

DRAFT UNAPPROVED MINUTES of
the Regular Meeting of the City Council of the
City of Rye held in City Hall on October 19, 2016
at 7:30 P.M.

PRESENT:

JOSEPH A. SACK Mayor
KIRSTIN BUCCI
EMILY HURD
JULIE KILLIAN
TERRENCE McCARTNEY
RICHARD MECCA
DANIELLE TAGGER-EPSTEIN
Councilmembers

ABSENT:

None

The Council convened at 6:30 P.M. Councilman Mecca made a motion, seconded by Councilwoman Bucci and unanimously carried to immediately adjourn into Executive Session to discuss litigation and personnel matters. Councilman Mecca made a motion, seconded by Councilwoman Bucci and unanimously carried, to adjourn the Executive Session at 7:30 P.M. The regular meeting convened at 7:40 P.M.

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.

Councilman McCartney wished everyone a Happy Yorktown Day. On the Rye Golf Club front, he announced that the competitive season came to an end with a closing event on Sunday, October 16, 2016. Councilman Mecca congratulated Councilman McCartney and his team on their big win for the closing event. Councilman McCartney also announced that several capital projects are underway at the Golf Course. The greens expansion and drainage projects have begun. On the Rye Recreation front, the Halloween Window Painting was held with over 1,000 children painting. He thanked the Recreation Department for running such a successful event. Councilman McCartney also announced that the 40th Annual Turkey Trot will be held November 26, 2016. Participants may register online until November 22, 2016, and following will be able to register in person. Movie Night will be October 22, 2016.

Councilwoman Killian encouraged residents to talk to their children about substance abuse issues. She highlighted the recent tragic events surrounding the consumption of heroin and fentanyl. She also announced that it was the anniversary of Black Monday.

Councilwoman Bucci announced that the Rye Team won the Westchester County Battle of the Books.

Councilman Mecca stated that the Fire Department just finished Fire Prevention Week, in which they visited 1,900 children. This year's theme focused on smoke detectors and the need to replace them every ten years. He asked that residents look at the date located on the back of their fire detectors. He stated that any questions about smoke detectors and batteries may be directed to the Fire Department at (914) 967-4530.

Mayor Sack thanked Deputy Mayor Killian for her comments about substance abuse. He recognized the terrible accident regarding the young woman who lived in Rye and the young man who died in White Plains recently. Young people may not think twice about drinking and drugs and their actions, such as driving under the influence. It is a difficult conversation to have but very needed.

Mayor Sack announced that last week, City Manager Serrano and Assistant City Manager Militana hosted a delegation of mayors from Japan. It was a wonderful and educational experience.

Mayor Sack recognized the great work of Rye TV, the cable committee that produces community content and is a great addition to the City of Rye. Councilwoman Killian also thanked Rye TV for their hard work.

4. Draft unapproved minutes of the regular meetings of the City Council held October 5, 2016.

Councilman McCartney recommended an amendment to Page 11 to Mr. Tuypens' comments, to reflect a statement of "2 to 6%," rather than "6 to 8%."

Councilman McCartney made a motion, seconded by Councilman Mecca and unanimously carried, to adopt the minutes as amended for the regular meeting of the City Council held October 5, 2016.

5. Issues Update/Old Business.

- Update from the City Manager on the Water Emergency

City Manager Serrano provided an update on the recent Water Emergency that was declared by the City of Rye. The restrictions on irrigation are still in place. The reservoir currently needs 12 inches of rain and there is no positive update to report. He asked that residents work with the City to comply with the regulations.

Mayor Sack encouraged residents to comply with the regulations and stated that the City will be enforcing the regulations.

Councilwoman Hurd asked about an update of the City's Master Plan. Mayor Sack responded that the City Planner is drafting an RFP. When that is finalized, the Council will be able to vote and take action on it.

6. Continuation of the Public Hearing regarding the request submitted by Crown Castle to amend their agreement with the City and for the installation of additional locations to their existing wireless telecommunications located in the City of Rye.

Chris Fisher, Cuddy & Feder, on behalf of Crown Castle, provided an update to the City Council. Procedurally, he stated that Crown identified some changes to the node application. There would be 64 total attached to all existing Con Edison poles. New pole structures are no longer being proposed. Mr. Fisher stated that they have received correspondence from the City Manager asking that Crown submit more information on the SEQRA review. He discussed plans and specifics of SEQRA. He stated that larger cabinet installations would not have an adverse impact. Mr. Fisher said that there was also a request about linear nodes and further about noise information. Mr. Fisher distributed a packet response addressing the issues within the City Manager's letter.

Council Wilson stated that City Manager Serrano wrote a letter to Crown Castle and its attorney on the SEQRA review. She said that there were several information requests to assist the Council in the analysis to declare a positive or negative declaration.

Mayor Sack asked that the City's letter request be placed on the website for review.

Mr. Fisher stated that he prepared correspondence as directed by Crown Castle.

Esme Lombard, Crown Castle, made a presentation to the Council. She stated that anything in the presentation will be a part of the information on the City's website. She showed photos of a proposed antenna. She also stated that site plans will be a part of the package given to the Council. She stated that all proposals would conform with NYS Building Codes.

Mr. Fisher stated there will be 37 pole top attachments and 27 "com zone" antennae. Ms. Lombard stated that the attachments would be at different heights on the poles.

Councilwoman Hurd asked about the smaller installations. Ms. Lombard showed what she described as an accurate depiction of an existing site within Rye, installed in 2011, which is a smaller box. She demonstrated the difference to between the larger box and the smaller box in her presentation. She stated there are 64 photos of the exact proposed nodes throughout the City. She demonstrated a few examples of the proposed nodes.

Councilwoman Hurd asked if Crown Castle confirmed that each pole was suitable for use. Ms. Lombard confirmed that an analysis of the poles identified that they are structurally sound.

There was a five minute recess.

Mayor Sack introduced Joseph Van Eaton, Best Best & Krieger, counsel for the City of Rye, and Lee Afflerbach, Professional Engineer of Columbia Telecommunications, retained on behalf of the City.

Mr. Van Eaton introduced himself and Mr. Afflerbach. He stated that he would like to present what has been done with regard to this application. Mr. Afflerbach stated that he has had extensive experience with regard to telecommunications. He stated that the application is in full compliance with the FCC regulations. He said that this is an unusual situation, as a high percentage of Rye is located in residential zoning, which can be problematic. He stated that he is looking at the same types of applications in other municipalities. The same questions have been raised elsewhere. He stated that there is a market for fast technology which, from an engineering standpoint, would support the need proposed. He also said that 5G technology is not far off and that Google is also looking at wireless needs. He stated that his job was to look at the situation currently, and in the future.

Mr. Van Eaton stated that he specializes in Federal law, and has extensive background in challenging the FCC rules. He said that unfortunately, the federal government has the sense that everything should be wireless. The communities across the country have had to deal with a realistic understanding of engineering, the laws, and the protection of communities.

Mr. Van Eaton discussed various types of wireless facilities such large towers versus small cells. DAS is another type of facility, which is the subject of this application. DAS is an integrative set of antennae. The industry is trying to deliver massive amounts of data effectively. The major target area of these nodes is within the right-of-way. By placing the nodes within the right-of-way, the technology can reach more people. He identified different DAS nodes and aesthetics being proposed throughout the country. He referenced legislation in other communities that help to regulate the right-of-way further than today's regulations, but still in conformance with federal regulations. He discussed communities' needs generally concerning the right-of-way. He then discussed communities' needs to maintain infrastructure that is aesthetically pleasing. Mr. Van Eaton said that the question is whether the City can come up with a solution to deal with the expansion of wireless within the right-of-way that also protects the municipality. Many times DAS systems are needed in areas with complicated topography, or lots of trees. He stated that there are confirmed studies on decreased property value with relation to larger towers, which are different than DAS nodes.

There was discussion from the public audience and Mr. Van Eaton with regard to small cell towers and priority placement. A member of the audience asked if there were any federal regulations regarding the fees to use the right of way. Mr. Van Eaton explained that the federal regulations require that the fees are "reasonable." However, the reasonableness standard remains an unsettled issue. Mr. Van Eaton said that the other issue is whether there is a State law on the issue. Mr. Van Eaton stated that there is a question about whether you can be charged to use the right-of-way. He said that fees may might be struck down if they are being used to deter someone from using the right-of-way. Joshua Cohn, Rye resident, asked if the DAS nodes are only a temporary solutions due to the impending 5G. Mr. Afflerbach stated that the poles would not be just a temporary solution.

Mr. Van Eaton added that the technology of 1G, 2G, etc. would not become obsolete as they will continue to work. Mr. Van Eaton stated that the City cannot decide the “gap in coverage.” In continuing his presentation, he discussed the regulations required with respect to the right-of-way use agreement and the options that the City has. The City has moved to enforce its rights under the RUA. He said that the City Manager has put Crown Castle on notice of possible violations of the right-of-way use agreement, in that Crown Castle promised to allow Verizon to place facilities in the City’s right-of-way, there was a failure to examine alternative municipal facilities, and also notified Crown Castle that it may not install facilities under the “30 day rule.” The City is conducting a reasonable review of facilities for each site, such as the property value issue that has been raised by residents. Mr. Van Eaton said that there is also a concern on whether the installation could grow above what is currently being proposed. He discussed the noise issue, aesthetics, and that currently a site may be expanded as of right. He also discussed the remaining SEQRA issues and what type of declaration that could be made.

Mr. Van Eaton discussed Chapter 196 of the City Code. He said that there is a federal standard that determines when federal law preempts a local law that would otherwise apply. The issue of gaps in coverage must be considered seriously. The gaps occur within the residential areas. He said that they hope to put the City in a position to adopt policies to apply to the current City Code Chapter 196 and SEQRA issues.

There was discussions about bandwidth. There was also discussion about municipal owned facilities, such as traffic lights. Trish Agosta, Rye resident, asked about the public sentiment across America regarding the placement of nodes within residential areas. Mr. Van Eaton explained that each municipality has different needs. Ms. Agosta stated that she would like to see more options explored.

There was general discussion about federal law versus State law and the New York State Public Service Commission.

Mayor Sack thanked Mr. Van Eaton for his presentation.

Edward Collins, 93 Grace Church Street, thanked the Council and Mayor for their dedication and time to the City. He made a statement to the Council against the application, stating concerns about aesthetic and property values. He felt skeptical about Verizon’s strategies and the 2011 right-of-way use agreement.

Mayor Sack again thanked Joe Van Eaton and Lee Afflerbach for their presentation. He stated that the community may need some time to absorb the information.

Marci Raab, 14 Grace Church Street, read a statement from Paul Shamberg, Rye resident and architect. The letter spoke about the City of Rye and aesthetics with regard to character of the neighborhoods. Ms. Raab added that she has been a resident for 20 years. She said that while a DAS node is not being proposed in front of her home, she is concerned about the aesthetics and character of Rye.

Sam Burruano, 290 North Street, cited a statement that was made from the time of the Oyster Bay Bridge and compared it to this issue. He asked that the Council support those residents who are against the application and again likened this situation to the proposed Oyster Bay Bridge.

Mary Iles, 80 Stuyvesant Avenue, read a letter from Douglas Wilk, Rye architect. The letter spoke about aesthetics and was against the application. Ms. Iles added that she was concerned about the noise of the nodes.

Michele Flood, 50 Orchard Lane, stated that she was a real estate agent in Rye and involved in the community. She stated that she understands what drives sales and was concerned that approval of the application, as it may diminish property values.

Ariel Eckstein 19 Hix Avenue, stated that he has worked for internet companies. He stated he was against the proposal and would not have purchased his home if it was near a DAS node.

James Alban-Davies 211 Kirby lane, addressed the Council. He stated he has lived in Rye for 33 years and that he loves the community. He stated that if any member of the Council would vote in favor of the application, he would want them to do so publicly. He asked the Council to support the residents. He thanked Emily Hurd for making sure the residents were apprised of the issue and gathering them to the meetings.

Dan Richman, Zarin and Steinmetz, retained counsel for private residents, stated that their clients ask that all issues be open to the public. He discussed SEQRA and stated that the essential function of SEQRA is to promote the consideration of reasonable alternatives. He is hopeful that the alternatives are strongly considered. He is also hopeful that the SEQRA considers aesthetic impacts and impact on the neighborhoods. He felt that the nodes will negatively impact the aesthetics of the City. He expressed concern over the future of the poles and negative aesthetics. He referenced his September 6, 2016 letter and October 5, 2016 letter that he submitted to Crown Castle and the City. He stated that the shot clock would not apply and that the SEQRA timeline preempts all other timelines.

Mayor Sack asked Mr. Richman to explain his analysis of the situation after listening to Mr. Van Eaton's presentation. Specifically, while a node can be placed on a traffic light or on the highway, this may not reach residents or areas with gaps in coverage. Given that, and given that this utility is permitted to fill gaps on coverage, the Mayor asked Mr. Richman where that leaves his own analysis. Mr. Richman said that there's not been an argument made on a gap in coverage, but rather that there is a capacity issue. However, he stated that he wants the alternative means to be explored.

Steve Agosta, 4 Ridgewood Drive, stated that he was there to address Mr. Mecca's request that Rye residents provide proof of their arguments to the Council so that the Council may use the information within their analysis. He objected to the request. He stated that he felt there was substantial evidence from the community during the public hearing to deny the application. He discussed the public hearing and the residents' comments at length.

Chris Fisher stated that the letter submitted to the Council addressed many of Mr. Richman's comments. Concerning SEQRA, he encouraged the Council to look at the complete Type II list. Mr. Fisher argues that Crown Castle is exempt from SEQRA review. However, the City needs to do the SEQRA analysis and ascertain the severity of impact under Parts II and III of the form. He said that many of the arguments that Mr. Richman has made were inaccurate, specifically with regard to his statement that SEQRA requires an analysis of alternatives. He further stated that the only question of SEQRA before the Council is the impact of placing DAS nodes on the proposed existing utility poles. He further discussed his disagreement with Mr. Richman's statements.

Mayor Sack said that with regard to process, the Council must make a determination with regard to SEQRA. There was discussion about making a determination earlier than mid-November, now that the City has the information from the applicant. Corporation Counsel Wilson stated that the City should take the time to review the document provided.

Chris Fisher stated that the Crown Castle would be agreeable to extend the shot clock to December 21, 2016. He asked that the City Council be prepared to make a SEQRA determination in November. He felt that the Council had adequate information to make a determination.

Councilman Mecca made a motion, seconded by Councilman McCartney and unanimously carried, to adjourn the issue to November 2, 2016.

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

There was nothing discussed under this agenda item.

8. Authorization for the City Manager to enter into an Intermunicipal Agreement with the County of Westchester Department of Public Works and Transportation for Bus Passenger Shelters.

City Manager Serrano explained that this resolution would allow the County to maintain one shelter at the train station.

Councilman Mecca made a motion, seconded by Councilman McCartney and unanimously carried, to authorize the City Manager to enter into an Intermunicipal Agreement with the County of Westchester Department of Public Works and Transportation for Bus Passenger Shelters.

- 8A. Resolution to amend the 2016 Adopted Fees and Charges for the Rye Boat Basin Enterprise Fund.
Roll Call.

Councilwoman Hurd explained that the Boat Basin is closing a successful season with a new supervisor, but one challenge is finding contractors to help get boats out of the water. She recommended delaying the penalties of boat removal until December 1, 2016.

Councilman Hurd, seconded by Councilman McCartney, made a motion to amend the Adopted Fees and Charges for the Rye Boat Basin Enterprise Fund, extending the time to require boats to be removed from the water to December 1, 2016.

ROLL CALL

AYES: Mayor Sack, Councilmembers Bucci, Hurd, Killian, McCartney, Mecca and
Tagger-Epstein
NAYS: None
ABSENT: None

9. Acceptance of donation to the Rye Police Department from the Potter family in the amount of One Thousand (\$1,000.00) Dollars.
Roll Call.

Councilwoman Hurd made a motion, seconded by Councilwoman Killian, to adopt the following resolution:

WHEREAS, the Potter family desires to donate One Thousand (\$1000) Dollars to the Rye Police Department; and

WHEREAS, the fiscal 2016 General Fund budget did not anticipate these donations; now, therefore be it

RESOLVED, that the City Council of the City of Rye accepts the aforementioned donations; and be it further

RESOLVED that the City Comptroller is authorized to amend the fiscal 2016 General Fund budget as follows: Increase Deferred Revenues - Police Donations \$1,000.00

ROLL CALL

AYES: Mayor Sack, Councilmembers Bucci, Hurd, Killian, McCartney, Mecca and
Tagger-Epstein
NAYS: None
ABSENT: None

Mayor Sack asked City Manager Serrano to notify the Potter family as to how the money is spent.

10. Miscellaneous communications and reports.

There was nothing discussed under this agenda item.

11. New Business.

There was nothing discussed under this agenda item.

12. Adjournment.

There being no further business to discuss, Councilman Mecca made a motion, seconded by Councilman McCartney and unanimously carried, to adjourn the regular meeting of the City Council at 11:20 P.M.

Respectfully submitted,

Carolyn E. D'Andrea
City Clerk