

AYES: Mayor Sack, Councilmembers Brett, Bucci, Killian, McCartney, Mecca and Slack  
NAYS: None  
ABSENT: None

12. Miscellaneous communications and reports.

There was nothing discussed under this agenda item.

13. New Business.

There was nothing discussed under this agenda item.

14. Adjournment.

There being no further business to discuss at the open meeting, Mayor Sack made a motion, seconded by Councilwoman Brett and unanimously carried, to adjourn the meeting into executive session to discuss personnel matters.

Respectfully submitted,

Carolyn E. D'Andrea  
City Clerk