

**CITY OF RYE
MEMORANDUM**

TO: Honorable Mayor and Council Members

FROM: Marcus Serrano, City Manager

SUBJECT: Enclosures - Council Packet

DATE: October 7, 2016

Enclosed with this memorandum are the following items:

- 10-1 Legal Department Update from the Corporation Counsel dated October 7, 2016.
- 10-2 Notice from Verizon regarding upcoming changes to Fios® TV programming.
- 10-3 Meeting notice for the week of October 11, 2016 is available on the City website www.ryeny.gov under Calendar.

**CITY OF RYE
MEMORANDUM**

TO: Honorable Mayor and Rye City Council
FROM: Kristen K. Wilson, Corporation Counsel
SUBJECT: Litigation Update
DATE: October 7, 2016

CLAIMS

Cecelia Kussner v. City of Rye

Claimant filed a notice of claim alleging permanent personal injuries she sustained after the Rye Police responded to a neighbor's call regarding an aggressive dog.

Elsie Scerbo v. City of Rye

Claimant filed a notice of claim alleging injuries she sustained when she slipped on the Rye Golf Club pool deck.

TAX CERTIORARI

MICHAEL ROTH v. CITY OF RYE

A new hearing was held on August 23, 2016 in front of JHO Sherwood. I attended the hearing along with Assistant Assessor Brendan Conroy. The City presented information regarding two additional sales as comparables and Petitioners presented the same comparables and, in addition, submitted a new appraisal that was not previously exchanged in violation of the Court's procedures governing SCAR proceedings. On August 25, 2016, JHO Sherwood rendered a decision awarding an 8% reduction in the assessed value of the property located at 9 Kirby Lane.

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. On September 6, 2016, the City was served with a Motion for Leave to Appeal to the Court of Appeals by both the Town of Rye and the Rye Town Park Commission. The City filed its opposition papers on September 16, 2016.

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. Petitioner served his reply papers on September 2, 2016 and Respondents filed their sur-reply on September 16, 2016.

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.

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. Respondents filed their opposition brief on September 19, 2016.

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. Petitioner has requested a three month extension due to an alleged disability that is preventing him from working on his papers in a timely 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. 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 second 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. **Village of Mamaroneck filed a motion to dismiss.**

RYE CITY COURT

Usual calendar with no unusual dispositions. The Court is now holding two separate vehicle and traffic law calendars on Thursday mornings in order to address a larger docket. In addition, the

court will hold a vehicle and traffic law calendar one afternoon per week. Friday calendars will remain with only one calendar for the time being.

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



Fios® TV Programming Change

On or after December 30, 2016, the provider of Infinito on channel 1620 will remove that programming from the Fios TV channel lineup. Check your channel guide to enjoy similar programs available on other stations.