

**CITY OF RYE  
MEMORANDUM**

TO: Honorable Mayor and Council Members

FROM: Marcus Serrano, City Manager

SUBJECT: Enclosures - Council Packet

DATE: February 3, 2017

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 7, 2017 beginning at 8:00 p.m. in the Rye Middle School Multipurpose Room.
- 2-2 Legal Department Update from the Corporation Counsel dated February 3, 2017.
- 2-3 Letter from Dan Ahouse, Altice Area Director of Government Affairs, regarding a programming change ceasing operations of Cloo TV effective February 1, 2017.
- 2-4 Letter from Dan Ahouse, Altice Area Director of Government Affairs, regarding a programming change ceasing operations of V-ME effective March 4, 2017.
- 2-5 Notice from Verizon regarding a Fios® TV programming change effective December 31, 2016.
- 2-6 Meeting notice for the week of February 6, 2017 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*

*Rye, New York 10580*

*Tel: (914) 967-6100 Ext. 6278 Fax: (914) 967-6957*

*Elaine Cuglietto*

*District Clerk*

*Cuglietto.elaine@ryeschools.org*

January 27, 2017

FOR IMMEDIATE RELEASE

**February 7, 2017 Board of Education Meeting**

The Rye City School District Board of Education will meet Tuesday, February 7, 2017 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.

On the agenda are fiscal, special education, personnel and business items that ordinarily come before the Board. In addition, there will be a presentation on the Superintendent's Recommended Budget for the 2017- 2018 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 3, 2017

**CLAIMS**

No new claims by third parties were filed this week.

**TAX CERTIORARI**

**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. We are waiting for a decision from the Second Department.

**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**

**STANISLAW SZEWCZYK v. CITY OF RYE**

Plaintiff filed and served a summons and complaint seeking damages for injuries sustained as a result of a fall. Plaintiff slipped and fell on ice in the parking lot area bordered by Purchase Street and School Street. The matter was commenced in Supreme Court, Westchester County. A Notice of Claim was previously filed and a 50 H hearing has taken place.

**WILTON VALDEZ v. CITY OF RYE, RYE FIRE DEPARTMENT and MILTON FIREHOUSE**

Plaintiff filed suit in Westchester County Supreme Court seeking damages he sustained while working at the Milton Firehouse. Plaintiff was injured when he fell off of a ladder while he was repairing a garage bay door. Plaintiff alleges that the ladder that he borrowed from the Milton Firehouse was defective and that such defect caused him to fall. Plaintiff commenced this action under the New York Labor Law Sections 200, 240, and 241(6). An Answer with Affirmative Defenses has been filed.

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. A preliminary conference was held on January 18, 2017 and a discovery schedule was agreed upon by all parties.

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. On December 12, 2016, Judge Zambelli issued a Decision, Order and Judgment dismissing Plaintiff's petition in its entirety and denied him any costs or fees associated with the filing of the Petition. In her Decision, Judge Zambelli found that the City Respondents properly complied with the Freedom of Information Law Requirements in a reasonable timeframe given the nature of Petitioner's request. Furthermore, with respect to those FOILs which Respondents denied, Judge Zambelli found that such denials were correct and upheld the Respondents' denials.

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 Judge granted Plaintiffs motion to certify the class. A pre-motion conference has been requested by the City of Rye and is currently calendared for October 19, 2016. A settlement conference took place in front of Magistrate Davison and the parties reached a tentative settlement.

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. The Appeal is fully submitted. We are still waiting for a date for oral argument.

#### 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. Plaintiff has failed to perfect her appeal in a timely manner.

#### 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. Petitioner has failed to perfect his appeal 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. On October 25, 2016, a revised discovery schedule was set and Plaintiffs' counsel had until November 2, 2016 to perfect service and until November 10 to serve responses to Plaintiffs' discovery demands. On November 8, 2016, Judge Ross rendered an Opinion and Order granting, in part, and denying, in part, the Defendants' motion to dismiss. Plaintiffs' claims against all of the unidentified John Does and against County Sgt. Hess are dismissed with prejudice. In addition, Plaintiffs' "Deprivation of Civil Rights" and "monell" causes of action are dismissed with prejudice as to all Defendants. Plaintiffs' false arrest claim against Chittenden is dismissed with prejudice but remains as to County Officers Lopez and Mohl. Also, Plaintiff Aguirre's claims for malicious prosecution and fair trial claims remain as to all three (Chittenden, Lopez, and Mohl). Judge Scanlon signed an amended Order to allow the New York State Department of Corrections more time to transfer Plaintiff Aguirre to Sing Sing Correctional Facility. The deposition is currently scheduled to take place on or before February 17, 2017. The deposition of Melissa Sanchez took place on January 24, 2017 and the deposition of Christian Aguirre is calendared for February 9, 2017 at Sing Sing Correctional Institute.

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 and second and third quarterly status reports to the Judge. **There is a court appearance/status conference on February 10, 2017.**

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.

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. Plaintiffs have requested a preliminary conference.

RYE CITY COURT

Routine vehicle and traffic law calendar with no unusual dispositions.

Respectfully submitted,



Kristen K. Wilson  
Corporation Counsel

KKW/kkw



January 24, 2017

Hon. Joseph Sack  
Mayor  
City of Rye  
1051 Boston Post Road  
Rye, NY 0

Re: Programming Change

Dear Hon. Sack:

In accordance with Public Service Law 224-a and 16 MYCRR 890.80, we are hereby providing your agency with notice of an upcoming programming change in New York. Altice USA was just notified by NBCUniversal that it is ceasing operations of Cloo TV and it will no longer be available. Please let this letter serve to provide notice that effective February 1, 2017, Cloo TV will no longer be available on the Optimum's channel lineup in New York.

Customers will be notified of this change through on air and bill messages. In addition, customers can always find the most current channel and packaging information on Cablevision's consumer website [www.Optimum.com](http://www.Optimum.com).

If you have any questions please feel free to call me at 917-378-4533

Sincerely,

A handwritten signature in black ink that reads "Dan Ahouse". The signature is written in a cursive, flowing style.

Dan Ahouse  
Area Director, Government Affairs



January 25, 2017

Hon. Joseph Sack  
Mayor  
City of Rye  
1051 Boston Post Road  
Rye, NY 0

Dear Hon. Sack:

In accordance with Public Service Law 224-a and 16 MYCRR 890.80, we are hereby providing your agency with notice of an upcoming programming change in New York. Altice USA was just notified by WNET, on January 19, 2017, that it is ceasing operations of V-ME (currently carried on Optimum Broadcast Basic tier) effective March 4, 2017 and it will no longer be available to Altice USA customers.

Customers will be notified of this change through on air bill messages. In addition, customers can always find the most current channel and packaging information of Cablevision's consumer website [www.Optimum.com](http://www.Optimum.com).

If you have any questions please feel free to contact me at 914-378-4533 or via email at [dahouse@cablevision.com](mailto:dahouse@cablevision.com).

Sincerely,

A handwritten signature in black ink that reads "Dan Ahouse". The signature is written in a cursive, flowing style.

Dan Ahouse  
Area Director, Government Affairs



### **Fios® TV Programming Change**

On or after December 31, 2016, CCTV News programming on channel 277 was replaced with CGTN (China Global Television Network) dedicated to providing Chinese and global news and business perspectives.