

**CITY OF RYE
MEMORANDUM**

TO: Honorable Mayor and Council Members

FROM: Frank J. Culross, City Manager

SUBJECT: Enclosures - Council Packet

DATE: October 17, 2014

Enclosed with this memorandum are the following items:

- 10-8 Letter from the Government Finance Officers Association with notification that the City of Rye has received the Distinguished Budget Presentation Award for the 2014 budget.
- 10-9 Notice from Westchester County Legislator Catherine Parker regarding a discussion on the future of Playland to be held on Monday, October 20, 2014 from 7:00 p.m. to 9:00 p.m. at the Rye Free Reading Room.
- 10-10 Legal Department Update from the Corporation Counsel dated October 17, 2014.
- 10-11 Letter from Brian Dempsey regarding his position as Chair of the Traffic and Pedestrian Safety Committee.
- 10-12 Meeting notice for the week of October 20, 2014 is available on the City website www.ryeny.gov under Calendar.



Government Finance Officers Association
203 North LaSalle Street, Suite 2700
Chicago, Illinois 60601-1210
312.977.9700 fax: 312.977.4806

September 22, 2014

Frank Culross
City Manager
City of Rye
1501 Boston Post Road
Rye, NY 10580

Dear Mr. Culross:

I am pleased to notify you that City of Rye, New York has received the Distinguished Budget Presentation Award for the current budget from the Government Finance Officers Association (GFOA). This award is the highest form of recognition in governmental budgeting and represents a significant achievement by your organization.

When a Distinguished Budget Presentation Award is granted to an entity, a Certificate of Recognition for Budget Presentation is also presented to the individual or department designated as being primarily responsible for its having achieved the award. This has been presented to:

Finance Department

We hope you will arrange for a formal public presentation of the award, and that appropriate publicity will be given to this notable achievement. A press release is enclosed for your use.

We appreciate your participation in GFOA's Budget Awards Program. Through your example, we hope that other entities will be encouraged to achieve excellence in budgeting.

Sincerely,

Stephen J. Gauthier, Director
Technical Services Center

Enclosure



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203 North LaSalle Street, Suite 2700
Chicago, Illinois 60601-1210
312.977.9700 fax: 312.977.4806

September 22, 2014

PRESS RELEASE

For Further Information Contact
Stephen J. Gauthier (312) 977-9700

Chicago--The Government Finance Officers Association of the United States and Canada (GFOA) is pleased to announce that **City of Rye, New York** has received the GFOA's Distinguished Budget Presentation Award for its budget.

The award represents a significant achievement by the entity. It reflects the commitment of the governing body and staff to meeting the highest principles of governmental budgeting. In order to receive the budget award, the entity had to satisfy nationally recognized guidelines for effective budget presentation. These guidelines are designed to assess how well an entity's budget serves as:

- a policy document
- a financial plan
- an operations guide
- a communications device

Budget documents must be rated "proficient" in all four categories, and the fourteen mandatory criteria within those categories, to receive the award.

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For budgets beginning in 2013, 1,424 participants received the Award. Award recipients have pioneered efforts to improve the quality of budgeting and provide an excellent example for other governments throughout North America.

The Government Finance Officers Association is a major professional association servicing the needs of more than 18,000 appointed and elected local, state, and provincial-level government officials and other finance practitioners. It provides top quality publications, training programs, services, and products designed to enhance the skills and performance of those responsible for government finance policy and management. The association is headquartered in Chicago, Illinois, with offices in Washington D.C. The GFOA's Distinguished Budget Presentation Awards Program is the only national awards program in governmental budgeting.

7th District Legislator

**CATHERINE
PARKER**

Chair, Committee on Environment and Energy

Dear Neighbors and Friends:

I will be hosting a discussion on the future of Playland this coming **Monday evening, October 20th, from 7-9 PM at the Rye Free Reading Room, 1061 Boston Post Rd, in Rye.**

Specifically, Central Amusements, Inc. (CAI) will be presenting its vision for re-inventing Playland. There will also be an opportunity for questions as well as sharing of concerns and ideas.

This event is open to the public--I look forward to seeing you there!

All the best,

Catherine F. Parker

**CITY OF RYE
MEMORANDUM**

TO: Honorable Mayor and Rye City Council
FROM: Kristen K. Wilson, Corporation Counsel
SUBJECT: Litigation Update
DATE: October 17, 2014

CLAIMS

A notice of claim has been filed by Linda Collins of Greenwich, Connecticut. The notice states that Ms. Collins suffered personal injuries as a result of a fall in the crosswalk on Smith Street at the corner of Purchase Street. The claim has been forwarded to our insurance carrier.

TAX CERTIORARI

CARROLL v. CITY OF RYE

This matter is fully submitted before the Appellate Division, Second Department. We are waiting for an oral argument date.

THE TOWN OF RYE AND THE RYE TOWN PARK COMMISSION v. THE ASSESSOR and Board of Assessment Review of the CITY OF RYE

The City's reply brief was served and filed. This matter is now fully submitted to the Appellate Division, Second Department. We are waiting for an oral argument date.

WESTCHESTER JOINT WATER WORKS v. CITY OF RYE

The Appellate Division, Second Department, reversed the lower court and found that the City of Rye did have standing to seek dismissal of the proceedings based on a failure to comply with RPTL 708(3) and found that the City's records clearly showed that some of the property was located within the Rye Neck Union Free School District's property.

181 NEW ENGLAND SEAFOOD CORP. v. NOREEN WHITTY, et al

The return date for the motion has been adjourned to October 24, 2014.

LITIGATION

BEAVER SWAMP BROOK – (DEC Administrative proceeding)

The T/V of Harrison filed an amended application with the NYSDEC. There is a comment period that has a deadline of October 6, 2014. A request for an extended comment period has been made.

CASPI v. CITY OF RYE

The City's motions for summary judgment were granted and the City, Commissioner Connors and Lt. Verille were dismissed from the case. The motion for summary judgment against Officer Anfuso was denied and Plaintiff's cause of action for failure to intervene remains. Summary judgment was also denied as to Officers Rosace and Compagnone.

BOARD OF MANAGERS OF THE IVES AT RYE v. CITY OF RYE

The City has served its Answer with Affirmative Defenses.

OMNI CONTRACTING V. CITY OF RYE

The co-defendant Calgi Construction has filed for bankruptcy. As a result, the trial has been adjourned.

AMERICAN LEISURE ACTIVITIES OF NEW YORK CITY INC. v. CITY OF RYE

This matter was certified on October 15, 2014.

RVIN REYES, et al v. CITY OF RYE, RYE GOLF CLUB, RM STAFFING & EVENTS, INC., MORRIS YACHT AND BEACH CLUB, INC. and SCOTT YANDRASEVICH, Jointly and Severally

A conference was held on September 12, 2014 in front of Judge Roman. The matter was referred to Magistrate Davison for all discovery. Plaintiffs' counsel has indicated that he would move for class certification by January 15, 2015.

GORDON and MARIA HARGRAVES v. CITY OF RYE ZONING BOARD OF APPEALS, WALTER & MARGARET NELSON, and Robert TALT

Hon. Barry E. Warhit issued an Opinion, Decision and Order of the Court remanding the matter back to the Board of Zoning Appeals for a more detailed decision. All parties are ordered to appear before Judge Warhit on October 28, 2014 for a conference.

P. STEPHEN LAMONT v. KRISTEN K. WILSON, et al

Plaintiff did not officially file and serve the Second Amended Complaint for which he had asked permission from Judge Roman. Defendants' Motion to Dismiss must be served on or before November 21, 2014.

ALAN KACHALSKY v. THE CITY OF RYE, NEW YORK and the RYE CITY POLICE DEPARTMENT and P.O. ED BALLS

A notice of Removal to Federal Court, SDNY was filed and served.

CHITTENDEN v. COMPAGNONE

Chittenden filed a motion for default judgment. Compagnone filed his answer and moved to dismiss for failure to serve a notice of claim on the City. Judge Mary Smith denied Plaintiff's motion and has ordered the parties in for a conference on November 10, 2014.

DOUGLAS E. LIMAN v. NICK EVERETT, MARTHA MONSERRATE, LAURA BRETT, BARBARA CUMMINGS, HUGH GREECHAN, PETER OLSEN, ALFRED VITIELLO, constituting the PLANNING COMMISSION OF THE CITY OF RYE, PANKAJ GUPTA and EMILY GUPTA, PAM McGUIRE and EUGENE McGUIRE

The City was served with an Article 78 proceeding seeking to vacate and nullify actions taken by the Planning Commission in approving a development project proposed by Applicants Pankaj and Emily Gupta. The petition seeks an Order annulling the Planning Commission's Resolution granting a Wetland and Watercourse Permit to the applicants.

CITY COURT

Routine calendar with no unusual dispositions.

Respectfully submitted,

Handwritten signature of Kristen K. Wilson in black ink.

Kristen K. Wilson
Corporation Counsel

KKW/dfn

October 13, 2014

Mayor Sack and Rye City Council
Rye City Hall
1051 Boston Post Road
Rye, NY 10580

Re: Response to Comments

Dear Mayor and Council:

The following is response to an email sent to the City Council regarding my status as Chairman of the Traffic and Pedestrian Safety Committee (TPS) and the fact that the firm that I work for TRC Engineers, Inc. (TRC) has performed Engineering Services for the City. It is important to note that before I took the position offered to me on the TPS (which was known as the Traffic and Transportation Committee at the time), I made sure to go through the proper channels including the City Manager as well as the Ethics Committee to ensure that there was not a conflict of interest. The Ethic Committee did determine that there was not a conflict (and issued a letter on file at the City stating as such) and I was appointed by the Mayor and Council at that time. It is also important to note that I am an employee of TRC, not a partner or owner.

There is essentially no relationship of what is discussed at TPS and the projects performed by TRC. TPS handles the issues brought to us by residents such as on-street parking, signage, etc. The services that TRC performs include expertise by other professionals besides me or engineering equipment or software such as design work, inspections, capacity analyses and traffic counts/machine counts. Any work that is performed by TRC is submitted on TRC letterhead and it is stated before testimony. If the work requires a signature by a Professional Engineer such as design work or an inspection or the utilization of specific Traffic Engineering Software programs, then it can't be done by the TPS. TPS can also not handle projects that require certain engineering equipment, require significant traffic counts, or require other fields of engineering. What I do at TPS is provide Engineering advice and it usually involves issues such as pedestrian safety as well as signage and striping or other regulations. As a professional with almost 30 years of experience, I try to explain the legal ramifications of certain items such as why something could or could not be done as well as provide input on new innovations in traffic. I also have been in the City for half a century and know people/relatives who have been here longer and thus know why things were done or not done.

I am the only Engineer on the TPS. Traffic is a serious issue and can be very dangerous thus it is important to have professional experience and training. It is not something to be taken lightly with providing political favors or approving concepts just because it is the opinion of some residents, although at TPS we feel it is important to hear the constructive comments of

the residents. It is important to note that TPS is only an Advisory Committee, we have no Approval Authority.

Much more of my time is volunteer such as the five or so recent Hearings on the Pilot Study, parking on Sylvan Avenue, and the Central Avenue parking restrictions. Essentially anywhere I go in the area, whether it is a school function, a sporting event, etc., someone will ask me a question pertaining to traffic. Today at Costco, three people were talking to me about traffic issues. The TPS has accomplished many things under my chairmanship. The services that I perform for the TPS, besides the meetings, include, but are not limited to, running the Bicycle Rodeo for many years, providing input to the local papers about traffic issues, writing various policies, discussing issues with the Police Department, reviewing plans and reports, as well as meeting residents and school officials about their traffic concerns, talking to students and PTO's, discussions with the NYSDOT and Westchester County, as well as meeting with other committees such as the Golf Club Commission to help them with their parking and circulation, among various other tasks. This includes taking time off from work or meeting someone on a Saturday morning, as well as receiving numerous calls/emails at home/work or being stopped and asked questions wherever I go in the City. This takes several hours of my personal time each week.

While some may not agree with the findings of the TPS on some traffic issues, the differences are from a political/opinion context and not a Traffic Engineering context. There is no one else in this City who has the understanding and experience in Traffic-related issues, the laws and codes that are required, nor the contacts with the NYSDOT and the County regarding Traffic and Pedestrian Safety issues. Having a driver's license does not make someone an expert, although some may think so. I have made various presentations on School Traffic Safety at both International and Regional Conferences. I constantly provide input to the City Engineering Department and City Planning Department when requested regarding signage, trip generation, regulations, etc. Because of my background, I have also been asked to serve on numerous other sub-committees including the CBD Committee, the Parking Committee and the Neighborhood Business Committee, among others. I am a licensed Professional Engineer (PE) in the State of New York as well as five other states and am a Certified Professional Traffic Operations Engineer (PTOE) as well as a Fellow with the Institute of Transportation Engineers.

An advantage of TRC is that it is a full Civil/Site/Highway Engineering Firm along with Air and Noise capabilities, ranked nationally in the top 40 by ENR. Thus TRC has the ability to provide a full-range of services, much more than a standard traffic engineering firm. TRC has been or is currently serving as Engineering Consultants in various surrounding communities (most of Westchester County) including, but not limited to, Port Chester, Harrison, Mamaroneck, Larchmont, New Rochelle, Pelham, Yonkers, Greenburgh, Dobbs Ferry, Briarcliff, White Plains, Scarsdale, Lewisboro, Cortlandt, Somers, Sleepy Hollow, Tarrytown, Ossining, Greenwich, Stamford, New York City, Westchester County, the NYSDOT and so on.

Although consulting services do not need to be sent out to bid by the City, many of the projects from the Engineering Department are sent to bid. TRC has bid on some of these. We do not bid on projects that I feel are too controversial or ones that the TPS has been heavily involved in. Nor does TRC bid on projects that were the outcome of my ideas such as the Road Diet along the Boston Post Road. The services generally performed by TRC on behalf of the City are typically Intersection Design projects (including crosswalks, curbing, drainage, etc.) and Traffic Signal Design projects or manual and automatic machine traffic counts that can't be handled by the City Engineering Department. TRC was the low bidder on one project this year, the Design Plans and Design Report for the Safe Routes to School Project (only four were awarded in all of Westchester and TRC is involved with two of them and has significant experience with schools and safe routes as well as the necessary coordination background with NYSDOT). TRC was not the low bidder on the last three Engineering projects that were sent to bid, (the redesign of the intersection of Grace Church Street/Midland Avenue, the redesign of the Boston Post Road and the retaining wall across from CVS, and the redesign of the Boston Post Road near Parsons Street), which all went to the firm that represented SPI.

In addition, if a private project being performed by TRC could have a possible impact on the City, I do not get involved in the project. For example, TRC has been performing Engineering Services on the Port Chester Gateway Project (former United Hospital site). As the City has commented on the Project's Scope, I have recused myself from testifying on the project.

Thus, there is a clear distinction between my TPS services and the work performed by TRC. Everything that I have done has been transparent. No matter the slanderous comments and lies directed at me, I have kept my responses professional and above board, and at least from my end, did not let it be personal although it has been difficult to restrain myself at times.

Contrary to what was said at the Council Hearing, it is well known that my firm does work with the City. Even Ted Carroll in response to the commenter in a blog on Rye Patch (June 2, 2014 at 1:06 PM) "Let's stipulate that Mr. Dempsey is well known and well liked around town and he has a disclosed conflict of interest (accepts paid professional assignments from authorized Rye public officials). There are others who serve on Boards/Commissions whose firms have also worked with the City.

One of the two commenter's main issue is regarding the TPS memo regarding the intersection of Boston Post Road and Central Avenue, particularly the suggestion that the City Council possibly consider looking at the corner lot for potential parking if it was determined to not be a park. We stated that this as a possible option if the impacts to the neighborhood become too great but we do not recommend that anything be done at this time. The TPS was asked to put the memo together by the City Council and it was also the result of letters sent to the City by a resident of Blind Brook Lodge regarding on-street parking, pedestrian safety and sight distance. The TPS was not in total agreement with any of the alternatives (including using the corner lot) but it was suggested by a member at one our meetings due to the elimination of

some or all of the parking along Boston Post Road to improve pedestrian safety and sight distance, and to limit the impact to the neighbors of the additional on-street parking, as that was a comment from various residents along Central Avenue in the past. It was one of a few potential modifications for the Council to consider for the intersection after 2 Central opens and its true impact is known. TPS understood the additional parking in that location is not the ideal choice but one to be considered as there are very limited options in the area. We, like many others, would not want to give up green-space if it is not necessary.

In the TPS Central Avenue Memo, the Committee put the particular comment about the City Manager not influencing us regarding Central Avenue because we were tired of all of the lies and false accusations that certain people were putting on the blogs with no actual facts. We have served under numerous City Managers and Mayors and none of them have instructed us what to say in our memos. Our whole Committee is involved in the preparation and review of the memos, which are a summary of our findings based upon the majority opinion. We are an advisory committee and we give our opinion. We do not get involved in the politics and we try to recommend what is best for the City as a whole, not for one or two individuals. We do not always agree amongst ourselves on the best option. Sometime the City Council will listen to us, and sometimes they will not, which is their prerogative.

As illustrated on the chart provided by the Commentor, TRC is currently working on the Preliminary Design of the Safe Routes to School project. We had not performed another project for the City going back to 2011 where we did some speed measurements (as the City did not own a machine at that time). The rest of the work performed was on the American Resource and Recovery Act (ARRA) Safety Improvements, which the City received a grant for and TRC was one of various consultants involved, and included the inspection of the construction per Federal Law, (listed under 2009, 2010 and 2011) and some monitoring at the Schools which required traffic counts (2009). *So over 6 years, there were only four projects performed by TRC, the intersection/signal design/inspection (in conjunction with the ARRA project), a traffic count/monitoring at the schools, a speed measurement, and the current Safe Routes Intersection Preliminary Design.* The chart is misleading as it lists invoices, not individual projects, which makes it appear like there are more than four projects. Also as illustrated on the chart, two thirds of the work performed by TRC was done by others in the office who have different expertise than me (such as drainage, wiring, etc.). The Commenter says I should be a full time paid consultant which would be good for my firm but not good for the taxpayers because the City would lose all of the volunteer time as well as the potential of a lower bid on a project.

On a personal note, volunteering for the City is very important to my family and me as we take significant pride in the City. My children are fourth generation Rye residents and volunteers (with some relatives being here even longer) so we have a deep attachment to the City. My Grandfather served as the Volunteer Chief of the Fire Department for many years while my Father worked as a Paid Firefighter for the City as well as being a Volunteer at the other firehouse, something not done anymore, for over 40 years. For his numerous volunteer services to the City, which also included among other things, President of the Rye Seniors

Association and Commander of the American Legion, he was elected into the Westchester County Hall of Fame as well as the New York State Veterans Hall of Fame, and has received the Americanism Award. I considered following in their footsteps and being a volunteer firefighter for the City but felt I could be more beneficial to the City by volunteering on the Traffic Committee. I also have volunteered for numerous other activities ranging from President of the Little League to the Easter Egg Hunt (which my Mother helped run for forty years as part of the Rye Fire Department Ladies Auxiliary. Along with my wife, who also has done more than her share, we were honored by the Rye Youth Council as "Superheroes" for our volunteer work. Our children have followed in our footsteps, as our son had over 600 hours of community service while at Rye High School while our daughter is approaching that number.

It is also important to note that to avoid of the appearance of potential impropriety, I do not donate to either governmental party or attend events run by either party. Members of both parties have asked me about running for a position on the Council several times, but again, I feel that I could better serve the community as Chairman of TPS. I feel that my services to the TPS are extremely beneficial to the City on a very important matter and the work that TRC performs is separate from the work of the Committee.

Very truly yours,

A handwritten signature in black ink, appearing to read "Brian Dempsey". The signature is fluid and cursive, with a long, sweeping tail that extends to the right.

Brian Dempsey