

**CITY OF RYE
MEMORANDUM**

TO: Honorable Mayor and Council Members

FROM: Marcus Serrano, City Manager

SUBJECT: Enclosures - Council Packet

DATE: November 13, 2015

Enclosed with this memorandum are the following items:

- 11-7 Notice regarding a Rye Town Park Commission Meeting to be held on Thursday, November 19, 2015 beginning at 6:00 p.m. at the Rye Brook Village Hall.
- 11-8 Legal Department Update from the Corporation Counsel dated November 13, 2015.
- 11-9 Meeting notice for the week of November 16, 2015 is available on the City website www.ryeny.gov under Calendar.



*Rye Town Park
95 Dearborn Ave.
Rye, NY 10580
914 967-0965*

RYE TOWN PARK COMMISSION **MEETING NOTICE**

Commission Members

Joseph Carvin-President
Joseph Sack, Mayor-City of Rye
Dennis Pilla, Mayor-Village of Port Chester
Paul Rosenberg, Mayor-Village of Rye Brook
Benedict Salanitro, Commissioner
Laura Brett, Commissioner

DATE & TIME: **Thursday, 11/19/2015 @ 6:00PM**

PLACE: **Rye Brook Village Hall
938 King Street
Rye Brook, NY 10573**

Tentative Agenda:

- 1. Roll Call**
- 2. Pledge of Allegiance**
- 3. Comments from the Public**
- 4. Park Management Report**
- 5. Financial Report**
- 6. Old Business**
- 7. New Business**

**CITY OF RYE
MEMORANDUM**

TO: Honorable Mayor and Rye City Council
FROM: Kristen K. Wilson, Corporation Counsel
SUBJECT: Litigation Update
DATE: November 13, 2015

CLAIMS

Adele Arrigale filed a Notice of Claim against the City for personal injuries she sustained while walking through the parking lot at 281 Midland Avenue. Ms. Arrigale suffered some minor injuries to her head, arm and hand and also damaged her glasses. Her damages for both medical treatment and her glasses total \$355.00.

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. **A bench trial commenced in front of Honorable Mary Smith. Opening arguments were heard and the trial will recommence next week.**

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. **City Defendants opposed the Rule 23 Motion and filed its opposition papers earlier this week.** 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 filed 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. **Petitioner requested an additional two-week extension to file reply papers. Based on the substance of Plaintiff's request, Respondents requested time to file a sur-reply. The Petitioner has until November 18, 2015 to serve his reply. The Court indicated that the Petitioner will not be granted any further adjournments.**

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.

LINDA COLLINS v. CITY OF RYE and CONSOLIDATED EDISON

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 served their motion papers on November 9, 2015. Plaintiffs must serve opposition papers by November 30, 2015. Motion must be fully submitted by December 14, 2015.**

CONNECTICUT FUND FOR THE ENVIRONMENT D/B/A SAVE THE SOUND v. WESTCHESTER COUNTY, ET AL.

Save the Sound commenced a federal action alleging violations of the Clean Water Act in the United States District Court for the Southern District of New York against the County of Westchester, the City of Rye, and numerous other municipalities. Save the Sound is alleging violations of the Clean Water Act for exceeding effluent limits under the City's SPDES permit and in violation of its MS4 permit. I submitted this matter to the City's insurance carrier for a coverage determination.

CITY COURT

Routine calendar with no unusual dispositions.

Respectfully submitted,



Kristen K. Wilson
Corporation Counsel

KKW/kkw