

**CITY OF RYE
MEMORANDUM**

TO: Honorable Mayor and Council Members

FROM: Marcus Serrano, City Manager

SUBJECT: Enclosures - Council Packet

DATE: April 28, 2017

Enclosed with this memorandum are the following items:

- 4-8 Notice regarding a Rye City School District Board of Education Meeting to be held on Tuesday, May 2, 2017 beginning at 8:00 p.m. in the Rye Middle School Multipurpose Room.
- 4-9 Legal Department Update from the Corporation Counsel dated April 28, 2017.
- 4-10 Notice from Verizon regarding additional HD channels for the MLB Extra Innings package beginning on July 15, 2017.
- 4-11 Meeting notice for the week of May 1, 2017 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

April 21, 2017

FOR IMMEDIATE RELEASE

May 2, 2017 Board of Education Meeting / Budget Hearing II

The Rye City School District Board of Education will meet **Tuesday, May 2, 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.

- The Board will hold Public Budget Hearing II of the 2017-2018 Superintendent's Recommended School Budget. Also on the agenda are fiscal, special education, personnel and business items that ordinarily come before the Board.
- There will be a student presentation on the "Billion Oyster Project."

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: April 28, 2017

CLAIMS

JULIE B. AND JAMES O'SHEA filed a notice of claim for alleged injuries sustained when Julie O'Shea fell from in the crosswalk located at the intersection of Elm and Purchase on January 27, 2017. The claimant allegedly suffered a fractured elbow with open reduction and internal fixation. Claimant James O'Shea is also making a claim for loss of service, society and consortium. The claim has been forwarded to our insurance carrier.

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. The Second Department has denied the Motion for Leave.

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

CITY OF RYE, ET AL. v. COUNTY OF WESTCHESTER, ET AL.

The Petitioners filed a Notice of Appeal on April 24, 2017 with the Appellate Division, Second Department. Petitioners have six (6) months to perfect their appeal.

JOHN LYONS, ET AL. v. CITY OF RYE

Plaintiffs, three Rye Golf Club couples, filed and served a summons and complaint in Westchester County Supreme Court alleging the City of Rye breached the contract (membership agreement for 2015) when the golf club had to close portions of the course as a result of damage to the golf greens. Plaintiffs are seeking full reimbursement of their 2015 comprehensive non-resident membership dues, in addition to other damages. An answer with affirmative defenses was filed

and served. **A preliminary conference was held on April 25, 2017 and a discovery schedule was established.**

CITY OF RYE v. TRAVELERS

The City of Rye filed and served a summons and complaint in Westchester County Supreme Court against Travelers Insurance Company as a result of a breach of contract when Travelers failed to compensate the City under the terms of the Insurance Policy. The City submitted a claim to Travelers for damage sustained to the roofs on the buildings at Rye Golf Club. The damage was sustained as a result of snow, ice and ice damming damage during the winter months in 2014 and beginning of 2015. The City is seeking compensatory damages in excess of \$1 Million, among other damages. Defendant filed a Notice of Removal to the United States District Court, Southern District of New York based on diversity of citizenship and the amount in controversy exceeding \$75,000. **Travelers filed an answer with affirmative defenses. In addition, a case management conference is calendared for May 12, 2017.**

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. An answer with affirmative defenses was filed and a preliminary conference is calendared for

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.

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

A settlement conference took place in front of Magistrate Davison and the parties reached a tentative settlement. A proposed Settlement Agreement and Release was submitted to the Court for its approval. The Court approved the proposed Settlement Agreement and a fairness hearing will be held on June 30, 2017.

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.

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 EDISION

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 established. Discovery is still on-going.

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 of Melissa Sanchez took place on January 24, 2017. The deposition of Christian Aguirre took place on February 13, 2017 at Sing Sing Correctional Institute. The depositions of non-parties will take place over the next two to three weeks. A status conference was held on March 24, 2017 and discovery deadlines were amended.

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 ninetyday (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 was 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. **The next appearance date is June 22,2017.**

RYE CITY COURT

Routine vehicle and traffic law calendar with no unusual dispositions.

Respectfully submitted,



Kristen K. Wilson
Corporation Counsel

KKW/kkw



Fios® TV Programming Change

Your MLB Extra Innings HD channel lineup is expanding.

We're happy to announce more HD channels for the MLB Extra Innings package. MLB Extra Innings HD currently has games on channels 1466-1474 in the Fios® TV channel lineup. Beginning on or after July 15, 2017, it will be available on channels 1461-1474, giving you 5 more HD viewing options as the season hits the home stretch. We hope you enjoy the games.