

**CITY OF RYE
MEMORANDUM**

TO: Honorable Mayor and Council Members

FROM: Marcus Serrano, City Manager

SUBJECT: Enclosures - Council Packet

DATE: May 19, 2017

Enclosed with this memorandum are the following items:

- 5-8 Notice regarding a Rye Town Park Community Conversation Meeting to be held on Sunday, May 21, 2017 beginning at 9:00 a.m. in the South Pavilion at Rye Town Park.
- 5-9 Notice regarding the Second Annual Senior Summit Program to be held on Thursday, May 25, 2017 from 9:30 a.m. to 12:30 p.m. at the Rye Free Reading Room.
- 5-10 Legal Department Update from the Corporation Counsel dated May 19, 2017.
- 5-11 Letter from Dan Ahouse, Altice Area Director of Government Affairs, regarding the removal of Eleven Sports from the Optimum programming line-up.
- 5-12 Notice from Verizon that Boomerang programming will be removed from channel 1724, but will remain available on channels 258 SD / 1725 SD in the Fios® TV channel lineup.
- 5-13 Meeting notice for the week of May 22, 2017 is available on the City website www.ryeny.gov under Calendar.



What: **8th Community Conversation Meeting Planned**

When: Sunday, May 21, 2017 from 9AM – 11AM

Where: South Pavilion at Rye Town Park, 95 Dearborn Ave., Rye, NY

Why: Continue a stakeholders' dialogue about current and future directions of the Park

The Rye Town Park Commission (RTPC) is holding its 8th annual "Community Conversation" meeting on Sunday, May 21, 2017 at 9AM. The Meeting will be held in the South Pavilion at Rye Town Park, 94 Dearborn Ave. in Rye, NY.

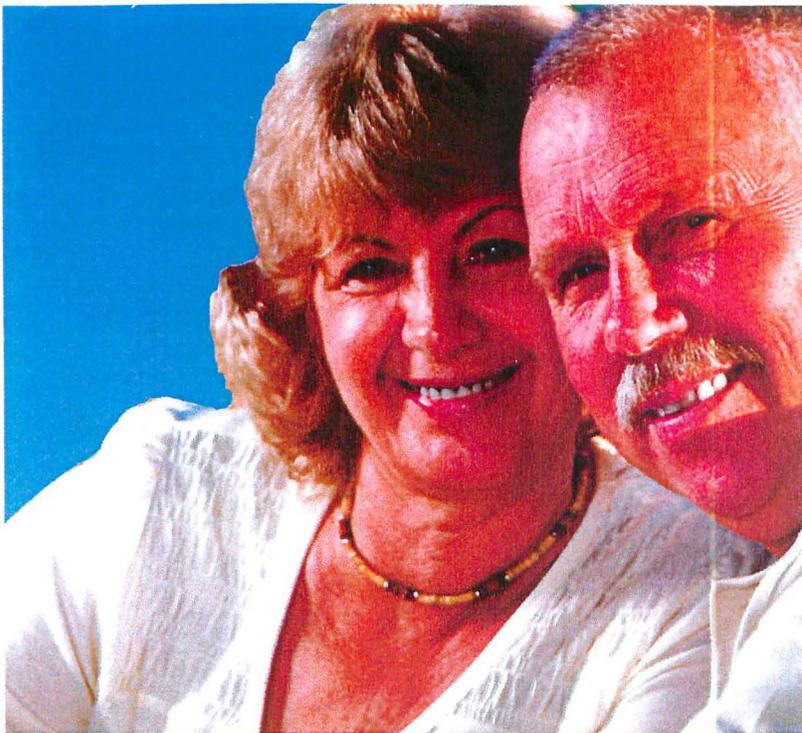
The previous "conversations" meetings have attracted from 50 to 150 people, representing a wide variety of interests and points-of-view concerning Rye Town Park.

The purpose of the May 21st conversation, according to Commission Chair Gary Zuckerman, "is to provide the public an opportunity to share with the Commissioners their thoughts on the operations of the park and what additional changes if any people would like to see implemented going forward in 2017."

This meeting has been planned to give participants the opportunity to continue the conversation about the results of the survey recently carried out by the NYU Capstone Team.

Events planned for 2017 include children's "Storytime" programs, a series of seven free evening concerts, an outdoor movie and magic show, and Shakespeare in the Park – "A Midsummer Night's Dream." The operators of the New Ocean Grill and Nathans snack bars will be planning additional concerts and other events.

For further information, please contact Debbie Reisner, Secretary to the Rye Town Park Commission at (914) 939-3553 or (917) 817-9796.



Rye Senior Advocacy Commission
presents

**SECOND ANNUAL
SENIOR Summit
PROGRAM** **MAY 25
2017**

9:30 am - 12:30 pm
Rye Library Annex

You are invited to "come out" and
join us for an informative morning, with
"Give Away Gifts," activities and
REFRESHMENTS offered by the
RYE POST MARKET. Don't miss it!

For more information, please call
(914) 643-7813 or email gunnerjpm@aol.com



Program-at-a-Glance

Opening and Introductions:

Joseph Murphy, LCSW,
Chair, Rye Senior Advocacy Commission

Welcome:

Hon. Joseph Sack, Mayor, City of Rye

Advance Directives and Income Preservation

ARIEL ROSENZVEIG, ESQ., Elder Law Attorney

How to Avoid Scams That Target Older Adults

IRMA K. NIMETZ, ESQ.,
Volunteer Assistant Attorney General

KEVIN FENNELL, SENIOR ASSOCIATE
Forester's Insurance Company

MICHAEL CORCORAN, JR., COMMISSIONER
Rye City Public Safety

REFRESHMENTS BREAK

Rye City Elderly Resources

Rye Seniors Recreation Model
SALLY ROGOL, Superintendent, Rye Recreation

Taxi Voucher Program
HON. CAROLYN CUNNINGHAM, ESQ.

S.P.R.Y.E. -
"Staying Put in Rye and Environs"
BARBARA BRUNNER, PRESIDENT

CLOSING REMARKS: SPECIAL GUEST

FREE

Demonstrations, information,
activities & light refreshments

**CITY OF RYE
MEMORANDUM**

TO: Honorable Mayor and Rye City Council
FROM: Kristen K. Wilson, Corporation Counsel
SUBJECT: Litigation Update
DATE: May 19, 2017

CLAIMS

No new claims 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. 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

CROWN CASTLE v. CITY OF RYE, ET AL.

Crown Castle filed a summons and complaint in the Southern District of New York against the City of Rye and the City Council alleging various causes of action under the Telecommunications Act and breach of contract. On Friday May, 12, 2017, Plaintiffs moved by Order to Show Cause for a Temporary Restraining Order and preliminary injunction. A TRO was granted preserving the status quo until a decision on the motion for a preliminary injunction is decided. A briefing schedule was also entered.

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. Counsel appeared at a case management conference on 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 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 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. **A tentative settlement has been agreed to and releases are being prepared.**

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



May 16, 2017

Hon. Joseph Sack, Mayor
City of Rye
1051 Boston Post Road
Rye, NY 10580

Dear Mayor Sack:

Altice hereby notifies the Commission that Eleven Sports (formerly One World Sports) has withdrawn its signal from the Optimum Japanese, Chinese, and Korean international packages and as an a la carte offering. The channel's owners recently demanded that Altice negotiate a new carriage agreement as a result of a change in the channel's ownership. Despite our efforts to discuss a new contract, we were unable to reach a new agreement with the channel's owners despite negotiations that occurred through last week. As a result, effective May 15, 2017, Eleven Sports is no longer available to subscribers to the above international tiers or as an a la carte offering on channel 1159 SD.

Customers will be notified of this channel removal via on-air slates. In addition, customers can always find Optimum's current programming line-ups on our website at www.Optimum.com. In addition, from May 15th on, a la carte customers will no longer be charged and will see the service removed from their future bills.

If you have any questions please feel free to call me at 914-378-4533

Sincerely,

A handwritten signature in cursive script that reads "Dan Ahouse".

Dan Ahouse
Area Director, Government Affairs



Fios® TV Programming Change

On or after June 2, 2017, Boomerang programming will be removed from channel 1724, but remains available on channels 258 SD / 1725 SD in the Fios TV channel lineup.