

**CITY OF RYE
MEMORANDUM**

TO: Honorable Mayor and Council Members

FROM: Marcus Serrano, City Manager

SUBJECT: Enclosures - Council Packet

DATE: July 29, 2016

Enclosed with this memorandum are the following items:

- 7-9 Notice regarding the Rye City School District Board of Education annual planning meetings to be held on Wednesday, August 3, 2016 and Thursday, August 4, 2016 beginning at 6:00 p.m. at the Wainwright House on Stuyvesant Avenue.
- 7-10 Legal Department Update from the Corporation Counsel dated July 29, 2016.
- 7-11 Letter from Mike Arias, Rye City School District Director of Health, Physical Education and Athletics, regarding the 2016 fall night game schedule.
- 7-12 Meeting notice for the week of August 1, 2016 is available on the City website 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

July 22, 2016

FOR IMMEDIATE RELEASE

August 3, 2016 and August 4, 2016 Board of Education Planning Meetings

The Rye City School District Board of Education will hold its annual planning meetings **Wednesday, August 3, 2016 and Thursday, August 4, 2016** beginning at 6:00 p.m. at the Wainwright House on Stuyvesant Avenue in Rye.

On August 3, 2016 immediately after the meeting is called to order, the Board will adjourn into Executive Session to discuss the employment history of current and prospective employees, negotiations pursuant to the Taylor Law, review of current litigation and litigation strategy and the Board will discuss its way of work, set goals for the coming school year, and discuss priorities for the 2016-2017 school year.

On Wednesday August 3, 2016 at 7:00 p.m. there will be a fifteen (15) minute business meeting after which time the public session will conclude and the Board will adjourn back into Executive Session.

On Thursday August 4, 2016 immediately after the meeting is called to order, the Board will adjourn into Executive Session to continue its discuss the employment history of current and prospective employees, negotiations pursuant to the Taylor Law, review of current litigation and litigation strategy and the Board will discuss its way of work, set goals for the coming school year, and discuss priorities for the 2016-2017 school year.

**CITY OF RYE
MEMORANDUM**

TO: Honorable Mayor and Rye City Council
FROM: Kristen K. Wilson, Corporation Counsel
SUBJECT: Litigation Update
DATE: July 28, 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

The Appellate Division, Second Department, handed down a Decision and Order reversing the lower court and granting the City's cross-motion for summary judgement. Notice of Entry was served on July 28, 2016. The Decision and Order confirms the City's ability to tax that portion of Rye Town Park which is occupied by Seaside Johnnies.

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

DeBORBA v. CITY OF RYE

Plaintiffs commenced suit against the City of Rye alleging a serious injury when Luis DeBorba tripped and fell on a sidewalk abutting 2 School Street, Rye, New York. The Summons/Complaint has been forwarded to our insurance carrier for a determination.

CHITTENDEN v. WILSON, D'ANDREA, SERRANO AND CITY OF RYE

Pro Se Petitioner commenced an Article 78 proceeding against the City of Rye and several officials alleging that the City failed to comply with the Freedom of Information Law.

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 an additional one-month enlargement of time to perfect their appeal. Petitioners perfected their appeal and served respondents with the record on appeal and appellate brief.

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. A Notice of Appeal was filed on April 25, 2016 by Plaintiff Luanne Chittenden.

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. 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. A compliance conference was held in May and a discovery schedule was entered into that requires all depositions to be completed by September 2016 and a Note of Issue to be filed April 2017.

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. The City and County's Motions to Dismiss are fully submitted. A conference call with Magistrate Scanlon was held between all parties and discovery is proceeding pursuant to the So-Ordered Scheduling Order.

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. Plaintiffs submitted the first quarterly status report to the Judge and New York State DEC is still reviewing the parties’ proposed plans.

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. During the week of May 9, 2016, I submitted an affirmation establishing ownership and maintenance of the playground property.

PEOPLE v. CHITTENDEN

I argued the appeal in front of the Second Department, Appellate Term on May 19, 2016. We are still waiting for a decision.

RYE CITY COURT

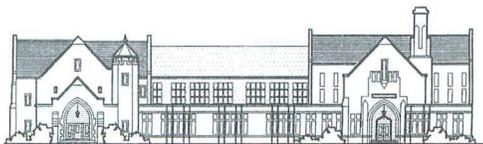
Usual calendar with no unusual dispositions.

Respectfully submitted,



Kristen K. Wilson
Corporation Counsel

KKW/kkw



HOME OF THE
GARNETS
 THE RYE HIGH SCHOOL
 RYE, NEW YORK 10580

MIKE ARIAS
 Director of Health,
 Physical Education and Athletics
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 Fax: 914-925-1076
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July, 2016

Dear Rye High School Neighbor:

In accordance with the Board of Education policy on the Use of Permanent Field Lights at John Nugent Stadium, I am informing you of the 2016 fall night game schedule. Should there be any changes or additions to this schedule, you will be notified as soon as possible.

Friday	9/16	Boys Soccer	7:00 p.m.
Saturday	9/17	Field Hockey	7:00 p.m.
Friday	9/23	Football	7:00 p.m.
Friday	9/30	Field Hockey	7:00 p.m.
Saturday	10/01	Girls Soccer	7:00 p.m.
Friday	10/07	Football	7:00 p.m.
Saturday	10/08	Girls Soccer	7:00 p.m.
Saturday	10/15	Boys Soccer	7:00 p.m.

If you have any questions and/or concerns, please do not hesitate to call me at (914) 967-6100, ext. 1543.

Sincerely,

Mike Arias

- cc: Dr. Brian Monahan, Superintendent
 Ms. Patricia Taylor, Principal, RHS
 Dr. Ann Edwards, Principal RMS
 Mr. Robert Zegarelli, Asst. Principal, RHS
 Mr. Rolf Koehler, Security, RHS
 Mr. William Pease, Police Commissioner
 Lieutenant Falk, Rye Police
 Ms. Sally Rogol, Rye Recreation
 Mr. Doug Scott, Rye Recreation