



## CITY OF RYE

### Conservation Commission/Advisory Council

TO: Rye City Planning Commission

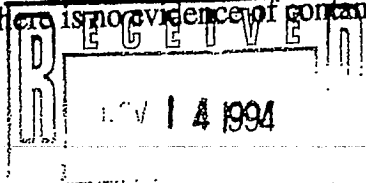
FROM: SEQRA Committee, Conservation Commission/Advisory Council

DATE: November 12, 1994

SUBJECT: Schubert Wetlands & Watercourses Permit #26  
980 Forest Avenue  
(Wetland Enhancement: Excavate Silt from Wetlands Pond, Enlarge Pond,  
and Restore with Native Wetlands Plantings)

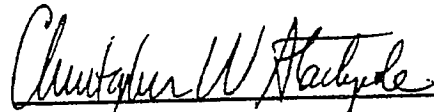
This application, dated 10/12/94 and received 10/26/94, was accompanied by a Full Environmental Assessment Form (Appendix A, Parts 1-3); site plans and a description of proposed changes from Tim Paterson, Landscape Designer; and a letter (dated 6/9/92) to Mr. Schubert from Laurence A. Taylor, Environmental Analyst, New York State Department of Environmental Conservation (DEC), New Paltz. This proposal is to modify a small wetland area ("pond") in a depressed area adjoining the Schubert residence to create a pond approximately 50 x 32 ft. (1600 sq. ft.) in size, to a depth of up to 2½ ft. and with a central island. Removed soil would be re-used on-site, with native perennial vegetation temporarily removed and replanted, along with new native shrub plantings. This review is based on a detailed site inspection. The DEC has determined that the site is not within the State Tidal Wetlands zone.

At present, the wetland area consists of a steady flow of fresh water emerging locally in an area of rocks, from what appears to be an underground spring rather than from neighborhood surface drainage as the proposal indicates. A spring origin is likely since outflow seems to be reasonably constant and unaffected by seasonal dryness. There is some pooling of water on-site prior to exit through a 24-inch conduit running under Forest Avenue and the property on the other side of the road, emerging at the base of a stone/concrete embankment as a permanent rivulet running into Long Island Sound. The on-site pooling is about 10 x 4 ft. (40 sq. ft.) in size, with a maximum depth of about 6 inches due to silt build-up. There is a larger marshy area with appropriate vegetation (phragmites, bullrushes, rose mallw, Joe-pye-weed, monkeyflower, and iris). This whole depressed area abuts a steep embankment of rocky rubble densely covered with a variety of shrubs and small trees, and a 2-ft. rock wall, adjoining Forest Avenue. The water is clear and there is no evidence of contamination either on-site or at its exit to the Sound.



Nov. 12, 1994

This proposal is to "enlarge" an existing pond without altering the current exit through the conduit. This wetland is not, however, a pond since outflow is equivalent to inflow while maintaining water pooling with a surface area that is 40-fold smaller than what is proposed. Some 200 yards of dirt would be excavated, but there is inadequate detail of where, other than in a central island, the soil would be re-located, and what effect this would have on the overall topography surrounding the pond. At present, this small wetland is reasonably healthy and seems to function as a small sanctuary for birds and mammals (muskrats). Moreover, the densely-vegetated marshy area seems to have prevented accumulation of fertilizers and pesticides from adjoining lawns on two sides. We strongly discourage the dramatic alteration to this area that is proposed and recommend that it be left in its present condition, but with measures taken to reduce erosion from the steep adjoining lawns (the source of silt build-up) and dumping of lawn maintenance materials, leaves, and lawn clippings. A pond as proposed is less likely to "buffer" these activities than is the present wetland, and therefore the proposal seems inappropriate and unwarranted.

  
for the SEQRA Committee

Planning Commission Minutes  
December 6, 1994

The City Planner stated that the current application fee is \$100.00, which is proposed to be increased to \$250.00, and that currently there is no inspection fee. The proposed minimum flat fee for inspections is \$350.00. For the purpose of comparison he noted the current the minimum fee for a site plan or subdivision informal review is \$250.00. An actual preliminary site plan application has a minimum fee of \$400.00 and a minimum final application fee of \$600.00. With respect to subdivisions, an actual preliminary subdivision approval application has a minimum fee of \$400.00 and a minimum final application fee of \$625.00. Currently all subdivision and site plan approvals include a minimum inspection fee of \$350.0, plus 5% of the cost of the proposed site improvements.

After a thorough discussion of the possibility that it might discourage people from building, how fees defray costs for the general tax payer, questioning of other municipalities fees, for similar applications, hardship issues and the possibility of minor projects paying less, it was the consensus of the Planning Commission that the proposed fee increases were appropriate.

**ACTION:** The Planning Commission scheduled a public hearing on the proposed amended Rules and Regulations for its special meeting on December 14, 1994.

2. Schubert Wetlands & Watercourses Permit Application #26  
980 Forest Avenue  
(Excavation of Silt from Wetlands Pond, Enlarge Pond  
& Restore with Native Wetlands Plantings)

The Planning Commission reviewed the application of Mr. Schubert, Owner, for a Wetlands and Watercourses Permit for his property, located at 980 Forest Avenue, for the purposes of excavating silt from a wetlands pond located on his property, enlarging the pond and restoring the area with native wetlands plantings.

The property is known on the Rye City Tax Map as Sheet 153.14, Block 1, Lot 46, and is located in an R-1 One Family Residence District, a "C" Remainder of City of Rye Parking District, and appears to be located in "C" and "A7" Flood Insurance Rate Zones.

Mr. Schubert, Owner, introduced his Landscape Designer, Tim Paterson, who went over a revised plan which he felt addressed the concerns raised by the Conservation Commission/Advisory Council. He explained that they had reduced the surface area of the pond by 30%, reduced the amount of silt to be removed from 200 cubic yards to

less than 100 cubic yards and reduced the depth of the pond to an average depth of 6 to 8 inches, as opposed to the previously proposed average depth of 2 1/2 feet to 1 foot.

Mr. Paterson also stated that the fragmities were taking over the site and should be removed.

Commission member Cunningham noted that the proposal was for the enhancement of the wetlands, and that the current wetlands regulations do not really address proposals for the enhancement of wetlands versus projects that would destroy a wetland. She also mentioned that the regulations would allow the Planning Commission to hire a specialist to monitor the work, the cost of which would be borne by the Applicant.

Commission member Klemens stated that the revised plan was much better, that the proposed reduction in the removal of silt is important in that it would not replace the wetland with a pond.

Conservation Commission/Advisory Council member Stackpole stated that he questioned if the proposed revise plan was preferable to not altering the wetland at all, but did agree that the revised plan would have a lesser adverse impact on the wetland.

Commission member Cunningham noted that if the current wetland were to be converted to a pond there would be a Long Island Sound water quality issue to be considered.

The City Engineer asked if the wetland was affected by tidal action.

Commission member Klemens stated that the wetland was relatively high and, therefore, not subject to tidal action, except in the case of an extremely severe storms.

Mr. Schubert added that there was almost a perpetual flow of water from the wetland to the Sound, except during an exceptionally high tide. He further stated that the source of the water appears to be a spring and runoff from upland and abutting properties, and that he did not expect that the proposed revised plans would, in anyway, change the surface elevation of the water in the wetland. ←

Mr. Schubert then read a prepared statement, a copy of which is attached and made part of these minutes.

In response to a statement made by Mr. Schubert, Commission member Klemens noted that the wetlands map is not a regulatory map, that it was meant to serve as a guide, that wetlands may exist that do not appear on the map. He also stated that the term artificially created wetland is not correct, that wetlands are defined by their function and

Planning Commission Minutes  
December 6, 1994

characteristics not by how they were formed. He concluded by stating the proposed revised plan is desirable, and hoped that the Conservation Commission/Advisory Council would reconsider, and support the issuance of this permit.

Chairman Dunne asked Conservation Commission/Advisory Council members Stackpole and Hodnett if the revised plan was acceptable to the Conservation Commission/Advisory Council.

Conservation Commission/Advisory Council members Stackpole and Hodnett agreed that it was a good compromise, and that the Conservation Commission/Advisory Council had no objection to the issuance of a permit for the revised plan.

The Planning Commission then reviewed a draft resolution prepared by the City Planner, and requested that the draft be revised to reflect the fact that the permit was being approved because it will not convert the present functioning of the wetland (a shallow ephemeral wetland) to a pond which is a wetland type of lesser ecological value.

On a motion made by Joseph Cox, seconded by Peter Larr and carried by the following vote:

AYES: William J. Dunne, Paul Benowitz, Carolyn Cunningham,  
Joseph Cox, Michael Klemens, Peter Larr

NAYES

ABSTAIN:

ABSENT: Joseph Latwin

the Planning Commission took the following action:

**ACTION:** The Planning Commission adopted Resolution #36-94, dated December 6, 1994, subject to appropriate conditions and safeguards, and asked the City Planner to circulate a copy of the final version for any minor corrections or changes, prior to issuing the resolution.

3. Svend Jensen of Denmark Site Plan #239  
1010 Boston Post Road (Preliminary)  
(Conversion from Office/Warehouse Use to Retail Use)

Mr. Jensen, Owner, advised the Planning Commission that Mr. Anthony Francello, Owner the Rye Art Gallery, whose store is now located on Purchase Street next to Baskin Robins, is looking to move the shop to his building.



# Request for Naturalist Determination

Chapter 195, Wetlands and Watercourses

City of Rye, New York

1051 Boston Post Road, Rye, New York 10580

## A. Property Owner:

Name:	Helen Yuu & William Gates		
Address:	3 Magnolia Place		
City:	Rye	State:	NY Zip: 10580
Phone:	914-921-6286	Fax:	914-921-5816
Contact:	Maria Lo Iacono	Phone:	914-235-8156 or 914-329-2244

## B. Property Description:

Street Address:	3 Magnolia Place		
Property Area (Acres):	1.03 acres		
Tax Map Designation:	Sheet: 153.14	Block: 1	Lot(s): 38

## C. Statement of Proposed Work:

Please provide as statement of the proposed work and purpose thereof and.

### The project consists of the following:

Construct two bay window additions with foundations at the existing picture window locations on the north elevation. Remove the existing entry portico, construct new larger entry portico and front steps at the existing entry portico location. Remove the roof on the entire house, and over the garage (existing roof at back sunroom to remain). Construct an addition to the room over the garage. Construct a new roof with a steeper roof pitch and cedar shingles over the entire house, excluding the sunroom. Extend chimney above new roof. Remove all exterior shingles, brick veneer, trim, designated windows and garage doors. Install new trim at roof line, new windows as designated, new garage doors and cedar shingles over entire house.

## D. Consent and Signature

By requesting a determination the owner thereby consents to entry onto his land by the City Naturalist, City Planner, or other agents designated by the Planning Commission for the purpose of undertaking any investigation, examination, survey, or other activity necessary for the purposes of Chapter 195. If the owner of the property bars such entry, the City Naturalist, Planning Commission and their agents or employees, are empowered to apply to the City Court for an Administrative Search Warrant, permitting such inspection.

Helen Yuu  
Property Owner/Signature

12/17/13  
Date



# Wetlands & Watercourses Application

City of Rye, New York Planning Department

**For City Use Only:**

Receipt Date:

**City Naturalist's Determination:**

The project area MAY be subject to the requirements of Chapter 195.

The project area MAY NOT be subject to the requirements of Chapter 195.

*Chantal DeLler* 12/23/03  
City Naturalist's Signature Date

Robert W. Schubert  
980 Forest Avenue  
Rye, NY 10580

June 13, 2006

Barbara Cummings, Chairman  
City of Rye, Planning Commission  
1051 Boston Post Road  
Rye, NY 10580

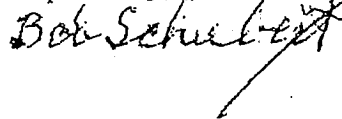
Dear Barbara:

It has come to my attention that the owner of parcel 153-14-1-38, no. 3 Magnolia Place, has hired an engineering consultant to address a water drainage problem on his property. I understand and appreciate Mr. Gates concern.

However, I find it necessary to also alert the Rye City authorities involved in such matters that any action taken to ameliorate such a condition by diverting the normal water drainage of the area may have a serious impact on our property, parcel 153-14-1-46, 980 Forest Ave,

As such, I would appreciate being kept apprised of any actions being planned or implemented by any of the municipal departments which could alter the course or volume of water run-off thru our property to Long Island Sound

Respectfully,



cc. Mr. William Gates  
cc. Christian Miller, City Planner  
Chantal Detlefs, City Naturalist  
Advisory Council, Rye Conservation  
Commission  
City of Rye, Dep't. of Public Works





# Surface Water, Erosion and Sediment Control Permit Application

City of Rye, New York Engineering Department

1051 Boston Post Road, Rye, New York 10580  
 Phone 914.967.7676 Fax 914.967.7185

www.ryeny.gov

## Section I. Applicant Information

Job Address	3 Magnolia		
Description of work	Repair Drains in Easement		
Contractor	Kerth Caleagni	Owner	Mekhaan Gates
Address	Hunter St	Address	3 Magnolia
City/State/Zip	Mamaroneck New York 10543	City/State/Zip	Rye, N.Y. 10580
Phone call	849-2232 office 771-3177	Phone	(914) 921-6286
Fax		Fax	

## Section II. Application Requirements and Conditions

- A. Drawings must be submitted for all applications (2 COPIES)
- B. Drawing scale must be at least 1" = 30'
- C. Street name and house number must be clearly identified.
- D. If applicable, location, size, and type of trees on property shall be shown on drawing.
- E. Location of any trees in the Right-of-Way, AND any trees to be removed must be shown.
- F. All work must be in accordance with the New York State Stormwater Management Design Manual.
- G. All driveway work must comply with the City of Rye Code section 197-30.
- H. Existing and Proposed Contours shall be provided if required by the City Engineer.

## Section III. Construction Requirements and Conditions

- A. Erosion control measures must be properly installed, maintained and inspected around the work site.
- B. Construction entrances must be properly maintained so that dirt and debris is not deposited on street.
- C. Exposed areas must be stabilized as soon as land alterations are completed.
- D. Any underground piping or structures must be inspected prior to backfilling.
- E. 24 hour notice is required for any inspection.

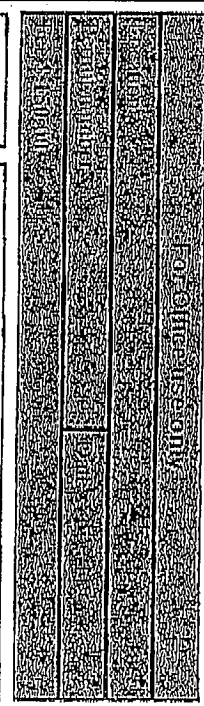
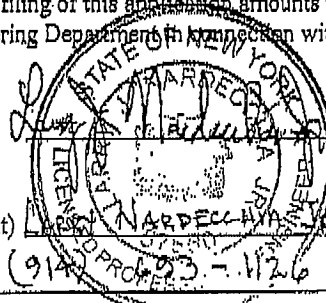
## Section IV. Storm Drain Connection

Will a connection to the Storm Drain be made?  
 Yes (Right of Way Permit must be filed.)  No (Proceed to Section V.)

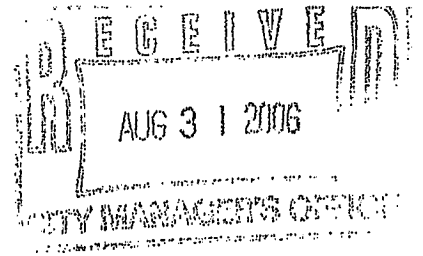
## Section V. Signature

I hereby certify that I am duly authorized to file this application: that all statements contained in this application are true to the best of my knowledge and belief; and that the work will be performed in the manner set forth in the application, plans and specifications filed herewith in compliance with the applicable laws, ordinances, codes, rules, regulations and directives of the City of Rye. The plans and specifications have been prepared so as to include all necessary data to show compliance with the State, County and City of Rye regulations. The undersigned understands that the filing of this application amounts to the written consent to all necessary inspection by the Engineering Department in connection with this application.

Applicant [Signature] PE 67860 Date August 16, 2006  
 Applicant (print) LESLIE NARDECCIA Title PE. Designer  
 (914) 921-6286



Robert W. Schubert  
980 Forest Ave.  
Rye, N.Y. 10580



Aug. 30, 2006

Mr. G. Mottarella  
City of Rye  
1051 Boston Post Road  
Rye, N.Y. 10580

Dear Mr. Mottarella,

Thank you for attending yesterday's meeting set up by Mr. Pickup, to review a water drainage and wetland/watercourse issue.

While we had an interesting and informative exchange, I continue to have a few unanswered questions:

1. Your stated position was that you concluded that no permit was required when an application for the proposed work was submitted. (Copy of application was not available.) All drawings presented are dated after the work has been completed. I accept your statement that such work does not come under your purview. Then who in Rye City government is? I have alerted at least five City authorities unsuccessfully. The Rye City Zoning Code clearly addresses an oversight interest in situations relating to Wetlands and Watercourses.
2. Where has all the water from this week's very heavy rainfall (over 6 inches) gone? In past decades the 'Gates' property had a well-known 12 to 18+ in. backyard "lake" after such a rainfall. This normally receded over days/weeks depending on the amount retained. However, this morning, 8/30/06, not a single ¼ inch puddle is to be seen. Where and how has all that water disappeared so rapidly this time?
3. I presented measured data on water flow in June, '06, and on 8/26/06, thru the old French Drain and the Rye City culvert under Forest Ave. (shown as Watercourse on old City map.) Rates of flow are radically different. Who in Rye's Administration has authority over impact on Ecology from evidenced reduction in water flow rate thru Rye water course?

Thank you in advance for helping me to understand a perplexing situation.

Respectfully yours,

A handwritten signature in cursive script that reads "Robert W. Schubert". The signature is written in dark ink and is positioned below the typed name.

cc: S. Pickup, L. Nardecchia C. Miller, B. Cummings, R. Giglia, C. Detlevs, C. Tallorini

---

---

INTEROFFICE MEMORANDUM

---

---

TO: SCOTT PICKUP, ASSISTANT CITY MANAGER  
FROM: CHANTAL DETLEFS, CITY NATURALIST  
SUBJECT: MR. SCHUBERT LETTER OF 8/30/06  
DATE: 9/1/06

---

In reviewing Mr. Schubert's letter dated August 30, 2006 I found that some of his questions are easily answered.

1. **All drawings presented are dated after the work has been completed.** – The engineering department has drawing dated prior to work. They were not able to retrieve them during the time Mr. Schubert met with them on August 29, 2006.
2. **Who in Rye city government is responsible for overseeing these matters?** – According to the City Engineer the proposed work did not require a permit and therefore the City has no oversight over the situation unless a violation has occurred.
3. **Who has oversight in situations relating to Wetlands and Watercourses?** – The Planning Commission, Conservation Commission/Advisory council, City Planner and City Naturalist.
4. **Where has all the water from this Week's very heavy rainfall gone and where and how has all that water disappeared so rapidly this time?** – We can't say exactly. But we do know that the water is not going into the city system and it is not being contained.
5. **Who in Rye's administration has authority over impact on Ecology from evidenced reduction in water flow rate thru Rye watercourse?** – Again the Planning Commission, Conservation Commission/Advisory council, City Planner and City Naturalist. The evidence that Mr. Schubert provided was flow rate on two dates. Those measurements do not provide sufficient evidence that there has been a reduction in water flow. Perhaps every August the flow is less or perhaps the flow is less because there were fewer rain events. It could be that June was an active rainfall month causing higher flow rates etc.

I cannot say that the work done required a wetland permit without visiting the site first. I would first have to conclude that there is a wetland or watercourse on site and determine its location in reference to the work. Regardless replacement in-kind does not require a wetland permit.

There was a Naturalist Determination done for 3 Magnolia on December 23, 2003. the proposed project included major renovations. My determination was that the project area may not be subject to the requirements of Chapter 195 however that decision was more due to the type of work rather than the presence of wetlands.

*cc: Krist-W  
Cage m  
D*

DEC 15 2006

Robert W. Schubert  
980 Forest Ave.  
Rye, NY 10580

Dec. 12, 2006

Mrs. Barbara Cummings  
Planning Commissioner  
City of Rye  
1051 Boston Post Road  
Rye, NY 10580

Dear Barbara:

In June I wrote to you calling attention to information I had received that a neighbor was apparently planning to address a water drainage problem on his property, and that any such project might have an impact on our property.

The objective of the project was to drain a known wetland and find other avenues for more rapid run-off. The construction activity, although recognized, was allowed to proceed without a permit and without any drawings until the project was completed and covered up.

As was anticipated, the result is a very significant reduction in the flow of water thru the established water-course on our property, which is clearly shown on the Rye City topographic maps. This water-course drains at least 8-10 acres. Part of it was built and is maintained by the City of Rye. Another part was purposefully constructed of underground rocks and is about 100 years old.

The reduced water flow has a marked influence on the ecology of the wetland which covers about one-third of our property. We have invested a great deal of money and effort over twelve years in developing a show-case wetland/woodland garden populated with native plants and shrubs. The environmental impact will be most prevalent in the summer when stagnant pools will result in bugs and vermin.

My reading of the Rye City Code identifies the Planning Commissioner as the City Official responsible for adherence to Code. I contend that a diversion of a wetland/water-course is a clear violation of the Code. Accordingly, I request that the City of Rye take action to require that further construction steps be undertaken to assure that all of the water collected in the Gate's property 'basin' will again all be directed to the original water-course.

cc.: Paul Shew ✓  
Andrew Spano  
George Latimer

Sincerely,

*RWS*

Received

JAN 17 2007

Robert W. Schubert  
980 Forest Ave.  
Rye, N.Y. 10580

City Manager's Office  
Rye, New York

*Registered Mail*

Jan. 14, 2007

Mr. Steven Otis, Mayor  
City of Rye  
1051 Boston Post Rd.  
Rye, N.Y. 10580

Dear Steve:

It is with great reluctance that I must bring to your attention an administrative issue which has been lingering for some time.

You are aware that in June, 2006, I requested the Rye City Planning Commission to alert me to any plans for modifying water run-off by the owner of a neighboring property. In fact, the owner, a Mr. Gates, of 3 Magnolia Pl., had previously attempted to correct his backyard problem by pumping the water into the public street. This was cited by the City as a violation when the water froze on the road.

I have written three letters with very clear and definitive questions to appropriate members of the Administration. I have not received a single written response to date. I contend that the Rye City Zoning Code, Chapter 195, Wetlands and Watercourses, reads directly on the problem.

Mr. Gates has retained a consultant to remove the water from his property in a manner other than that which pertained for the past approx. 100 years. The old Rye Watercourses Map clearly identifies the topography of an 8-10 acre drainage area with the watercourse thru our property. It exits our property thru a 24" concrete culvert under Forest Ave. to Long Island Sound. It was built by the City of Rye and is maintained by the Rye DPW. It runs thru our property in an underground French Drain constructed at least 50 years ago of large boulders.

I have presented numerical data on water flow rates showing the impact of the diversion. Invasive plant growth has taken place due to reduced water circulation. (Photos avail.) I believe the Code identifies the City Naturalist as the "enforcement officer", but she and her immediate superior both express a lack of experience in the field of hydraulics.

The facts are clear and evident. A wetland/watercourse diversion has been executed without Rye City oversight as required by the City Code. This results in:

1. A severe detrimental impact on our wetland garden which was a unique "Showcase Garden of Rye" in 2006 representing Westchester and Putnam.
2. The very real likelihood that the reduced water flow will produce stagnant pools this summer with consequent mosquito, vermin and West Nile risk.

I ask you to please enforce the Rye City Code. The only restitution I now seek is that a project be undertaken to assure that all the water collected in the Gates 'drainage basin', including so-called 'storm overflow', will be directed to the historic water course without any diversion.

Respectfully yours,

*Bob Schubert*

cc.: Barbara Cummings  
Ron Gatto  
George Latimer  
Andrew Spano

2/7/07

I received a call this morning from Mr. Schubert informing me that he sees a considerable amount of work with a backhoe going on in the back yard area of 3 Magnolia. I told Maureen and her, Chris and I went out to look at the property. They had a backhoe working filling in a hole that they had dug. They said that they removed some tree stumps. It looked like the case since we were able to see where they had removed other stumps. While on the property I noticed a wetland delineation flag and I recall a wetland being back there. Unfortunately it appears that they had regraded the area and fill has been placed in the buffer and possibly the wetland. In addition it also appears that the wetland that was there is now dry. There is still a portion of wetland in the back of the property to the right. I believe the project they did unintentionally drained the existing wetland.

When Vinny get's back I am going to talk with him.

2/7

Note:

this document was  
in a folder in  
Chantal's drawer, not  
on her hard drive.

Date was handwritten



## MINUTES

### Conservation Commission/Advisory Council Minutes

May 3, 2007

7:45 p.m. at Rye City Hall

#### I. Meeting Attendance:

##### CC/AC

- Joseph P. Murphy, Chairman
- Loriel De Caro, Vice Chair
- Dennis Buckley
- Anne Cochran
- Richard Horsman
- James McGee
- James Nash
- Lewis Nash
- Paul Knudsvig

##### Other

- Mayor Steve Otis, City Council Liaison
- Chantal Detlefs, City Naturalist
- Mr. And Mrs. Schubert

#### II. Minutes: No minutes approved

#### III. 980 Forest Avenue – Schubert Property:

Mr. Schubert's stated that work was done on 3 Magnolia to dry out their backyard. He said that in the process they have diverted an old watercourse. Mr. Schubert stated that in 2005 the property owners were pumping water into the City Storm system and the City told them they couldn't do that. In 2006 3 Magnolia submitted for a permit to do work and The City Engineer determined that no permit was necessary. Mr. Schubert stated that he has sent a letter to the City asking the City to advise him if any work on 3 Magnolia were to be done. Mr. Schubert stated that there are drawings for work on 3 magnolia and they are post dated. He stated that he couldn't explain where the water is going. He said that 80 % of his pond covered with algae.

Mr. Schubert showed pictures of his pond in January of 2007. He said that now his neighbors are getting flooded.

Lewis Nash suggested Mr. Schubert get an aerator to remediate the algae problem.

The CC/AC recommended that Mr. Schubert bring a legal action against his neighbor to go through a discovery process of for Mr. Schubert to fund a hydrologist to determine the problem, come up with a solution and then bring it up with the City.

#### IV. Committee Meetings Attended/Member Reporting:

##### 1. FRNC Meeting:

Joseph Murphy reported that the FRNC are interested in getting involved in taking on flooding issues in Rye. Mr. Murphy asked the Commission how they felt the CC/AC could be of assistance to the City in reference to the flooding issues. Lewis Nash



suggested flooding hotline and perhaps the CC/AC could help relay the community's ideas to the City.

2. **Planning – No report**
3. **Site Visit: -**  
The CC/AC had a site visit on 5/31/07

**V. New Permits: No new permits**

**VI. Outstanding permits:**

The City Naturalist gave an update on the following properties:

1. **92 Mendota– WP#219**
2. **6 Dalphin Drive – WP#220**
3. **269 Purchase Street – SP#302**
4. **290 Stuyvesant Avenue**
5. **111 Wappanocca Avenue**
6. **265 Grace church Street**

**VII. Other Business:**

1. Joseph Murphy stated that he would like to see the commission take more of a stand on environmental issues in Rye. He suggested the CC/AC begin a cable program series.
2. Joseph Murphy passed out a letter in reference to global warming. The Commission recommended that He send that letter to the City council.

**VIII. Adjournment:** Jim McGee made a motion to adjourn, seconded by Lewis Nash.

**IX. Submission:** Submitted by Chantal Detlefs, Secretary to the meeting

Received

MAY 09 2007

Robert W. Schubert  
980 Forest Ave.  
Rye, N.Y. 10580

City Manager's Office  
Rye, New York

May 7, 2007

Mr. Steven Otis, Mayor  
City of Rye  
1051 Boston Post Rd.  
Rye, N.Y. 10580

Registered Mail

*Sum*  
*cc: Christie / ch*  
*Ek*  
*- P*

Dear Steve:

This letter will confirm my visit today to the offices of Messrs. Paul Shew, City Manager, and Christian Miller, City Planner, to alert them to the real risk of a serious health hazard this summer for the citizens of Rye, due in my opinion, to a misreading of the Rye City Code or a questionable decision made a year ago.

In any event a clear diversion of an age-old water course, partly owned (?) and certainly maintained by the City of Rye, has been altered impacting several neighbors' properties and developing large breeding grounds for mosquitoes and other infestation when the temperatures reach the eighties and nineties.

Steve, I have been unsuccessful in getting effective attention to this matter for a year, other than suggestions to "sue the City". I believe you know me well enough that is not my character, -- at least not yet..

In any event the ball is now in your court as the top official in the City of Rye.

Respectfully,

*RWS*

cc.: P. Shew ✓  
C. Miller  
C. Detlefs  
R. Gatto

Mayor Steve Otis

City of Rye  
Rye, N.Y. 10580

Rita Schubert  
980 Forest Ave.  
Rye, N.Y. 10580

June, 22<sup>nd</sup>, 2007

Dear Steve,

If you have a chance, look at the green flyer "A Reminder to Rye City Property Owner" which we got from City Hall.

In it, it is clearly stated -

"Surface Water Control Permits:

Development or land disturbing activities often require a surface water, erosion and sediment control permit This permit protects water quality and prevents increases ( in our case decreases) in stormwater runoff from IMPACTING neighboring properties."

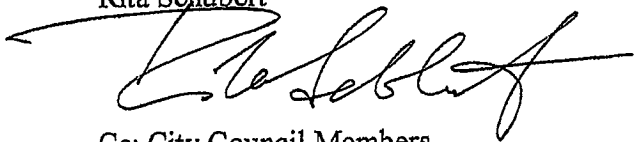
As everybody knows by now, we have many people who are more than willing to confirm the standing water condition on the Gates property. The Goedeke's and the Norcia's have both lived for decades in the adjacent properties and are happy to confirm that.

I know the City Council members and you are waiting for information from Mr. Shew. We are obviously very interested, if in fact the correct permit was used for the WATER COURSE DISTURBANCE that has taken place. Not to mention the wetland. How come Chantal never went to the site to take a soil sample???? Doesn't this all sound VERY suspicious to you??????

It surely does to us.

Hope we can soon find a solution, because I am getting tired of looking at an empty pond.

Respectfully,  
Rita Schubert



Cc: City Council Members

DATE: July 6, 2007  
TO: Michael A. Genito, City Comptroller  
FROM: George J. Mottarella, City Engineer  
RE: # 3 Magnolia Place - Gates Residence

---

The plan that I reviewed regarding this property dated 7-9-2006, indicated that the existing 10" pipes on the Gates property were broken and would be replaced with 6" plastic pipes. There was no plan to connect the new piping to any City drainage system. The plan showed the replacement piping draining into an existing underground stream by installing a 3' deep drywell above it. This office was given an as-built drawing indicating that the work performed was in conformance with the original plans.

It was my decision not to require a surface water control permit for this work for several reasons. They are as follows:

1. The work involved replacing existing piping.
2. No material was being brought into the site except for pipe bedding (no major regrading).
3. All the work was entirely on the Gates property.
4. No connections were being made to any City drainage facility.

George J. Mottarella  
City Engineer

GJM/pf

Received

AUG 20 2007  
by certified mail  
City Manager's Office  
Rye, New York

*Yan...  
Robert W. Schubert  
8/15*

Robert W. Schubert  
980 Forest Ave.  
Rye, N.Y. 10580

Aug. 16, 2007

Mr. Steve Otis, Mayor  
City of Rye  
1051 Boston Post Rd.  
Rye, NY 10580

Registered

Dear Steve:

Last night's City Council meeting was extremely disconcerting for the Schuberts and several other Rye residents, but certainly has not diminished our determination.

You have chosen to ignore my comments (ltr. 6/24/07) regarding the specific shortcomings in the performance of the City Engineer, but continue, according to newspaper accounts, to promote him for expanded responsibility in the field. Needless to say, I believe the authority he assumed to himself is the root cause of our problem.

I would like the record to show that Mr. Seitz did not defend his point of the last meeting, regarding the extensive construction on Topsail Lane, but that, conversely, his very point confirms my contention that the City Engineer has once again, unilaterally enabled the diversion of water from my property, contrary to the natural terrain/topography.

I also find the word "repair" is being interpreted very loosely. The dictionary defines it as: "to restore to a sound former state, to mend". That is precisely what I want for the original watercourse!! That's also exactly what Mr. Nardecchia promised Rita and me, "No change in the amount of water to your pond". And that's exactly what the first drawing defines!! However the "as BUILT" (not 'repaired') drawing six weeks later, has several notable discrepancies. In the US at least it is universal that "repair" to your property is not a free passage to damage mine.

From an Engineering viewpoint I believe this problem is relatively easily solvable, or repairable, and should also have a salutary effect on the new flooding problems already identified by my neighbors. It will not be readily solved by a long series of lawsuits!! You and the City have the power in your hands. Your Chap. 195, of the City Code. Exercise it and I believe we can ALL go home reasonably happy.

Respectfully,

*Bob Schubert*

COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEES:  
LABOR, HEALTH AND HUMAN SERVICES,  
AND EDUCATION

FOREIGN OPERATIONS,  
EXPORT FINANCING AND  
RELATED PROGRAMS

COMMITTEE ON HOMELAND SECURITY

SUBCOMMITTEES:  
INTELLIGENCE, INFORMATION SHARING AND  
TERRORISM RISK ASSESSMENT

EMERGENCY PREPAREDNESS, SCIENCE,  
AND TECHNOLOGY



WASHINGTON  
2329 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515  
(202) 225-6506  
FAX: (202) 225-0546

ROCKLAND  
(845) 639-3485

WESTCHESTER  
222 MAMARONECK AVENUE  
SUITE 310  
WHITE PLAINS, NY 10605  
(914) 428-1707  
FAX: (914) 328-1505

GRINTON I. WILL LIBRARY  
1500 CENTRAL PARK AVENUE  
YONKERS, NY 10710  
(914) 779-9766  
(By Appointment)

*Nita M. Lowey*  
Congress of the United States

18th District, New York  
August 22, 2007

Received

The Honorable Steven Otis  
Mayor  
City of Rye  
1051 Boston Post Road  
Rye, New York 10580

AUG 29 2007

City Manager's Office  
Rye, New York

Dear Steve:

I am writing on behalf of our mutual constituent, Mr. Robert Schubert, of 980 Forest Avenue. Mr. Schubert contacted me regarding water flows to an outdoor pond on his property. He claims that natural water flow has been diverted away from his property by a neighboring property, located at 3 Magnolia Place, which is adjacent to Mr. Schubert's property. According to Mr. Schubert, this natural water flow supplied water to his show garden, but now that it has been diverted, water no longer flows to his property.

I would appreciate your looking into this matter and advising me of your findings. As always, if I may be of assistance in any way, please do not hesitate to contact me, or my District Representative, Taylor Palmer, at 914-428-1707.

Sincerely,

*Nita M. Lowey*  
Nita M. Lowey  
Member of Congress

NML:tp

*Water Course*



**Rye Post #128  
P.O. Box 128  
Rye, NY 10580**

**Received**

*09/30/07*

City Manager's Office  
Rye, New York

September 31, 2007

The Mayor and City Council  
City of Rye  
1051 Boston Post Road  
Rye, New York 10580

Dear Sirs:

Rye Post stands in solidarity with our friend and fellow Legionnaire Bob Schubert in his struggle to redress the watercourse problem at his Forest Avenue property.

The difficulty arose as the result of City-sanctioned action by Mr. Schubert's neighbor that was apparently at variance with existing law. It seems unfair that Mr. Schubert should have to bear the trouble and expense of suing his neighbor, as the Council suggests. Better that the City should take steps to correct it's own actions and resolve the matter.

Thank you for your continued consideration.

Sincerely,

*Nicholas J. LaGattuta*

Nicholas J. LaGattuta  
*Commander Post 128*  
cc: R. Schubert

**ZARIN & STEINMETZ**  
ATTORNEYS AT LAW  
81 MAIN STREET  
SUITE 415  
WHITE PLAINS, NEW YORK 10601

TELEPHONE: (914) 682-7800  
FACSIMILE: (914) 683-5490  
WEBSITE: WWW.ZARIN-STEINMETZ.NET

DAVID S. STEINMETZ\*  
MICHAEL D. ZARIN  
DANIEL M. RICHMOND

\* ALSO ADMITTED IN D.C.  
\* ALSO ADMITTED IN CT.  
\* ALSO ADMITTED IN N.J.

DAVID J. COOPER  
JODY T. CROSS\*  
JILLIAN K. MOONEY ^  
KEBRA A. FREDRICK  
BRAD K. SCHWARTZ

MARSHA RUBIN GOLDSTEIN  
HELEN COLLIER MAUCH ^  
SUSAN H. BARCH\*  
LISA R. SMITH\*

IN COUNSEL

January 15, 2008

**By Facsimile and Regular Mail**

Mr. Kevin J. Plunkett  
Thacher Proffitt & Wood  
50 Main Street  
White Plains, N.Y. 10606

**Re: Our Client: Robert Schubert,**  
**980 Forest Avenue, Rye, New York**

Dear Kevin:

As you know, this firm has been retained by Robert Schubert, the owner of the above-referenced property in the City of Rye ("Rye"), in relation to the recent diminishment of uphill water flowing to an underground stream feeding Mr. Schubert's property, which has resulted in substantial damage to his property. As we discussed in our phone conversation of last week, it appears that the diminishment in water flow to Mr. Schubert's property directly correlates with the implementation of certain drainage work on property located at 3 Magnolia Place (the "Drainage Work").

In December, we submitted a request to view all documents contained in Rye's files regarding the Drainage Work pursuant to the New York State Freedom of Information Law ("FOIL"). We acknowledge receipt and review of this material. As a result of this review and our subsequent phone conversation, are writing to request some further information from the City Engineer. We hope that by answering these questions, we may be able to ascertain the cause of Mr. Schubert's diminution in water flow and determine the necessary steps to remedy the situation.

As we discussed, our review of the FOIL response indicates that the Drainage Work deviated from the proposed plans submitted to Rye. According to documents submitted on July 6, 2006, entitled "Repairs to Drainage System Gates Residence - 3 Magnolia Place" (the "Proposed Plans"), the repaired pipes were to drain into a new drywell 8' in diameter and 3' in depth. The notation by this drywell indicated



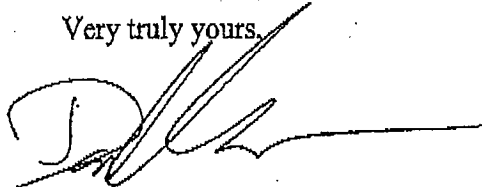
that it would empty "into [the] underground stream to Schubert Pond." According to the "As Built" Plans submitted on August 24, 2006, however, it appears that this drywell was not put in place. Despite this deviation, on July 6, 2007, the City Engineer submitted a memorandum ("July Memo") stating his office was given an As-Built Plan indicating that the Drainage Work was in conformance with the Proposed Plans.

We believe the drainage from 3 Magnolia Place was diverted away from the underground stream noted on the Proposed Plans, causing the diminution in flow to the Schubert Pond. We are attempting to ascertain where this runoff is actually flowing, and submit the following questions:

- 1) Has the City confirmed the July Memo's statement that the replacement piping would be draining into the existing underground stream?
- 2) Has the City confirmed whether a drywell was ever placed where the Proposed Plans called for it to be placed?
- 3) Was the City ever given an "As-Built" drawing indicating the work performed was in conformance with the Proposed Plans?
- 4) Why did the City not require that the existing 10" pipes be replaced by pipes of the same size?

Thank you for taking the time to look into these questions. We look forward to hearing from you.

Very truly yours,



David J. Cooper, Esq.

DJC/mth

cc: Robert Schubert (by fax)



## CITY OF RYE

1051 BOSTON POST ROAD RYE, NY 10580-2996  
TEL: (914) 967-5400 FAX: (914) 967-4604

January 28, 2008

VIA FAX AND REGULAR MAIL

David J. Cooper, Esq.  
Zarin & Steinmetz  
81 Main Street, Suite 415  
White Plains, New York 10601

Re: Robert Schubert  
980 Forest Avenue Rye, New York

Dear David:

In response to your letter dated January 15, 2008, I have spoken with the City Engineer regarding the questions you raised. The City of Rye (the "City") received a set of plans for "in kind" improvements to property at 3 Magnolia Place. The City reviewed the proposed plans in accordance with the City of Rye City Code Chapter 173 "Surface Water, Erosion and Sediment Control," determined that the improvements did not impact any City owned infrastructure or property and found that no permit was needed from the City.

Below is the City's response to your specific inquiries:

Inquiry:

1) Has the City confirmed the July Memo's statement that the replacement piping would be draining into the existing underground stream?

Response:

1) Since the improvements did not impact any existing City infrastructure or any mapped stream or other waterbody and did not otherwise trigger the need for any City permits, the City has no jurisdiction over the private homeowner's improvements.

January 28, 2008

Inquiry:

2) Has the City confirmed whether a drywell was ever placed where the Proposed Plans called for it to be placed?

Response:

2) In response to an inquiry from Mr. Schubert several months ago, the City has confirmed that a dry well has been placed at 3 Magnolia Place. Generally, a homeowner has a right to place any given number of drywells on his property without requiring City approvals or triggering any City jurisdiction.

Inquiry:

3) Was the City ever given an "As-Built" drawing indicating the work performed was in conformance with the Proposed Plans?

Response:

3) No City permits and/or approvals were required for the proposed work to take place. The City did receive plans but because no permit was required, no additional City inspections and/or approvals were necessary.

Inquiry:

4) Why did the City not require that the existing 10" pipes be replaced by pipes of the same size?

Response:

4) A property owner (through his/her engineer) designs the proposed project, including the size of the pipes, for his/her own property. The City does not have any jurisdiction over what size pipe a property owner may wish to place on his/her own property if it is not impacting any City infrastructure or other City property.

The City understands that Mr. Schubert is concerned about the City's actions in permitting the improvements at 3 Magnolia Place without requiring a permit. Both the City staff and several members of the City Council have spent a great deal of time speaking with Mr. Schubert, visiting his property and assessing the situation. However, the City never had any jurisdiction over the improvements made to 3 Magnolia Place since no permits/approvals were required and there were no impacts to City infrastructure or property. It appears that this matter is a private property dispute and should be resolved between Mr. Schubert and the owners of 3 Magnolia Place.

January 28, 2008

Page 3.

Very truly yours,



Kristen Kelley Wilson

cc: Mr. O. Paul Shew, City Manager  
Mr. George Mottarella, City Engineer



**Nita M. Lowey**  
**Congress of the United States**  
**18th District, New York**

May 19, 2008

The Honorable Steven Otis  
Mayor  
City of Rye  
1051 Boston Post Road  
Rye, New York 10580

Dear Steve:

I am writing to you again on behalf of our mutual constituent, Mr. Robert Schubert, of 980 Forest Avenue. In my previous correspondence, dated August 22, 2007, I asked you to provide me with information concerning Mr. Schubert's pond.

Since that time, I am aware that my District Representative Taylor Palmer has been in contact with Mr. Schubert and city officials concerning Mr. Schubert's case. Although your office has provided helpful information, could you please inform me in writing of the City's response to Mr. Schubert's concerns about the natural water flow, which he claims no longer flows to the pond on his property?

Thank you again for your attention to this matter. If I may be of assistance in any way, or if you require any additional information about this request, please do not hesitate to contact me, or Taylor, at 914-428-1707.

Sincerely,

Nita M. Lowey  
Member of Congress

NML:tp

Received

MAY 22 2008

City Manager's Office  
Rye, New York

(16)

Received

SEP 12 2008

City Manager's Office  
Rye, New York

Robert W. Schubert  
980 Forest Ave.  
Rye, N.Y. 10580

Sept. 11, 2008

Mr. Paul Shew, City Mgr.  
Rye City Hall  
Boston Post Rd.  
Rye, N.Y. 10580

Dear Mr. Shew:

I recently asked the City Engineering (technical) departments for information about the construction of the large concrete culvert under Forest Ave. at 980/999. Dates, dimensions, cost, etc. I was advised, after checking, that there is no data available in the department.

It is extremely hard for me to believe that a project of this magnitude, under a major thoroughfare on Milton Pt., would have been conducted by the City without any record having been kept of the details for future reference/maintenance.

I would appreciate your confirming to me that the information I have received is in fact correct or provide what I believe should be public information.

Sincerely,

Bob Schubert

to: George M  
-----  
Pls give a call  
Meyer  
CRS

CITY OF RYE  
Department of Public Works

Memorandum

DATE: September 26, 2008  
TO: O. Paul Shew, City Manager  
FROM: George J. Mottarella, City Engineer  
RE: Schubert Inquiry

---

As per Mr. Shubert inquiry for information regarding the culvert running under Forest Avenue near his home, I have been unable to find any written record of when it was installed. An investigation of the records secured in the vault on the lower floor, some of which date before the City was incorporated in 1942, show no profiles, construction or location maps whatsoever. The only indication of its existence is drawn on the large overall drainage map. It only indicates an approximate position, direction of flow (towards the Sound) and a size of 24 inches. This fairly old map (last updated in 1975) is only used for general information purposes by the Department of Public Works and is not considered especially accurate for anything other than basic location.

---

*Public Works*  
141 Oakland Beach Avenue  
Rye, NY 10580

(914) 967-7461 phone

(914) 967-4107 fax



## CITY OF RYE

CITY HALL • RYE, NEW YORK 10580

TELEPHONE (914) 967-5400

Engineering Department (914) 967-7676

### INTEROFFICE MEMORANDUM

**TO:** O. Paul Shew, City Manager

**FROM:** Engineering

**DATE:** February 18, 2009

**RE:** 3 Magnolia Place Timeline of Engineering Department Activities

➤ *Revision: Line 5 Paragraph 1 (2/18/09)*

**Date:** *March 2006 thru July 2006*

During the design phase of the drainage project at 3 Magnolia Place, the City of Rye was presented with information regarding the existing drainage system at 3 Magnolia Place and surrounding properties. Subdivision file map 15101 (Jm Morehead Subdivision, 1966) shows an easement for a future 10" drain line which connects to an existing drain line on a neighboring property at 940 Forest Avenue. This drain line *does not terminate* at a manhole in the right of way at Magnolia Place. The manhole was uncovered at the time by private parties. (See attached map, File Map 15101 (amended to show field conditions)).

**Date:** *August 16, 2006*

On August 16, 2006, an application for a Surface Water, Sediment and Erosion Control Permit was submitted for proposed work at 3 Magnolia Place. It was determined that a permit was not required due to the nature of the work (repair).

(See Attached Plan for Proposed Work at 3 Magnolia Place)

**Date:** *Mid to Late August*

During this time period a complaint was received about work being performed at 3 Magnolia Place. It was investigated by the Engineering Department. It was determined that the work being done was consistent with the proposed work on previous application. Being that work was consistent with previous application no action was required.



**Date:** *August 26, 2006*

A meeting was facilitated by the City of Rye Engineering Department and Robert Schubert of 980 Forest Avenue. This meeting was an attempt to have an open dialogue with the design engineer retained by the homeowner at 3 Magnolia Place. The project was explained to Mr. Schubert by the design engineer.

(See Attached Plan of Proposed Work At 3 Magnolia)

**Date:** *First Week of February 2007*

In early February the Engineering Department responded to a complaint that unauthorized work was being done at 3 Magnolia Place. The Engineering Department responded on site. At the time tree removal operations were occurring in the rear yard of the property. The holes left by the stump removal were also filled. This action does not require a permit.

(Please note other City Departments also responded separately to this complaint)

**Date:** *February 17, 2009*

On February 17, 2009, the manhole previously uncovered at Magnolia Place was uncovered again by the Public Works department for verification. There was no water flow present in the manhole. There was only one six inch pipe running parallel with Magnolia Place upstream of the manhole, and one ten inch pipe connecting the manhole to the catch basin in the pavement on Magnolia Place. There was no pipe running in the direction of the existing piping shown on file map 15101. Therefore the system shown this map is not connected to the City Storm Drainage infrastructure.

(See attached map, File Map 15101 (amended to show field conditions))

(See attached memo and field sketch from the Public Works Department)

This concludes the timeline to date.

CONFIDENTIAL

To: O. Paul Shew  
From: Christopher Tallarini  
Date: February 19, 2009  
Re: Property abutting Schubert

As per Councilman Cunningham's request, enclosed please find information on projects completed at the Forest Avenue property abutting Schubert on the north side, and the Topsail Lane property abutting Schubert on the southwest side.

The information includes:

- Request for Naturalist Determination
- Engineering Permit
- Surface Water, Erosion and Sediment Control Permit Application
- Maps of the property

Christopher Tallarini  
City of Rye  
Assistant City Engineer



# Request for Naturalist Determination

## Chapter 195, Wetlands and Watercourses

City of Rye, New York

1051 Boston Post Road, Rye, New York 10580 <http://www.rye.ny.gov/>

### A. Property Owner:

Name: CHARLES & MICHELE MARTIN  
 Address: 950 FOREST AVENUE  
 City: RYE State: NY Zip: 10580  
 Phone: (914) 967-1979 Fax: \_\_\_\_\_  
 Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

### B. Property Description:

Street Address: 950 FOREST AVENUE  
 Property Area (Acres): 0.993 AC  
 Tax Map Designation: Sheet: 153.14 Block: 1 Lot(s): 37

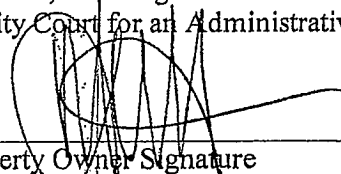
### C. Statement of Proposed Work:

Please provide a statement of the proposed work and purpose thereof and.

**CONSTRUCT RESIDENTIAL ADDITIONS, TERRACES AND WALLS;  
 PARTIAL REMOVAL AND RECONFIGURATION OF EXISTING DRIVEWAY  
 AND LANDSCAPING**

### D. Consent and Signature

By requesting a determination the owner thereby consents to entry onto his land by the City Naturalist, City Planner, or other agents designated by the Planning Commission for the purpose of undertaking any investigation, examination, survey, or other activity necessary for the purposes of Chapter 195. If the owner of the property bars such entry, the City Naturalist, Planning Commission and their agents or employees, are empowered to apply to the City Court for an Administrative Search Warrant, permitting such inspection.

  
 \_\_\_\_\_  
 Property Owner Signature

2/12/07  
 \_\_\_\_\_  
 Date

**For City Use Only**

Receipt Date: \_\_\_\_\_

**City Naturalist's Determination:**

The project area **MAY** be subject to the requirements of Chapter 195.

The project area **MAY NOT** be subject to the requirements of Chapter 195.

City Naturalist's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**RECEIVED**  
 FEB 12 2007  
 CITY PLANNER



**CITY of RYE**  
 Engineering Department  
 1051 Boston Post Road  
 Rye, N.Y. 10580  
 (914) 967-7676

**PERMIT**

Permit Number: **3722 CITY ENGINEER** Date: 6/11/07  
 Permittee: Charles Martin Phone: 203-625-9725  
 Address: 950 Forest Ave  
 City/State/Zip: Rye NY 10580

Subject to the terms and conditions set forth in section 167, article II of the Rye City Code, the permittee is hereby granted a permit to:

**Surface Water Control**

At:

**950 Forest Ave**

**Building addition**

The right is reserved to examine the premises as often a may be necessary while the work is in progress, and to order any change in the construction that may be deemed requisite to ensure sufficient strength, solidity and safety.

"K-Krete" Required

---

Fee	\$	<b>150</b>
Surcharge "CAPSTR"	\$	<b>N/A</b>
Deposit	\$	<b>N/A</b>
Insurance Filed		<b>NO</b>

*W. Anne G. Moore, Deputy*  
 City Clerk, City of Rye, N.Y.

- If this work requires "K-Krete" backfill, the permittee shall notify the City Engineer twenty-four (24) hours prior to placing the "K-Krete." The placement of said backfill must be observed by this department. The City Engineer is authorized to forfeit the deposit posted by the permittee if permittee fails to give notice.
- Steel plates must be maintained at all times over trenches until the concrete plug is deemed passable.
- No Sewer cut-ins will be permitted without special permission from the City Engineer.
- This permit may be suspended or terminated for any violation of federal, state or local laws, rules and regulations of the Dept. of Public Works or other departments of the City of Rye.
- The permittee must notify all operators of underground utilities in conformance with N.Y.S industrial code 53 before any work is started.

153.14-1-37



# Surface Water, Erosion and Sediment Control Permit Application

City of Rye, New York Engineering Department

1051 Boston Post Road, Rye, New York 10580

Phone 914.967.7676

Fax 914.967.7185

www.ryeny.gov

## Section I. Applicant Information

Job Address 950 FOREST AVE.  
 Description of work ADDITIONS, REPLACE DRIVEWAY & TERRACES  
 Contractor MALEK SAMAD Owner CHARLES & MICHÈLE MARTIN  
 Address 23 BUCKOUT RD. Address 950 FOREST AVE.  
 City/State/Zip RYE, N.Y. 10580 City/State/Zip RYE, N.Y. 10580  
 Phone 914.761.7648 Phone 914.967.1979  
 Fax 914.761.7644 Fax \_\_\_\_\_

## Section II. Application Requirements and Conditions

- A. Drawings must be submitted for all applications (2 COPIES)
- B. Drawing scale must be at least 1" = 30'
- C. Street name and house number must be clearly identified.
- D. If applicable, location, size, and type of trees on property shall be shown on drawing.
- E. Location of any trees in the Right-of-Way, AND any trees to be removed must be shown.
- F. All work must be in accordance with the New York State Stormwater Management Design Manual.
- G. All driveway work must comply with the City of Rye Code section 197-30.
- H. Existing and Proposed Contours shall be provided if required by the City Engineer.

## Section III. Construction Requirements and Conditions

- A. Erosion control measures must be properly installed, maintained and inspected around the work site.
- B. Construction entrances must be properly maintained so that dirt and debris is not deposited on street.
- C. Exposed areas must be stabilized as soon as land alterations are completed.
- D. Any underground piping or structures must be inspected prior to backfilling.
- E. 24 hour notice is required for any inspection.

## Section IV. Storm Drain Connection

Will a connection to the Storm Drain be made?  
 Yes (Right of Way Permit must be filed)  No (Proceed to Section V.)

## Section V. Signature

I hereby certify that I am duly authorized to file this application: that all statements contained in this application are true to the best of my knowledge and belief: and that the work will be performed in the manner set forth in the application, plans and specifications filed herewith in compliance with the applicable laws, ordinances, codes, rules, regulations and directives of the City of Rye. The plans and specifications have been prepared so as to include all necessary data to show compliance with the State, County and City of Rye regulations. The undersigned understands that the filing of this application amounts to the written consent to all necessary inspection by the Engineering Department in connection with this application.

Applicant [Signature] Date 4-11-07

Applicant (print) BRAD DE MOTTE, R.A. Title ARCHITECT

Fee \$120.00	Permit Number	Location	For Office use only
	Date		



# Request for Naturalist Determination

## Chapter 195, Wetlands and Watercourses

City of Rye, New York

1051 Boston Post Road, Rye, New York 10580 <http://www.rye.ny.gov/>

### A. Property Owner:

Name: BRUCE MCCARTHY & VANESSA DREWERY  
 Address: 3 TOPSAIL LANE  
 City: RYE State: NY Zip: 10580  
 Phone: 914-967-0963 Fax:  
 Contact: BRUCE MCCARTHY Phone: 212-856-3941

### B. Property Description:

Street Address: 3 TOPSAIL LANE  
 Property Area (Acres): 1.15 ACRES  
 Tax Map Designation: Sheet: 153.14 Block: 1 Lot(s): 48

### C. Statement of Proposed Work:

Please provide as statement of the proposed work and purpose thereof and.

NEW 2 STORY ADDITION TO EXISTING 2 STORY RESIDENCE

### D. Consent and Signature

By requesting a determination the owner thereby consents to entry onto his land by the City Naturalist, City Planner, or other agents designated by the Planning Commission for the purpose of undertaking any investigation, examination, survey, or other activity necessary for the purposes of Chapter 195. If the owner of the property bars such entry, the City Naturalist, Planning Commission and their agents or employees, are empowered to apply to the City Court for an Administrative Search Warrant, permitting such inspection.

[Signature]  
 Property Owner Signature

6/8/05  
 Date

For City Use Only:

RECEIVED  
 JUN - 8 - 2005  
 PLANNING DEPARTMENT

City Naturalist's Determination:

The project area MAY be subject to the requirements of Chapter 195.

The project area MAY NOT be subject to the requirements of Chapter 195.

[Signature] 6/13/05  
 City Naturalist's Signature Date



**CITY of RYE**  
Engineering Department  
1051 Boston Post Road  
Rye, N.Y. 10580  
(914) 967-7676

## PERMIT

Permit Number: **3613 CITY ENGINEER**  
Permittee: Paul Benowitz  
Address: 55 Locust Ave  
City/State/Zip: Rye NY 10580

Date: 9/26/06  
Phone: 914-967-0557

Subject to the terms and conditions set forth in section 167, article II of the Rye City Code, the permittee is hereby granted a permit to:

### Surface Water Control

At: 3 Topsail Lane

For the purpose of:

New House

The right is reserved to examine the premises as often a may be necessary while the work is in progress, and to order any change in the construction that may be deemed requisite to ensure sufficient strength, solidity and safety.

"K-Krete" Required

---

Fee	\$	<b>150</b>
Surcharge "CAPSTR"	\$	<b>N/a</b>
Deposit	\$	<b>n/a</b>
Insurance Filed		<b>no</b>

*Deane C. Moore, Deputy*  
City Clerk, City of Rye, N.Y.

- If this work requires "K-Krete" backfill, the permittee shall notify the City Engineer twenty-four (24) hours prior to placing the "K-Krete." The placement of said backfill must be observed by this department. The City Engineer is authorized to forfeit the deposit posted by the permittee if permittee fails to give notice.
- Steel plates must be maintained at all times over trenches until the concrete plug is deemed passable.
- No Sewer cut-ins will be permitted without special permission from the City Engineer.
- This permit may be suspended or terminated for any violation of federal, state or local laws, rules and regulations of the Dept. of Public Works or other departments of the City of Rye.
- The permittee must notify all operators of underground utilities in conformance with N.Y.S industrial code 53 before any work is started.



# Surface Water, Erosion and Sediment Control Permit Application

City of Rye, New York Engineering Department

1051 Boston Post Road, Rye, New York 10580

Phone 914.967.7676

Fax 914.967.7185

www.ryeny.gov

## Section I. Applicant Information

Job Address 3 TOPSAIL LANE  
 Description of work TWO 2 STORY ADDITIONS - (LEFT & RIGHT OF HOUSE)  
 Contractor TBD Owner BRUCE & VENESSA MCCARTHY  
 Address \_\_\_\_\_ Address 3 TOPSAIL LANE  
 City/State/Zip \_\_\_\_\_ City/State/Zip RYE, N.Y. 10580  
 Phone \_\_\_\_\_ Phone 967 0963  
 Fax \_\_\_\_\_ Fax \_\_\_\_\_

## Section II. Application Requirements and Conditions

- A. Drawings must be submitted for all applications ( 2 COPIES )
- B. Drawing scale must be at least 1" = 30'
- C. Street name and house number must be clearly identified.
- D. If applicable, location, size, and type of trees on property shall be shown on drawing.
- E. Location of any trees in the Right-of-Way, AND any trees to be removed must be shown.
- F. All work must be in accordance with the New York State Stormwater Management Design Manual.
- G. All driveway work must comply with the City of Rye Code section 197-30.
- H. Existing and Proposed Contours shall be provided if required by the City Engineer.

## Section III. Construction Requirements and Conditions

- A. Erosion control measures must be properly installed, maintained and inspected around the work site.
- B. Construction entrances must be properly maintained so that dirt and debris is not deposited on street.
- C. Exposed areas must be stabilized as soon as land alterations are completed.
- D. Any underground piping or structures must be inspected prior to backfilling.
- E. 24 hour notice is required for any inspection.

## Section IV. Storm Drain Connection

Will a connection to the Storm Drain be made?

Yes (Right of Way Permit must be filed.)    No (Proceed to Section V.)

## Section V. Signature

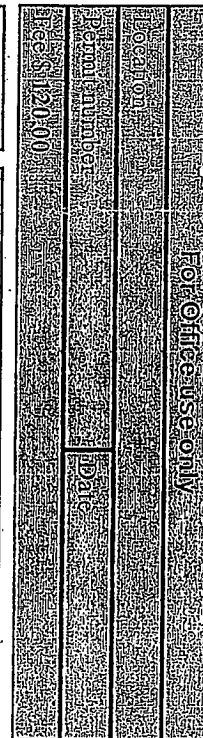
I hereby certify that I am duly authorized to file this application: that all statements contained in this application are true to the best of my knowledge and belief; and that the work will be performed in the manner set forth in the application, plans and specifications filed herewith in compliance with the applicable laws, ordinances, codes, rules, regulations and directives of the City of Rye. The plans and specifications have been prepared so as to include all necessary data to show compliance with the State, County and City of Rye regulations. The undersigned understands that the filing of this application amounts to the written consent to all necessary inspection by the Engineering Department in connection with this application.

Applicant \_\_\_\_\_

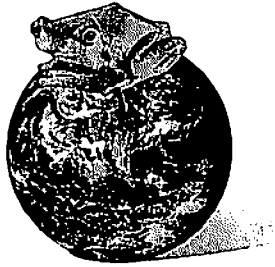
Date 5/12/06

Applicant (print) Bruce & Vanessa McCarthy

Title Civil Engineer







Chantal Detlefs  
96 Fox Run  
South Salem, New York 10590  
[cdetlefs@country.school.net](mailto:cdetlefs@country.school.net)  
(914) 533-7061

Received

FEB 20 2009

City Manager's Office  
Rye, New York

February 18, 2009

Rye City Mayor Otis and Council Members  
1051 Boston Post Road  
Rye, New York 10580

Dear Mayor and Council:

The following is my recollection of the facts regarding my involvement in the Schubert matter while I was the City Naturalist for City of Rye.

**Some Facts:**

- The Gates property has a wetland on it and it has been delineated.
- Other properties around the Gates property contain wetlands.
- The only way the drywell on the Gates property does not require a Wetland Permit would be if one already existed in the exact same location at the exact same depth and size, etc.
- Plans showing the existing conditions on the property were not available until after the fact.
- In the file for the Schubert Wetland Permit there is a report stating that Mr. Schubert's pond is fed by surface water. A drywell removes surface water and diverts it deeper into the ground.
- The City Manager was made aware that according to the Wetlands and Watercourses code the City Engineer made a mistake in his determination that the Gates project did not require permits.
- Mr. Schubert made many complaints that the recharge to his pond has been affected by the Gates Project and according to the intent of Chapter 195 "It is the intent of the City of Rye that activities in wetlands, watercourses and wetland/watercourse buffers conform with all applicable building codes, sediment control regulations and other regulations and that such activities not threaten public safety, the natural environment or cause nuisances by: Adversely altering the recharge or discharge functions of wetlands, thereby impacting groundwater or surface water supplies".

**Prior to the City Engineers Determination:**

Prior to the City Engineer making his determination that the project on Gates property did not require a building permit I visited the property with the Assistant Building Inspector. She asked my assistance in looking at some work being done on the property. Apparently some pipes have been uncovered in the back yard area and the property owners had some questions. I recall seeing the pipes dug up and there was standing water at the back of the property. In our discussions at the site visit the Assistant Building Inspector and I agreed that a specialist should be called in to study the hydrology of the area if an application came up to do work on the property in reference to diverting the water. This was based on walking the site and realizing that it is quite a complex wetland/watershed area with various old drainage pipes that require further investigation.

**The City Engineers Determination:**

I was away on vacation when the City Engineer determined that the Gates property project did not require a building permit because he felt it was replacement in kind. A Naturalist Determination is the first step of the building permit application process and since the City Engineer determined there was no building permit necessary a determination was never completed.

It was standard practice to defer all Naturalist Determinations until the City Naturalist returns from leave and in those cases where it could not wait, a wetlands consultant was hired to perform the determination.

#### **Returning From Vacation:**

Sometime after returning from vacation I was made aware that the City Engineer approved a project on the gates property and I was incredibly surprised. I was told that the City Engineer determined that the project was replacement in kind. I took the City Engineers word that it was replacement in kind.

I do not recall when Mr. Schubert began to complain about a lack of flow into his pond. At some point in the beginning of his complaints the City Manager asked me to write up what had happened to date in reference to the gates project. I don't recall what I wrote in the memo.

#### **First Noticing the Drywell Issue:**

Mr. Schubert was making many requests to see various materials in reference to the Gates project. I then became more involved. I do not recall when I first saw a set of plans but the plans did not include existing conditions nor was there attached plans showing existing conditions. Plans of existing conditions was one of the things Mr. Schubert was asking to see (he had already seen the proposed project plans). Plans with existing conditions were not available and were submitted after Mr. Schubert requested them (after the project was given the go ahead by the City Engineer and after the work had been started or completed.)

Upon seeing the plans with existing conditions I noticed that the existing pipes were larger than the proposed and that there was no drywell on the property prior to the project. The smaller pipes do not require a wetland permit because although they are not exactly replacement in kind, the Wetland and Watercourses code does read that any repair of an existing structure "shall not be expanded, changed, enlarged or altered in such a way that increases its nonconformity without a permit" and smaller pipes does not increase the nonconformity of the property.

The drywell did not previously exist and therefore would require a Wetland Permit. I am not aware of any drywell that existed on the property prior to the project. **The only way the drywell does not require a Wetland Permit would be if one already existed in the exact same location at the exact same depth and size, etc.**

#### **Meeting With Staff:**

I had many discussions about the Gates project including the drywell with the City Planner and he was very clear that although he agreed with me he did not want to get involved in the situation.

I had repeatedly mentioned to the Assistant Manager that according to the code the City Engineer had made a mistake.

There were meetings with the city staff in the City Manager's office. I don't recall exactly when the meetings were and the individuals present varied depending on availability. The one meeting of importance was when I was aware that there was no existing drywell on the property. During the discussion I expressed my concern that according the Chapter 195 an error had been made (because of the drywell) and that the project should have gone through the wetlands permit process. I do not recall exact words but the City Manager discussed that possibility and what would happen if it was admitted that the City made a mistake. The conversation included:

- If the City allowed work to be done and now finds it was wrong how does the City tell the property owner that a mistake was made and the work done needs to be rectified. That property owner will sue the City and so will Mr. Schubert.

- Mr. Schubert doesn't have any direct evidence linking the Gates project and the lack of flow to his pond.
- If the City maintains its current position then only Mr. Schubert can sue the City if he can make a case.
- If the City maintains its current position that a building permit was not required, then it would be more of a matter between neighbors.

At the conclusion of the discussions it was decided by the City Manager that the City will maintain its position and the matter is a civil dispute.

In meetings after the above one I had reiterated the fact that according to the code an error had been made.

#### **The CC/AC:**

Mr. Schubert decided to bring the matter before the CC/AC. Prior to the meeting the City Manager asked me to call the Chair of the CC/AC and explain the City's position on the matter. I relayed the information to the CC/AC chair that the City feels it is replacement in kind and the matter is now a civil dispute. At the CC/AC meeting with Mr. Schubert the CC/AC followed the lead of the City Manager.

#### **Meetings with Mr. Schubert on His Property:**

Mr. Schubert had called me several times and I met with him many times at his property.

- He called me to look at his pond to see the algae growing in his pond and explained he felt it was from a lack of flow into his pond (algae will grow in a pond when there is a lack of oxygen and water continuously flowing in a pond provides oxygen). I went to his property.
- He called to have me look at the algae frozen in his pond which he stated never happened before. I went to his property.
- He called me to show me how slow the flow was after a major storm. I went to his property.
- He called me to show me how he can release the water from his pond into Long Island Sound via a gate and explained that prior to the gates project the pond would refill within less than a day and now it takes much longer.
- He called me to meet him at his property to show me various valves and pipes above his pond on his property. I met him at his property.
- He called me look at a milky substance in his pond. I went to his property and saw a milky substance in his pond. I called Ron Gatto from Westchester County to look at the pond.

I would explain to Mr. Schubert that we have no evidence connecting the Gates project to the lack of flow to his pond and there was nothing the City could do and that he had to talk with his neighbor.

I hope the above information is useful to your examination of the Schubert matter.

Sincerely,



Chantal Detlefs

**PLANS, DRAWINGS, MAPS AND  
OTHER RELATED DOCUMENTS  
ARE AVAILABLE FOR VIEWING  
THROUGH THE CITY CLERK'S  
OFFICE**