

**CITY OF RYE
MEMORANDUM**

TO: Honorable Mayor and Council Members

FROM: Marcus Serrano, City Manager

SUBJECT: Enclosures - Council Packet

DATE: February 5, 2016

Enclosed with this memorandum are the following items:

- 2-1 Notice regarding a Rye City School District Board of Education Meeting to be held on Tuesday, February 9, 2016 beginning at 7:30 p.m. in the Rye Middle School Multipurpose Room.
- 2-2 Legal Department Update from the Corporation Counsel dated February 5, 2016.
- 2-3 Notice regarding a Harrison Town/Village Board Public Hearing to consider the Petition of Brightview Senior Living to purchase the property at 600 Lake Street.
- 2-4 Meeting notice for the week of February 8, 2016 is available on the City website www.ryeny.gov under Calendar.



The Rye City School District

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Elaine Cuglietto

District Clerk

Cuglietto.elaine@ryeschools.org

February 3, 2016

FOR IMMEDIATE RELEASE

February 9, 2016 Board of Education Meeting

The Rye City School District Board of Education will meet **Tuesday, February 9, 2016** beginning at 7:30 PM in the Rye Middle School Multipurpose Room.

Prior to the meeting, beginning at 7:00 p.m. the Board will meet in Executive Session at Rye Middle School Multipurpose Room for the review of the employment history of current and prospective employees, negotiations pursuant to the Taylor Law, review of current litigation and litigation strategy.

On the agenda are fiscal, special education, personnel and business items that ordinarily come before the Board as well as

- A presentation on American Sign Language II
- A presentation on the Superintendent's Recommended Budget for the 2016- 2017 school year.

Members of the public are welcome and encouraged to attend this meeting of the Board and to speak at designated times.

**CITY OF RYE
MEMORANDUM**

TO: Honorable Mayor and Rye City Council
FROM: Kristen K. Wilson, Corporation Counsel
SUBJECT: Litigation Update
DATE: February 5, 2016

CLAIMS

Casey Meehan filed a claim this week seeking damage to his automobile when debris fell from a bridge/overpass onto his car as he was traveling on I-95 on November 16, 2015 at approximately 10:15 a.m. The claim has been forwarded to our insurance broker for a review of same.

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.

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 Rule 23 Motion is fully submitted and we are waiting for a decision on same.

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. Plaintiff has filed an Amended Note of Issue. Defendant filed a motion for summary judgment. **Plaintiff's counsel requested a two week adjournment to respond to the motion. The new return date for the motion is now March 4, 2016.**

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 January 15, 2016. The deposition of Scott Pickup took place on Monday January 11, 2016.

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 has filed and served his opposition papers. Defendants filed its sur-reply earlier this week and the matter is now fully submitted. Judge Neary responded to a letter I sent regarding ex parte communications made by Petitioner to the Court after the return date of this proceeding and the Court confirmed that any submissions by Plaintiff after December 9, 2015 would not be considered.

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 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. Judge Ross denied the Defendants' motion to change venue and the case will remain in the Eastern District of New York. Both the City of Rye and County of Westchester defendants have filed a letter requesting a pre-motion conference in order to file a motion to dismiss.

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. Save the Sound has consented to an additional ninety day (90) adjournment in order to allow the defendants time to answer or otherwise submit a request for permission to file a motion to dismiss. Judge Seibel has "so ordered" the new schedule.

JEANETTE v. VERILLE

On December 3, 2015, Judge Mary Smith rendered a decision vacating the arbitrator's decision in its entirety and found that Arbitrator Barone committed misconduct pursuant to CPLR 7511. Plaintiffs filed a notice of appeal and they have six months to perfect the appeal.

GERRITY v. CITY OF RYE

Christine Gerrity commenced a lawsuit against the City for injuries she sustained when she tripped while walking down the "handicapped" sidewalk ramp outside of 76 Purchase Street when there was on-going construction work on the sidewalks. Plaintiff alleges that on November 4, 2014 was performing work and left the area of the sidewalk in an unsafe and dangerous condition.

RYE CITY COURT

Routine calendar with no unusual dispositions.

Respectfully submitted,

A handwritten signature in black ink that reads "Kristen K. Wilson". The signature is written in a cursive, flowing style.

Kristen K. Wilson
Corporation Counsel

KKW/kkw

PLEASE TAKE NOTICE THAT the Harrison Town/Village Board will hold a Public Hearing to consider the Petition of Brightview Senior Living, the contract-vendee to purchase the property known as the Lake Street Quarry located at 600 Lake Street (shown on the Assessment Map as Block 995, Lots 11 & 12, Block 994 Lot 6, Harrison, New York) to amend the Town/Village Zoning Code so as to add a Special Exception Use allowing a "Senior Living Facility" to be developed on limited properties within the Town's R-1 and R-2 District. This Special Exception Permit could only be applied to properties in the Town's R-1 or R-2 Districts which are: (i) 6 acres or larger; (ii) contain at least 1,500 feet of frontage along an arterial roadway; and (iii) developed with, and utilized immediately previously as, a non-residential use. Regulations concerning the height, bulk and accessory uses associated with a "Senior Living Facility" are also proposed.

This hearing will occur at the Board's Regular Meeting on Wednesday evening, February 10, 2016, at 7:30 p.m., in the Court Room of the Municipal Building, 1 Heineman Place, Harrison, New York.

ALL PERSONS HAVING AN INTEREST IN THIS MATTER ARE INVITED TO ATTEND AND BE HEARD.

BY ORDER OF THE TOWN BOARD OF THE TOWN OF HARRISON.

Jacqueline Greer
Town Clerk

PROPOSED ZONING TEXT AMENDMENT

Article V of the Town/Village of Harrison Zoning Code regulating Special Exception Uses shall be amended as follows:

Add a new Subsection "X" to Section 235-17 (Special conditions and safeguards for specific uses):

§ 235-17

X. Senior Living Facility.

(1) Definitions. For the purposes of this Subsection, the following terms shall apply:

SENIOR LIVING FACILITY - A residential facility containing Independent Living, Assisted Living and/or Memory Care Units.

ASSISTED LIVING UNIT - A unit specifically designed for use and occupancy by individuals who benefit from daily monitoring, and may be provided, whether by the facility operator or an appropriate third party, medication supervision, personal care services and assistance with other activities of daily living, such as bathing, dressing, grooming, eating and/or ambulation.

MEMORY CARE UNIT - A unit specifically designed for the use and occupancy by individuals suffering from dementia.

INDEPENDENT LIVING UNIT - A unit specifically designed to accommodate individuals with increasing frailty, which unit shall contain a kitchen, and for which there are also common amenities available for the residents thereof outside of the unit, including dining facilities, laundry, security and housekeeping services.

(2) Siting Requirements. A site eligible for this special exception use must (i) be held in single ownership at the time of the enactment of this Subsection, (ii) have been improved with, and used immediately previously as, a non-residential use, and (iii) consist of at least 6 acres with at least 1,500 feet of frontage along an arterial roadway.

(3) Lot and area requirements. The following requirements shall apply to all Senior Living Facilities permitted hereunder:

- (a) Minimum lot area: 6 acres
- (b) Minimum lot width (measured at the front yard setback): 800 feet
- (c) Maximum building coverage: 20%
- (d) Minimum front yard: 15 feet
- (e) Minimum rear yard: 30 feet

- (f) Minimum side yard: 30 feet (60 feet combined)
- (4) Density. No more than 25 Units per acre shall be permitted. For purposes of this Subsection, "Units" shall include any mix of Independent Living, Assisted Living and/or Memory Care Units, and all acreage used in connection and/or associated with the Senior Living Facility may be included in said density calculation.
- (5) Height. The maximum height of any Senior Living Facility building shall be 55 feet or 4 stories.
- (6) Off-street parking. At least 1 parking space for every 2 Units shall be provided on-site. Parking spaces may be located within required front and side yards, provided that such spaces are set back at least 5 feet from any property line.
- (7) Accessory uses.
 - (a) Living area(s) for the common use of the residents, adequate in location, number, size, variety and amenities to satisfactorily serve the needs of such residents. Such living areas may include, but not be limited to, living rooms, TV rooms, libraries, music rooms, activity rooms and multipurpose rooms.
 - (b) Dining area(s) for the common use of the residents, adequate in location, number, size and amenities to satisfactorily serve the needs of such residents.
 - (c) Central commercial kitchen adjacent to the common dining area(s), and from which food service is provided to the common dining area(s).
 - (d) Indoor and outdoor passive recreational areas for the common use of the residents.
 - (e) Laundry facilities for the residents' personal use.
 - (f) Linen and housekeeping services.
 - (g) Personal-care services for residents only, including, but not limited to, medical and dental care (outpatient services only), physical therapy, assistance with dressing, bathing, eating, ambulation and general supervision.
 - (h) Twenty-four-hour supervision by on-site responsible staff person(s).

AND add new column to the Table of Use Regulations for Residence Districts

Attachment 1:

Use Classification	R-2.5	R-2	R-1	R-1/2	R-1/3	R-75 and R-50	B	GA	MF
Senior Living Facility pursuant to § 235-17(X)	X	SE	SE	X	X	X	X	X	X