

APPROVED MINUTES of the
Regular Meeting of the City Council of the
City of Rye held in City Hall on December 7,
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 7:33 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.

6. Mayor and Council amendments to the proposed 2017 City of Rye Budget.
Roll Call.

This item was taken out of order. Mayor Sack stated that the three proposed alterations were 1) to eliminate the 2017 appropriation for the Five Point Intersection capital project; 2) elimination of one police officer position for the 2017 tentative budget, of which Councilman McCartney clarified was the current staff amount; and 3) raise the projected revenue for traffic enforcement from \$200,000 to \$250,000.

Mayor Sack made a motion, seconded by Councilman McCartney to amend the proposed 2017 City of Rye Budget as described.

ROLL CALL

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

7. Public Hearing on the proposed 2017 Budget.

This item was taken out of order. Councilman Mecca made a motion, seconded by Councilwoman Hurd, to open the public hearing for the proposed 2017 budget. Simultaneously, the following public hearing was opened:

8. Public Hearing to adopt a Local Law to override the State enacted tax levy limitation.

This item was taken out of order. Councilman Mecca made a motion, seconded by Councilwoman Tagger-Epstein, to open the Public Hearing to adopt a Local Law to override the State enacted tax levy limitation.

Joseph Murphy, 57 Franklin Avenue, addressed the Council. He asked for a \$650 contribution from the City to the Rye Senior Advocacy Committee. City Manager Serrano confirmed that this item had been included in the proposed budget.

Mayor Sack invited the residents to speak at the public hearing. There being no one to speak, Councilman Mecca made a motion, seconded by Councilwoman Tagger-Epstein and unanimously carried, to adjourn the public hearings anyone to come and speak either this evening or on December 21, 2016.

3. General Announcements.

Councilwoman Tagger-Epstein said that the Rye Sustainability Committee has announced that their tree fund is up and running. By way of background, Rye once held the Tree City USA designation, but it was unfortunately lost in 2006. The fund has been set up on the Rye Sustainability Committee website, where people can donate. The initiative is called "Branching Out for Rye." Councilwoman Tagger-Epstein then announced that on November 20, 2016, she was fortunate enough to attend the Rye Interfaith Thanksgiving Service, held at the Resurrection Catholic Church, in which all other religious organizations were invited. The Rye Women's Interfaith Counsel hosted the event, with a theme of tolerance and unity. She reiterated the importance message that "words matter, and the truth matters." She stated that hate crimes are up 35% for 2016 compared to 2015. Councilwoman Tagger-Epstein lastly said that she will continue to remind everyone to emphasize to children that words and actions do matter.

Councilman Mecca stated that he attended a recent Westchester County Electrical Licensing Board meeting. They discussed that the County Board of Legislators will

amend their electrical license code to include electrical inspectors. It takes an act of the state legislature to give the County the right to do so, through a Home Rule. Councilman Mecca said that the City of Rye had enacted this standard back in 2004, meaning that Rye was 12 years ahead of the standard.

Councilman McCartney stated that the Rye Golf Club capital improvements have been completed. He said that the club looks great and encouraged everyone to think about memberships for 2017. He also said that the annual Turkey Run was a great success. Councilman McCartney then stated that Rye resident registration for Winter Recreation programs can be found on the City website. He added that the annual Sing-along and bonfire was also great. Lastly, he stated that the Rye Golf Club will hold its end of year celebration on Friday night, December 9, 2016, for Rye Golf Club members.

Councilwoman Killian announced that the Rye Police Department and Rye ACT are sponsoring a joint drug take-back day on Saturday, December 10, 2016. She also encouraged members of the community to donate to the Sustainability Committee's tree fund.

Councilwoman Hurd thanked the Chamber of Commerce for a successful Mistletoe Magic event. She thanked Councilman Mecca and Mrs. Mecca for volunteering at the event, which was festive for all who attended.

Mayor Sack announced that today, December 7, 2016, was the 75th anniversary of Pearl Harbor. He stated that this important event should not be forgotten.

4. Draft unapproved minutes of the Presentation of the 2017 Budget held November 9, 2016, the Budget Workshop held November 14, 2016 and the Regular Meeting of the City Council held November 16, 2016.

Councilwoman Killian proposed that the minutes for the budget presentation should be amended by deleting an unnecessary sentence of page 2, paragraph 2.

Councilman McCartney made a motion to approve the minutes as revised, seconded by Councilwoman Hurd, and unanimously carried.

5. Issues Update/Old Business.

City Manager Serrano stated that the City was still working to try and fix the Dearborn Avenue seawall. He also announced that 23-25 Purchase Street would be demolished, closing down that area of Purchase Street on December 8, 9, and 12 from 5:00 A.M. to 7:30 A.M.

9. Consideration regarding the request from the Rye Town Park Commission for \$50,000 in funding from the City of Rye for the Rye Town Park's Capital Account for FY 2015.

Mayor Sack explained the issue and stated that in the past several years, there was conversation the City of Rye budget approximately \$50,000 to make up for any potential shortfall in the Rye Town Park budget. If there is no shortfall, the money can return to the City's general fund. If the City does not need the \$50,000, the Council could consider transferring the money and using it for capital improvements. Mayor Sack said that due to changes in circumstances with Rye Town Park, there may be a shortfall in 2017 that would require these funds. He recommended holding onto this funding, as the future is uncertain.

Councilwoman Killian agreed with this recommendation. She said it was important to make budgetary decisions in the best interest of the City of Rye, and it is prudent for the City to keep the money at this time.

City Comptroller Fazzino stated that the actual amount carried over would be \$38,000.

Mayor Sack made a motion, seconded by Councilwoman Killian, to deny the request for funding from the Rye Town Park Commission.

ROLL CALL

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

10. Resolution to transfer \$100,000 from the Contingency account and appropriate \$200,000 from the General Fund, Fund Balance to the Legal Department to fund legal services.
Roll Call.

City Manager Serrano stated that there is ongoing litigation ongoing that the City is currently facing. Councilwoman Killian stated that she was surprised about the \$166,000 that had been used to defend the City in the Save the Sound lawsuit. There was further discussion about Save the Sound and the litigation that has been ongoing for one year, in which nine municipalities, the County and the State are attempting to work together to propose a resolution.

There was also a brief review of other unanticipated legal matters, including Crown Castle and Playland.

Councilman Mecca made a motion, seconded by Councilman McCartney, to transfer \$100,000 from the Contingency account and appropriate \$200,000 from the General Fund, Fund Balance to the Legal Department to fund legal services.

ROLL CALL

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

11. Resolution to appropriate \$30,000 from the General Fund, Fund Balance to the City Council Consultant Account to fund traffic engineering services for the United Hospital redevelopment project.
Roll Call.

City Manager Serrano said that this appropriation would bring the City up-to-date with the current invoices, and also anticipate costs prior to the end of the year. He announced that there would be a public hearing on the FEIS prior to the end of the year.

Councilman Mecca made a motion, seconded by Councilman McCartney to appropriate \$30,000 from the General Fund, Fund Balance to the City Council Consultant Account to fund traffic engineering services for the United Hospital redevelopment project.

ROLL CALL

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

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

There was nothing discussed under this agenda item.

13. Public Hearing to amend local law Chapter 194, "Water", of the Rye City Code by amending Section §194-1, "Conservation in times of emergency", to give the City Manager the authority to declare conservation in times of water emergency.

This item was tabled for a later date.

14. Public Hearing on the proposed revision to the Rye City Charter to rescind Article 12 "Police Department" and Article 13 "Fire Department" and create a new Article 12 "Department of Public Safety" and to create a new position of "Commissioner of Public Safety" which position shall have charge and supervision of the Police and Fire Departments.

Councilman Mecca made a motion, seconded by Councilman McCartney, to open the public hearing.

There were no comments.

Councilman Mecca made a motion, seconded by Councilwoman Tagger-Epstein, to adjourn the matter to December 21, 2016.

15. 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.

Corporation Counsel Wilson announced that the parties had agreed to extend the tolling agreement to allow for final SEQRA determination to January 25, 2017. No final action will be taken at tonight's meeting regarding SEQRA or the actual application. The City will continue the SEQRA process as well.

Chris Fisher, Cuddy & Feder, Crown Castle's attorney, addressed the Council. He said that since the last public hearing, the applicant had provided new materials to the City. This includes a number of additional photo simulations. He then stated that with the materials submitted from the small citizens group, the applicant and its attorney do not agree with the group's analysis of the law. He said that Crown does not believe that the residents' proposed equipment falls within the confines of the law. He then discussed the DAS node cabinet, which he said was carefully designed under New York State and federal guidelines. In terms of the property value analysis, he said the applicant commissioned a study by Lane Appraisals to do this analysis. The appraisers came back and stated that there is no impact on property values.

Dan Richmond, Zarin and Steinmetz, addressed the Council. He introduced Susan Raybold and Jon Edwards from CityScape, and Kelly Solon of architecture firm Solon & Murdock. He said that their presentation would show that Crown Castle's proposal is not the least intrusive means. He said the applicant must show that a gap exists and that they are proposing to fill a gap in coverage with the least intrusive means. He stated that he disagreed with Crown Castle's assertion that they may enter the right-of-way as-of-right. He said that the Council should require Verizon to provide a legitimate gap analysis, rather than Crown Castle. Mr. Richmond then said that the public has not seen a contract between Crown and Verizon with regard to Verizon's request. He stated that Crown's analysis of gaps in Rye have been incomplete "drive test data." He then said that the means put forth have not been the least intrusive. He also urged the Council to require SEQRA review. He said that SEQRA requires that the City consider the long and short-term impacts.

Mayor Sack stated that the City of Rye has retained its own attorney and consultant engineer to assist with these issues. The City has made its consultants

available to the residents' group and their counsel. Mayor Sack said that the City is taking advice from its own attorney and consultant. The Council remains hopeful that discussions continue.

Councilwoman Bucci asked what materials the residents' group had asked for that they have not been provided. Mr. Richmond responded that they had not been provided design data of propagation modeling that would demonstrate a gap in coverage.

Mr. Richmond and the representatives from CityScape presented photos to the counsel of 70 to 100 foot towers, on both public and private property, as an alternative to DAS nodes on existing Con Ed polls. Mr. Richmond said that they believed this alternative is far less intrusive than Crown's DAS nodes. He thanked the Council for providing the opportunity to be heard.

Susan Raybold and Jon Edwards, CityScape, addressed the Council. Ms. Raybold stated that their organization provides informational services to local government on master planning and zoning with telecommunications. She discussed the history of telecommunications and 1G technology, and how that technology has evolved. She explained the difference between concealed and non-concealed facilities. She gave a detailed overview about gap analyses and used several examples.

Jon Edwards, P.E., CityScape, stated that they were retained by residents to analyze Crown Castle's application. He said that what was provided was drive test data, rather than a complete analysis of gaps in coverage. Councilwoman Hurd asked if Mr. Edwards would typically see is a coverage map, supported by drive test data, but not solely drive test data. Mr. Edwards responded in the affirmative.

Councilwoman Bucci asked if CityScape had previously worked with an intermediary like Crown, or with the actual carrier. Mr. Edwards responded that they had worked with mostly carriers. He said they did receive information from Verizon called "polygons" regarding gaps and service. He then said that Crown has proposed a DAS system, in which there are many because height is important. Mr. Edwards said that Crown also has not provided an "after" analysis map that would project service levels after the nodes are installed.

Mr. Edwards said that they were proposing "slick sticks" as an alternative. They can be engineered to have several carriers within one piece of equipment.

Councilwoman Bucci asked about the power levels. There was discussion about the spectrum of power and various frequencies to reach users.

Councilwoman Hurd asked about the facilities. She said was curious about any kind of equipment at the base at the ground level. There was a discussion about the possible footprint of the slick stick. Councilwoman Hurd asked if CityScape ever combined different types of facilities throughout municipalities. Mr. Edwards responded that they have seen DAS as a supplement to monopoles. Councilwoman Hurd asked if

they had details on distance of the sticks from residential properties. Mr. Edwards responded that the closest residence was 300 feet, specifically the equipment proposed in the residents' plan at Disbrow Park.

Councilwoman Tagger-Epstein said that some of the properties that CityScape and the residents picked are private/ commercial entities. She said that the City has no property rights there, and as a result asked if there was a backup plan being proposed. CityScape representatives responded that the plan could be altered.

Mayor Sack thanked CityScape for this proposal for comparative purposes. He said that one of the themes within this public hearing has been visual impact of the technology. He asked how it is that CityScape reconcile the visual impacts of this plan versus the existing proposal.

Councilwoman Killian asked about multiple users on one pole. Councilwoman Bucci followed up and asked about the impacts of collocation and height of pole.

Susan Raybold, CityScape, responded that these issues could be resolved within the City's zoning ordinances.

Councilwoman Killian said that if these large towers were approved, and then the City decided that they were not favorable, a precedent would have already been set to accept this type of technology.

Kelly Solon, Solon & Murdock, 81 Main Street, White Plains, New York, addressed the Council. She showed a rendering that she made to show what she thought collocation would look like. She argued that the collocated DAS pole would be displeasing aesthetically. There was discussion over the possible footprint and width of a DAS node.

Councilman Mecca clarified that the Council needed to understand the footprint of the proposed slick stick pole and the worst case scenario. Councilwoman Tagger-Epstein said that for all proposals, it is important to understand the appearance and placement of each individual site.

Ms. Raybold said that the slick stick is one of many designs. Mayor Sack thanked her for her presentation.

Paul Benowitz, Rye resident, stated that he objected to the residents' proposal in Disbrow Park. He said that his is the home closest to Disbrow Park. He read a statement expressing his opposition to the residents' alternative put forth with CityScape and Zarin and Steinmetz. He stated that he felt it was important to preserve the quaint beautiful views of Rye. He reminded the Council that there was a proposal 12 years ago for a cell tower at the same location, which was rejected by the City.

Kristin Jauiz, 20 Old Post Road, addressed the Council. She said she was there to stand up for her friends, neighbors and community. She felt that the “burden of proof” had not been met by Crown Castle. She said that cell towers are a bad idea with overwhelming opposition. She said that she felt that Crown had not followed existing wireless law and that it was clear that Verizon and Crown were acting in their own best interests. She asked the Council to represent the needs of the community.

Sam Powers, 12 Larkspur Lane, stated that he works in the Finance area of the telecommunications industry. He stated that the City needs more out of Crown. He said there needs to be better consideration of the long-term effects. He asked for the formation of a citizens group. He stated it was important to be proactive at this time.

Councilwoman Hurd commented that the City does not have any mention of telecommunications in the 1985 Master Plan. She said she appreciated the comments about the scope and future of telecommunications in Rye.

Diana Page, 86 Halsted Place, addressed the Council. She said she is worried about the precedent that this may set. She stated that her takeaway from CityScape’s proposal is that there are alternatives.

James Alban-Davies, 211 Kirby Lane, thanked the Council for the opportunity to speak. He encouraged the Council to deny the request and make history for Rye. He asked that the Council support the residents who oppose the DAS nodes. He stated that Councilwoman Hurd had dealt with unfair criticism from her Councilmembers.

Mayor Sack responded. He stated that he took issue with the unfair commentary issued by Mr. Alban-Davies, and asked the residents to not applaud a statement of this nature.

Bjorn Tuypens, 717 Forest Avenue, stated that he objected to the Appraisers report and methodology.

Ben Stacks, 15 Sonn Drive, stated that he appreciated Mr. Benowitz’s comments. He stated that he is 25 feet from an existing tower. He stated he opposed the application.

Joshua Cohn, 24 Green Avenue, addressed the Council. He mentioned the Pelham case, discussing the property value issue. He read a letter from the property owner from Pelham who had appeared previously before the Council. He stated that he opposed the applicant’s proposal. He stated that he supported the residents’ proposal for 100 foot towers throughout the City of Rye. He encouraged the Council to give the community all information.

There was a five minute recess.

Mr. Cohn stated that there was an antenna on the premises at Disbrow Park, and near I-95. He said that the City should know that there has been violation of Chapter 196

at these sites. He said the citizens' proposal showed an alternative to DAS nodes. He urged the City to approve plans that were only by the least intrusive means.

Vreni Rooluner, 5 Purdy Avenue, discussed the possible negative health effects of the applicant's proposal.

Tricia Agosta addressed the Council. She discussed gaps in coverage and bandwidth. She discussed the citizens' proposal and the 100 foot towers that she supports. She stated that there was a lack of information. She stated that the existing right-of-way use agreement is unenforceable. She felt upset that she did not have access to the City's attorney.

Chris Fisher, Cuddy & Feder, addressed the Council again. He thanked the citizens and Council for their comments. He demonstrated various photo simulations to the Council. He said that they would be subject to their pole attachment agreement with Con Edison, which is regulated heavily. He discussed the cabinets and aesthetics being proposed. He stated that the City may control the future of collocation through the current right-of-way use agreement. He then discussed the differences between a large pole and a DAS node in terms of the equipment and footprint. He referenced the analysis of "need" and the data that is or is not available. He clarified that the gap analysis at 21,000 MGHZ was provided to the City. He also referenced a previous phone call in which the residents' attorney and City's attorney was present, in which information was discussed. He said that the notion that Crown Castle does not go hand-in-hand with Verizon is completely false. Lastly, Mr. Fisher said that the applicant believed it had more than adequately shown the gap in coverage.

Councilwoman Hurd asked for a copy of the agreement between Verizon and Crown Castle. Councilwoman Killian stated that it was important to understand the definition of a gap in coverage.

Mr. Fisher stated that he did not agree that it was Crown's burden to prove the gap in coverage, and that the FCC had not provided a standard for a "gap in coverage." He said that the City Council was being asked to ascertain the application under the state and local law. He clarified that this is not a 5G application. He stated that his client has not been disingenuous during this proceeding.

Corporation Counsel Wilson discussed the SEQRA process with regard to Crown Castle's application. She said that the next step that City Council as lead agency would need to decide whether the action is a Type 1 or Type 2 action. She advised the Council to classify the application as an unlisted action of SEQRA, as it does not fall within either category. The next step is to clarify it as an unlisted action.

Mr. Fisher stated that the applicant feels that it is a Type 2 action.

Councilman McCartney asked if the City had sufficient information to make a determination with regard to SEQRA. Corporation Counsel Wilson responded that

overall, she felt that the City did have enough information, but that it should gather more information about aesthetics from the City's consultant.

Mayor Sack made a motion, seconded by Councilwoman Tagger-Epstein, to adopt the following resolution:

WHEREAS, the City Council of the City of Rye (the "City Council") received an application from Crown to amend the exiting RUA to allow for a different type of equipment within the City's right-of-way; AND

WHEREAS, the City Council previously declared its intent to be the Lead Agency under the State Environmental Quality Review Act ("SEQRA"); and

WHEREAS, the City Council has, and continues to, review the Proposal and the documentation in order to evaluate the Proposal's impacts to the City; now therefore, be it

RESOLVED, that the City Council hereby classifies the Proposal as an "Unlisted" action under SEQRA; and be it further

RESOLVED, that the City Council, as lead agency, finds that it will continue to review the Proposal and any modifications to same by Crown before it makes a final determination under SEQRA.

The Council voted unanimously to uphold the resolution.

Mayor Sack stated that based on the budget priorities, he recommended adjourning the public hearing to the first meeting in January.

Mayor Sack made a motion, seconded by Councilman Mecca, to adjourn the public hearing to January 11, 2017.

16. Consideration to review a SEQR determination in connection with the request submitted by Crown Castle to amend the Right of Way Use Agreement and the installation of additional locations to their existing wireless telecommunications located in the City of Rye.

Councilman McCartney made a motion, seconded by Councilman Mecca and unanimously carried, to adjourn the public hearing to January 11, 2017.

17. Miscellaneous communications and reports.

There was nothing discussed under this agenda item.

18. New Business.

Councilwoman Hurd said that she previously mentioned in a Council Corner newspaper article that she would be moving a resolution to provide all information to the public from potential telecommunications applicants. She circulated the draft resolution.

Mayor Sack stated that the City Council and staff have complied with the Freedom of Information law. Councilman McCartney stated that the Council was fortunate to have several attorneys on staff, who can use sound judgment about information and Freedom of Information. Councilwoman Killian stated that she did not have enough information to vote at this time on a resolution. Councilman Mecca also supported deferring certain issues to City staff.

Councilwoman Hurd made a motion, seconded by Councilman Mecca to adopt a resolution:

WHEREAS, the public has demonstrated a vital interest in all aspects of the proliferation of wireless facilities in Rye, and;

WHEREAS, it is likely that the City of Rye will continue to be approached by providers of wireless facilities about siting of wireless facilities within the City of Rye (whether it be on City, County or State owned property), and;

WHEREAS, in the interest of providing access to information to residents on issues of vital public interest, and;

WHEREAS, the publication of information on the City of Rye website is a cost effective way to make information public, now therefore be it;

RESOLVED, that the City of Rye will post on a designated tab on its website any and all documents received relating to the proposed installation (including modification) of wireless facilities within the City of Rye.

ROLL CALL

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

The resolution failed.

19. 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 12:01 P.M.

Respectfully submitted,

Carolyn E. D'Andrea
City Clerk