

**CITY OF RYE
MEMORANDUM**

TO: Honorable Mayor and Council Members

FROM: Marcus Serrano, City Manager

SUBJECT: Enclosures - Council Packet

DATE: October 30, 2015

Enclosed with this memorandum are the following items:

- 10-17 Notice from the American Legion Rye Post #128 regarding the Annual Veterans Day Observance to be held on Wednesday, November 11, 2015 beginning at 10:30 a.m. on the Village Green.
- 10-18 Legal Department Update from the Corporation Counsel dated October 30, 2015.
- 10-19 Notice from the Westchester County Department of Health with information on how to keep homes lead-safe and protect children from lead poisoning.
- 10-20 Meeting notice for the week of November 3, 2015 is available on the City website www.ryeny.gov under Calendar.



RYE POST #128
P.O. Box 128
Rye, New York 10580

Rye American Legion Post 128 cordially invites everyone to attend the annual Veterans' Day Observance which will be held on the Village Green on Wednesday, November 11, 2015 beginning at 10:30 a.m.

A brief ceremony will be held in honor of those who served in our Nation's wars.

Thank you for your continued support. We look forward to seeing everyone on the 11th.

**CITY OF RYE
MEMORANDUM**

TO: Honorable Mayor and Rye City Council
FROM: Kristen K. Wilson, Corporation Counsel
SUBJECT: Litigation Update
DATE: October 30, 2015

CLAIMS

Luis and Patricia DeBorba filed a Notice of Claim alleging that the City failed to properly maintain the sidewalk adjacent to the premises known as #2 School Street. Claimant is seeking claims for personal injuries and related medical and economic damages.

TAX CERTIORARI

MICHAEL ROTH v. CITY OF RYE

Petitioner has served a Notice of Verified Petition and Petition against the City of Rye challenging the Decision of J.H.O. Maher's dated February 20, 2015 which upheld the City Assessor's original assessment. Petitioner alleges that J.H.O Maher's decision is irrational. The City is in receipt of Petitioner's reply papers. The return date was September 14, 2015. **Last week, I appeared in front of Judge Tolbert's law clerk along with Brendan Conroy to discuss the merits of the Article 78 proceeding.**

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

Oral argument took place in front of the following judges: Mastro, J.P., Skelos, Dickerson and LaSalle. We are still waiting for a decision.

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

I appeared at a court conference with Judge Tolbert and his law clerk on April 21, 2015. Motions for summary judgment are still pending.

LITIGATION

BEAVER SWAMP BROOK – (DEC Administrative proceeding)

The DEC Commissioner rendered a decision in which he partially upheld and partially reversed the ALJ's interim decision. The DEC Commissioner upheld the ALJ's decision finding that the negative declaration was rational and based on the record before it. In addition, the Commissioner reversed the ALJ's decision and found that Harrison's application did meet the standards under the Freshwater Wetland Act.

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 trial has been calendared to commence on November 4, 2015.

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

The parties appeared before Hon. Nelson Roman. Plaintiffs anticipate making a Rule 23 motion. A motion schedule was established. Next status conference is calendared for November 20, 2015.

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

Judge Cacace dismissed Petitioners' Petition finding that the Respondent ZBA acted reasonably, properly considered the statutory criteria that must be met in order for a variance to be granted and relied on substantial evidence in the record. Notice of Entry was served on October 21, 2015. Petitioners have thirty (30) days to file a Notice of Appeal.

CHITTENDEN v. COMPAGNONE

The non-party deposition of Sergeant Charlie Hunter took place on August 14, 2015. Additional non-party depositions and other outstanding discovery will take place over the next several weeks. Another compliance conference was held this week and Plaintiff still owes Defendant outstanding discovery documents. I attended the Conference on October 21, 2015 and Plaintiff's counsel stated that, despite his prior statements, he was not going to file a lawsuit in federal court. Court referee informed Plaintiff's attorney that the Note of Issue must be filed in thirty days.

CITY OF RYE v. TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

The City served its Complaint on Travelers. Travelers has answered the Complaint and discovery is taking place. An initial conference was held before Judge Seibel and a short discovery schedule was set, with fact discovery to be completed by December 11, 2015, and expert discovery to be completed by March 11, 2015.

NOTICE OF DANGEROUS CONDITION

The City received a copy of a "Notice of Dangerous Condition" regarding any future bow and arrow or other permitted deer hunting.

CHITTENDEN v. WILSON, ET AL.

Mr. Chittenden commenced an Article 78 Proceeding against Kristen Wilson, Marcus Serrano and others alleging violations of the Public Officers Law. Plaintiff requested an additional week extension (second request) to file reply papers.

BALLANTONI v. CITY OF RYE, CONSOLIDATED EDISON, and PERSICO CONTRACTING AND TRUCKING, INC.

Plaintiffs served the City of Rye, Consolidated Edison and Persico Contracting with a Summons and Verified Complaint alleging that the City was negligent in performing construction

work in and around 81 High Street and created a dangerous condition. Plaintiff fell and sustained injuries. The matter is venued in Westchester County Supreme Court.

JACQUELINE FITZPATRICK v. CITY OF RYE, CONSOLIDATED EDISION and WESTCHESTER COUNTY

Plaintiff served the City with a Summons and Complaint alleging that the City, Consolidated Edison and Westchester County were negligent in maintaining Highland Road near Mendota Avenue. On December 11, 2014, Plaintiff tripped and fell while crossing Highland Road and sustained a shoulder fracture and other bruising. The matter is venued in Westchester County Supreme Court.

LINDA COLLINS v. CITY OF RYE and CONSOLIDATED EDISION

Plaintiff served the City of Rye and Consolidated Edison with a Summons and Complaint alleging personal injuries when she fell crossing the street in the area of Purchase Street and Smith Street on July 26, 2014. The matter is venued in Westchester County Supreme Court.

AGUIRRE and SANCHEZ v. COUNTY OF WESTCHESTER, ET AL.

Plaintiffs commenced a federal lawsuit in the Eastern District of New York alleging violations of their civil rights under the Constitutions of the United States and New York State. Plaintiffs were arrested in Queens and subsequently indicted in Westchester County Supreme Court for Assault in the Second Degree and Robbery in the Second Degree. On November 26, 2012, Westchester County Court Judge Hubert issued a decision and order dismissing the indictment. The matter has been forwarded to the City's insurance carrier for a coverage determination. Judge Ross has granted Defendants' request to file a motion to change venue. Defendants must serve their motion papers by November 9, 2015. Plaintiffs must serve opposition papers by November 30, 2015. Motion must be fully submitted by December 14, 2015.

CITY COURT

Routine calendar with no unusual dispositions.

Respectfully submitted,



Kristen K. Wilson
Corporation Counsel

KKW/kkw



Robert P. Astorino, Westchester County Executive

NEWS RELEASE

Sherlita Amler, MD, Commissioner, Department of Health

Ned McCormack, Communications Director

Contact: Caren Halbfinger (914) 813-5013 / after hours: 813-5000

For Immediate Release: October 28, 2015

COUNTY EXECUTIVE ASTORINO REMINDS PARENTS TO KEEP THEIR HOMES LEAD SAFE Health Department Observes National Lead Poisoning Prevention Week

To highlight National Lead Poisoning Prevention Week, which runs through Oct.31, Westchester County Executive Robert P. Astorino encourages parents to take care to keep their homes lead-safe and to keep products that may contain lead away from their young children.

“Our health department has lots of practical tips to help parents keep their older homes lead-safe for young children, so I encourage you to visit our website to learn more,” Astorino said.

Health Commissioner Sherlita Amler, MD, advises parents to assure their young children are assessed annually for lead exposure by their medical provider from the time they are six months old until they reach age six. All children at ages one and two years should receive a blood lead test. Pregnant women should also be assessed for lead exposure by their prenatal health care provider because lead exposure can cause miscarriage or low birth weight.

“Lead poisoning can cause devastating health effects, so we must do everything in our power to keep children safe from lead,” Dr. Amler said. “Avoid cooking, storing or serving food in pottery made outside the U.S. unless you are sure it does not contain lead. It’s a good idea to err on the side of caution with anything that could go in a child’s mouth or close to the eyes, where lead can be absorbed. This includes toys, spices and play jewelry made outside the U.S.”

If your home was built before 1978, it may contain lead paint, sometimes under layers of newer paint. If the paint is in good shape, the lead paint is usually not a problem. Peeling, chipping, chalking, cracking, damaged or damp lead-based paint is a hazard that needs immediate attention. It also may be a hazard when found on surfaces that children can chew, or that get a lot of wear-and-tear, such as windows and window sills, doors and door frames, stairs, railings, banisters and porches. Keep all paint in excellent shape and clean up dust frequently to protect your family from the hazard of lead dust.

When you buy a home built prior to 1978, ask for a lead inspection. If your home was built before 1978 and you hire a contractor to renovate, repair and/or paint, the Environmental Protection Agency requires that your contractor be certified by the EPA or an EPA authorized state and follows lead-safe work practices. If you are doing the work yourself, to avoid creating dangerous lead dust, set up safely, control the dust and clean up completely to protect your family and home. For more on what to do, go to the lead poisoning prevention page at westchestergov.com/health.

More

Here's what you can routinely do to minimize a child's exposure to lead:

- Clean up peeling paint and paint chips often, using a wet mop or sponge and an all purpose degreasing cleaner.
- Use a wet mop and a damp dusting cloth to avoid adding lead dust to the air that children will breathe.
- Wash children's hands frequently, particularly before meals and snacks and after playing outdoors. Supervise small children closely to ensure they only put food in their mouths, not paint chips, jewelry or toys, which could contain lead.
- Feed children a well balanced diet high in calcium and iron, which can minimize their exposure to lead. Cheese, yogurt, beans and dark, leafy green vegetables are good sources of calcium and iron.
- Don't let children play with imported jewelry, toys, make-up or eat candy, which can contain lead or lead paint.
- Avoid serving food in pottery if you are unsure about whether there could be lead in the glaze.

Lead in drinking water is rarely a significant source of lead poisoning. However, if you are unsure about the level of lead in your drinking water, use only water from the cold water tap for cooking and drinking or making a baby's formula. Run cold water for three to five minutes in the morning to flush out any lead which may have leached into the water during the night. Hot water picks up more lead from pipes and solder. If more than six hours have gone by since a tap was last turned on, run the water until it becomes cooler before using it for cooking or drinking.

Throughout the year, the health department's Lead Poisoning Prevention Program staffers educate parents and providers about the dangers of lead exposure; provides surveillance and monitoring of blood lead level data to identify trends and populations at risk for lead exposures; conduct investigations in the home and other places where lead poisoned children spend time to identify lead hazards and work to remediate those hazards. The Program maintains a lead poisoning registry for the medical case management of Westchester County children diagnosed by their primary care providers with lead poisoning and collaborates with providers to reduce levels of lead exposure.

New cases of lead poisoning continue to occur, caused primarily by lead hazards in the home. The health department is currently tracking the health status of 103 children who were identified with elevated lead levels through routine blood lead tests, including 25 that were identified this year. At low blood lead levels, lead can adversely affect a child's ability to learn. At high levels, lead is an acute poison that can cause developmental delays, seizures, and in severe cases, death. There is no known safe level of lead in the body.

If you live in certain parts of Westchester, the county health department can offer a free home inspection and risk assessment for lead paint hazards to prevent children from become lead poisoned. Residents can schedule a free home assessment by calling the health department at 914-813-5000 if they live in these zip codes: 10701 and 10705 in Yonkers; 10801 in New Rochelle; 10606 in White Plains; and 10550 in Mount Vernon. This service is available because the county receives additional state grant funding because of its many older homes and significant number of lead-poisoned children.

For more information about lead poisoning prevention, call the Westchester County Department of Health at (914) 813-5000 or go to www.westchestergov.com/health.