

**CITY OF RYE  
MEMORANDUM**

TO: Honorable Mayor and Council Members

FROM: Marcus Serrano, City Manager

SUBJECT: Enclosures - Council Packet

DATE: March 4, 2016

Enclosed with this memorandum are the following items:

- 3-1 Notice regarding a Rye City School District Board of Education meeting to be held on Tuesday, March 8, 2016 beginning at 7:30 p.m. in the Rye Middle School Multipurpose Room.
- 3-2 Legal Department Update from the Corporation Counsel dated March 4, 2016.
- 3-3 Notice from Verizon FiOS regarding an increase in fee for the Regional Sports Network effective June 1, 2016.
- 3-4 Meeting notice for the week of March 7, 2016 is available on the City website [www.ryeny.gov](http://www.ryeny.gov) under Calendar.



**The Rye City School District**

*411 Theodore Fremd Avenue, Suite 100S  
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*Elaine Cuglietto  
District Clerk  
Cuglietto.elaine@ryeschools.org*

March 1, 2016

FOR IMMEDIATE RELEASE

**March 8, 2016 Board of Education Meeting**

The Rye City School District Board of Education will meet **Tuesday, March 8, 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 further discussion of the Superintendent's Recommended Budget for 2016-2017
- A presentation on Midland School's "We Future Cycle"

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: March 4, 2016

**CLAIMS**

No new claims were filed this week.

**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 City is in receipt of Plaintiff's opposition papers. The Judge has requested that the motion papers be refiled and a new return date chosen so that the motion can be fully submitted at a future date.**

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. On Wednesday February 24, 2016, the City and Travelers agreed to settle the pending matter for \$1.55 Million. On Friday February 26, 2016, Judge Cathy Seibel, S.D.N.Y., ordered that the case is discontinued with prejudice and further ordered that settlement must be consummated within thirty (30) days.

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. In a Judgment, Decision and Order filed and entered on February 23, 2016, Judge Neary dismissed the petition in its entirety.

finding that Mr. Chittenden did not demonstrate that the City failed to comply with its obligations under FOIL or acted in an arbitrary and capricious manner.

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. 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. On February 18, 2016, I appeared before Magistrate Vera Scanlon for an Initial Conference and to set the Scheduling Order. **On February 24, 2016, Plaintiff asked for an additional week (until March 4, 2016 to file an amended complaint). On or before March 9, 2016, all parties are to submit a proposed joint briefing schedule on the motion to dismiss. Judge Ross denied Plaintiff's request to have a pre-motion conference. Plaintiff has asked for an additional week to provide his client's consent to release/unseal the criminal court proceeding.**

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. Defendants participated in an initial settlement meeting on February 25, 2016.

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.

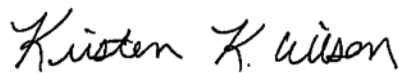
RYE CITY COURT

**People v. Jose Antonia – The Rye Building Department inspected the premises at 73 Maple Avenue and issued violations pertaining to safety issues and an illegal apartment. Defendant resolved all of the violations and agreed to pay \$2,500 in full satisfaction of the docket.**

**25 Kirby Lane – A new control date of April 8, 2016 was agreed upon by the parties. On March 9, 2016, there is a scheduled fire and building code inspection. On or before April 1, 2016, property owners must file stamped plans with building department.**

Otherwise, usual traffic court calendar with no unusual dispositions.

Respectfully submitted,



Kristen K. Wilson  
Corporation Counsel

KKW/kkw



## **Fios® TV Rate Notification**

### Regional Sports Network Fee

Effective on or after 30 days from the date of this message, you will receive a Fios® TV Regional Sports Network (RSN) fee of \$5.89/month. If you currently have an RSN Fee on your bill, it will increase to \$5.89/month. This monthly fee helps cover a portion of the costs Verizon pays to RSNs to deliver professional and collegiate sports programming in each local team's territory. Verizon offers alternative packages that do not include RSNs and are not subject to this fee.