

**CITY OF RYE
MEMORANDUM**

TO: Honorable Mayor and Council Members

FROM: Marcus Serrano, City Manager

SUBJECT: Enclosures - Council Packet

DATE: May 6, 2016

Enclosed with this memorandum are the following items:

- 5-1 Notice regarding a Rye City School District Board of Education Meeting/Budget Hearing II to be held on Tuesday, May 10, 2016 beginning at 8:00 p.m. in the Rye Middle School Multipurpose Room.
- 5-2 Legal Department Update from the Corporation Counsel dated May 6, 2016.
- 5-3 Notice from Westchester County Executive Robert Astorino regarding steps that Westchester County has taken and will be taking to prevent mosquitoes from multiplying. Also attached is a flyer entitled "*Keep Healthy and Get the Facts*" that provides information on the Zika virus.
- 5-4 Notice from the Wainwright House regarding a Spring Awakening Luncheon to be held on Thursday, May 19, 2016 from 12:00 to 2:30 p.m.
- 5-5 Meeting notice for the week of May 9, 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

May 3, 2016

FOR IMMEDIATE RELEASE

May 10, 2016 Board of Education Meeting / Budget Hearing II

The Rye City School District Board of Education will meet **Tuesday, May 10, 2016** beginning at 8:00 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.

- The Board will hold Public Budget Hearing II of the 2016-2017 Superintendent's Recommended School Budget. Also on the agenda are fiscal, special education, personnel and business items that ordinarily come before the Board.

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: May 6, 2016

CLAIMS

No new claims have been 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. Petitioners requested a 2 month enlargement of time to perfect the appeal. **The Second Department granted the enlargement of time.**

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 motion for summary judgment was refiled with a new return date of April 15, 2016. On April 20, 2016, Judge Mary Smith rendered a Decision and Order granting the City's motion for summary judgment and dismissing Mrs. Chittenden's three causes of action. The Decision was entered in the Westchester County Clerk's office on April 21, 2016. Notice of Entry was filed on April 25, 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. 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 forty-five (45) 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. Notice of Entry was filed and served. **The Appellate Division, Second Department received Petitioner's Notice of Appeal and assigned the following docket number 2016-03878.**

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. Plaintiffs filed an amended complaint, filed a Summons for Westchester County Officer Mohl and served (and then subsequently withdrew) a subpoena for the District Attorney's files in the underlying criminal proceeding. Both the County Defendants and the City Defendants filed motions to dismiss. Plaintiff requested an extension until April 28, 2016 to file his opposition papers. **The Plaintiffs filed their opposition papers and the City received the County's initial disclosures.**

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 and a subsequent settlement conference on March 17, 2016.

There have been numerous Defendants-only strategy meetings and also two settlement meetings with all parties. On Wednesday, April 20, all parties appeared in front of the Honorable Cathy Seibel in the Southern District of New York for a formal status conference and update. At the conference, the parties requested more time to conduct system wide studies regarding the condition of the infrastructure. The enlargement of time would delay the requirement for defendants to answer. The Judge agreed to this approach and was pleased that the parties appeared to be working together in a productive fashion. The Plaintiffs are responsible for submitting quarterly status reports to the Judge while the system studies are undertaken.

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.

ANDERSON v. CITY OF RYE, ET AL.

Melissa Anderson filed a summons and complaint against the City of Rye, the Rye Neck Union Free School District and the Village of Mamaroneck seeking damages for personal injuries sustained while on the playground at Rye Neck Middle School. The City's insurance carrier has been notified and denied defense and indemnification since this property is not owned by the City and the City does not maintain or operate the playground equipment. **I submitted an affirmation establishing ownership and maintenance of the playground property.**

RYE CITY COURT

Normal traffic court 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



Robert P. Astorino
County Executive

May 4, 2016

Dear Mayor/Supervisor/Manager and County Legislators:

County Executive Robert Astorino wants you and your constituents to be aware of the steps the County has taken and will be taking to prevent mosquitoes from multiplying. With the growing news reports on Zika, many of your constituents may become concerned about the potential risks of mosquitoes at home and around their neighborhoods. This letter serves to update you on the steps the County is taking to reduce the mosquito population, Westchester County has a robust plan that includes education, surveillance, and mosquito control.

Education: Attached is a new flyer “Keep Healthy and Get the Facts” that provides information on Zika and includes a link to a new brochure “*Keep Healthy and Bug Off*”. These materials offer personal protective measures that can be taken to avoid mosquito bites and to reduce standing water. I encourage you and your constituents to review these materials and to visit the department’s website www.westchestergov.com/health for up-to-date information. Residents also can call the health department at 813-5000 to report standing water in their area.

Surveillance: The Westchester County Department of Health has doubled the number of mosquito trap sites and has added a new trap designed to attract and capture Aedes mosquitoes – the kind that is capable of transmitting Zika. The health department will monitor the mosquitoes found in Westchester and send mosquitoes for testing for West Nile and Zika viruses.

Mosquito Control: The Westchester County Department of Health will continue its mosquito control efforts, which include larviciding and distributing minnows. Starting May 9th, the health department will evaluate and treat catch basins that can hold standing water throughout the county. To further reduce the mosquito population, the health department will give residents free minnows to add to their backyard ponds and water features and free dunks for their birdbaths, rain barrels and unused pools, as follows:

- Wednesday – Friday, May 4-6, 11 a.m. to 6 p.m.
- Thursday – Friday, May 19-20, 11 a.m. to 6 p.m.
- Saturday, May 21, 10 a.m. to 3 p.m.

Help us spread the word on measures residents can take to protect themselves and their families against mosquito bites.

We must all do our part to fight Zika and the County is prepared and ready to respond.



**Westchester County
Department of Health**

Westchester
gov.com

Robert P. Astorino, County Executive
Sherlita Amler, MD, Commissioner
Department of Health

**KEEP
HEALTHY
AND
GET THE FACTS**



Zika Virus 101

What is Zika virus?

Zika is a virus that is primarily transmitted to people through the bite of an infected Aedes species mosquito.

How is Zika virus transmitted?

The most common way that [Zika virus is transmitted](#) is through mosquito bites. Zika virus can also be transmitted from a pregnant mother to her baby during pregnancy or around the time of birth. The virus can also be spread through sexual contact and blood. Zika is not spread from person to person by casual contact such as sharing food with someone else.

Who is at risk for infection with Zika virus?

Anyone who lives in or travels to an area where Zika virus is found is at risk for infection. However, pregnant women and women who are trying to become pregnant are of special concern because Zika can cause birth defects. Visit our website for more information about [Zika and pregnancy](#).

Where is Zika virus spreading?

Zika is present in Central and South America, Mexico, the Caribbean and other places listed by the Centers for Disease Control and Prevention (CDC). The CDC has issued a [travel alert](#) for people traveling to regions and certain countries where Zika virus transmission is ongoing.

Currently, the Zika virus is not spreading in Westchester County and the type of mosquito linked to the outbreak, the Aedes aegypti, has not been found here. A different mosquito that may carry Zika, the Aedes albopictus, is sometimes found in Westchester and the surrounding area during the summer months. Health experts are still learning whether the Aedes albopictus is likely to spread Zika to people.

What are the symptoms of Zika virus infection?

About one in five people infected with Zika will get sick. The illness is usually mild and many people might not realize they have been infected. Symptoms usually begin two to 12 days after being bitten by an infected mosquito. The most common symptoms of Zika virus disease are fever, rash, joint pain, and conjunctivitis (red eyes). Rarely, it can cause an ascending paralysis called Guillain-Barré syndrome. See your healthcare provider if you develop these symptoms and have visited an area where Zika is found.

What should I do if I have Zika?

Treat the symptoms:

- Get plenty of rest
- Drink fluids to prevent dehydration
- Take medicine such as acetaminophen (Tylenol) to reduce fever and pain
- Do not take aspirin or other non-steroidal anti-inflammatory drugs (NSAIDs)

To help prevent others from getting sick, avoid mosquito bites during the first week of illness by using insect repellent and covering exposed skin when outdoors. During the first week of infection, Zika virus can be found in a person's blood. The virus can be passed from an infected person to a mosquito through mosquito bites. An infected mosquito can then spread the virus to other people.

How can I protect myself and my family from Zika?

Follow the tips below for how to take personal protective measures against mosquitoes and ways to eliminate standing water around your home where mosquitoes can breed. You can also download our [Keep Healthy and Bug Off brochure](#) that is filled with mosquito bite prevention tips.

- Cover exposed skin by wearing long-sleeved shirts and long pants.
- [Use EPA-registered insect repellents](#) containing DEET, picaridin, oil of lemon eucalyptus (OLE), or IR3535. Always use as directed.
- Apply sunscreen first, then repellent
- Pregnant and breastfeeding women can use all EPA-registered insect repellents, including DEET, according to the product label.
- Most repellents, including DEET, can be used on children aged >2 months.
- Use [permethrin-treated clothing](#) and gear (such as boots, pants, socks, and tents). You can buy pre-treated clothing and gear or treat them yourself.
- Stay and sleep in screened-in or air-conditioned rooms.
- Use a mosquito bed-net if you cannot keep mosquitoes out of your residence. Cover cribs, strollers and baby carriers with mosquito netting too.
- Remove [common backyard mosquito sources](#) such as old tires, buckets, wheelbarrows, toys and other items from your property that can collect water.
- Cover outdoor trash containers to keep rainwater from accumulating inside.
- Keep your gutters clear.
- Keep your property clear of objects or debris that can hold even tiny amounts of water.
- Drill holes in the bottoms of recycling containers that are left outdoors.
- Drain water in birdbaths, plant pots and drip trays twice a week.
- Clean and chlorinate swimming pools, outdoor saunas and hot tubs. Keep them empty and covered if not in use; drain water that collects on their covers.

For more information:



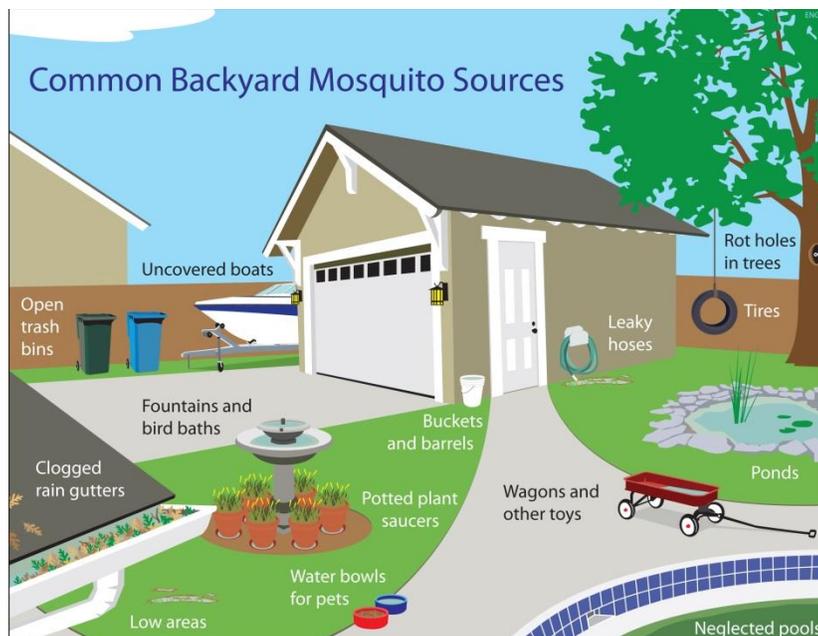
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SAVE the DATE
Information www.wainwright.org or call 914 967-6080

Wainwright House
Invites You To
Our Fourth Annual

Spring Awakening Luncheon

The Fonrose Wainwright Condit
Heart & Soul Award

2016 Honorees
Tao Porchon - Lynch
Friends of Rye Town Park
SPRYE

Thursday,
May 19