

In The Matter Of:
Coastal Resources Management Council

Semi-Monthly Meeting
January 24, 2023

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Semi-Monthly Meeting - January 24, 2023

STATE OF RHODE ISLAND
COASTAL RESOURCES MANAGEMENT COUNCIL

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IN RE: SEMIMONTHLY MEETING

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Date: January 24, 2023
Time: 6:00 p.m.
Place: Administration Building
One Capitol Hill
Conference Room A
Providence, RI

MEMBERS PRESENT
Raymond Coia, Chairman
Jerry Sahagian
Donald T. Gomez
Lindsay McGovern
Patricia Reynolds
Ronald Gagnon, DEM
Catherine Robinson Hall
Stephen Izzi

Anthony DeSisto, Esquire, Legal Counsel
Mark Hartmann, Esquire, Legal Counsel

STAFF PRESENT
Jeff Willis, Executive Director
Lisa Turner, Recording Secretary
Laura Miguel
Benjamin Goetsch
Ryan Moore

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I N D E X

APPLICATION WHICH HAS BEEN BEFORE A SUBCOMMITTEE
AND IS BEFORE THE FULL COUNCIL TO RECEIVE THE
SUBCOMMITTEE'S REPORT AND RECOMMENDATION, AND
DELIBERATION AND ACTION ON FINAL DECISION:

APPLICATION PAGE

2017-12-086 PERRY RASO 4

PUBLIC HEARING ON PROPOSED RULEMAKING:

APPLICATION PAGE

650-RICR-30-05-01

OCEAN STATE CLIMATE ADAPTATION AND
RESILIENCE FUND 57

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TUESDAY, JANUARY 24, 2023

(MEETING COMMENCED AT 6:00 P.M.)

CHAIRMAN COIA: Good evening, everyone. I will call the semimonthly meeting of the Rhode Island Coastal Resources Management Council to order. Today is Tuesday, January 24, 2023. I'd ask that the record reflect the Council members that are present, as well as the CRMC staff that is present as well.

First matter on our agenda will be approval of the minutes of the previous meeting, that being Tuesday, January 10, 2023. I would ask for a motion to approve the minutes as presented.

MR. SAHAGIAN: So moved.

CHAIRMAN COIA: Motion's been made. Is there a second?

MR. GOMEZ: Second.

CHAIRMAN COIA: Motion made and seconded. All in favor say, "aye."

(WHEREUPON, A VOICE VOTE WAS TAKEN)

CHAIRMAN COIA: Anyone opposed?

(NO RESPONSE)

CHAIRMAN COIA: Motion carries.

(MOTION PASSED)

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1 CHAIRMAN COIA: Any subcommittee reports?

2 MR. WILLIS: Actually, there's one
3 subcommittee report, Mr. Chair. We just met. The
4 rights-of-way subcommittee just met to give a
5 status report on two specific rights-of-ways that
6 are under review, being the String Street extension
7 out of Westerly and the Buttonwoods matter in
8 Warwick. And it was just a status for the
9 subcommittee. There will be more status and
10 updates from the subcommittee in the future. But
11 that's it for subcommittee reports, Mr. Chair.

12 CHAIRMAN COIA: Okay. Any staff reports?

13 MR. WILLIS: There are no staff reports
14 tonight, Mr. Chair.

15 CHAIRMAN COIA: Okay. Which brings us to,
16 application which has been before a subcommittee
17 and is before the full Council to receive the
18 subcommittee's report and recommendation, and
19 deliberations and action on the final decision.
20 That application being 2017-12-086, Perry Raso. An
21 application to establish a 3-acre oyster and bay
22 scallop farm, using floating and suspended gear in
23 Potter Pond, Narragansett, Rhode Island.

24 I am going to ask Attorney DeSisto, at

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1 this time, to present to the Council a posture of
2 the case and our proceeding for this evening.

3 MR. DeSISTO: Yes. This matter was heard
4 by a subcommittee over several hearings with about
5 33 hours of testimony. We have some of the
6 subcommittee members here on it. I know the rest
7 of you have it.

8 Before we begin on this, I would like the
9 members that were not present on the subcommittee
10 to state, on the record, that they did review the
11 transcript and the record and are ready to vote on
12 the matter -- deliberate and vote on the matter.
13 Is that a fair statement for everyone?

14 MS. ROBINSON HALL: Yes.

15 MR. IZZI: Yes.

16 MS. McGOVERN: Yes.

17 MR. SAHAGIAN: Yes.

18 MR. DeSISTO: Okay. The record should
19 reflect that all of the members present were either
20 subcommittee members or have reviewed the
21 transcript and the record, all of the documents,
22 and are ready to take the matter up at the Council
23 level.

24 CHAIRMAN COIA: Thank you.

1 MR. DeSISTO: Further, Mr. Chair, there
2 was a request from the applicant for the
3 introduction of newly discovered evidence. I don't
4 think that we're going to need to hear arguments
5 from the various parties on that.

6 A review of the regulations in regard to
7 this matter, specifically 65 -- 650RI --
8 RICR-20-00-1.1(k). This is not something that
9 would have been discoverable. Rather, it appears
10 to me to be a settlement proposal, so to speak and,
11 therefore, is not something that the Council should
12 consider or make part of the record at this time,
13 but I would ask that a motion be made to that
14 effect.

15 MR. GOMEZ: I would move that having read
16 the document and looked back at the history on
17 this, I think that this is just too late to come in
18 at this particular meeting.

19 CHAIRMAN COIA: All right. A motion's
20 been made by Mr. Gomez.

21 MR. SAHAGIAN: Second.

22 CHAIRMAN COIA: Seconded by Mr. Sahagian.
23 I will call for a roll call vote. Mr. Izzi?

24 MR. IZZI: Aye.

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1 MS. ROBINSON HALL: Excuse me, I have a
2 question.

3 CHAIRMAN COIA: Yes.

4 MS. ROBINSON HALL: So just to be clear on
5 what this motion is based on, is it based on --
6 where's Mr. Gagnon? Hello. Hi, Don. Gomez. I'm
7 just curious, can you just clarify the basis of the
8 motion. Did you say it was because it was out of
9 time?

10 MR. GOMEZ: I think that we've put a lot
11 of hours into this and that this has come up with
12 many opportunities. We did a study on several
13 reconfigurations. The one that was recommended by
14 CRMC was different than the one that was applied
15 for. We moved things back and forth and took lanes
16 out and tried to make -- what it came down to was
17 that it was really just -- there was a lot of
18 public use there, and it was a dangerous spot for
19 even sailboats to come back through into that
20 particular cove.

21 So it was just so well discussed after so
22 many hours, and I was part of that, but it just
23 seemed to me that this is just too late. I mean,
24 we've already had that many bites at the apple on

1 reconfiguring it, removing it from shore, and just
2 cutting lanes down, different options on the actual
3 outlay of the -- and it's a fairly small oyster
4 pond.

5 My opinion was that we just don't need to
6 see another one. There was plenty of time, and it
7 was well discussed in the past. So that's where
8 I'm coming from.

9 MS. ROBINSON HALL: And you're --

10 MR. GOMEZ: You know, when you're kind of
11 coming in at the last minute with a hail Mary, is
12 kind of the way I'm looking at it. I guess you'd
13 have to be Catholic for that.

14 MS. ROBINSON HALL: Thank you. Your
15 clarification was that it's a settlement offer and
16 not --

17 MR. GOMEZ: What's that?

18 MS. ROBINSON HALL: Attorney DeSisto, your
19 advice to us was that it's coming in as a
20 settlement offer more than evidence?

21 MR. DeSISTO: Well, under Section 1.1K,
22 "'New evidence' is that which is of a material and
23 controlling nature and not by the exercise of
24 ordinary diligence discoverable in time to be

1 presented at the evidentiary hearing." So rather
2 than being evidence -- and I agree with what
3 Mr. Gomez has said, but my own view and the advice
4 to the Council is that it doesn't qualify as newly
5 discovered evidence and, therefore, should not be
6 accepted or considered by the Council.

7 MS. ROBINSON HALL: Thank you.

8 MR. SAHAGIAN: Mr. DeSisto, I think I'm
9 going to withdraw my second because --

10 COURT REPORTER: Can you speak up a little
11 bit, Mr. Sahagian. You have to speak up a little
12 bit. I'm sorry.

13 MR. SAHAGIAN: I'm sorry. I would like to
14 withdraw my second because I disagree a little bit
15 with Don, but more importantly, I think that the
16 regulations indicate that we cannot take new
17 evidence if it was readily available at the time of
18 the subcommittee.

19 MR. DeSISTO: Correct.

20 MR. SAHAGIAN: Correct? So I think we're
21 getting off onto a tangent so -- I'm not
22 comfortable with, so I withdraw my second. And I
23 think we should stick to the attorney's advice and
24 focus on the regulation. If we're going to deny

1 it, deny it based on the regulation.

2 CHAIRMAN COIA: Can I just ask a question,
3 I guess, of counsel. You have a motion to deny the
4 introduction and then some rationale for the
5 motion. A second to the motion to deny, maybe with
6 some different rationale. I don't know if the
7 rationale matters, if what we have before us is a
8 motion to deny and a second to deny; am I correct?

9 MR. DeSISTO: Yes, but I think the concern
10 is that to make sure the record is clear. I'm
11 not -- okay. I don't want to tell you how to vote
12 or why to vote, but I think that's the issue, and I
13 think that's why Ms. Hall had her question. I just
14 tried to clarify it.

15 CHAIRMAN COIA: Well, my question then, is
16 if we, if there is a second to the motion and we
17 vote on it, am I correct that we're not voting to
18 incorporate the rationale, we're incorporating
19 the -- I mean, we're voting on a denial?

20 MR. DeSISTO: Yeah, my only concern is,
21 for the record purposes, the findings upon which
22 the motion are based. So if the second is
23 withdrawn, you have a motion now that's not
24 seconded, and if it doesn't get another second, I

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1 think another motion would be appropriate.

2 CHAIRMAN COIA: Okay. Is there a second
3 to Mr. Gomez's motion? If it fails to get a
4 second --

5 MR. SAHAGIAN: Mr. Gomez, would you
6 consider making a motion based on what the attorney
7 advises?

8 MR. GOMEZ: I made the motion, and I'm
9 sticking with the motion that I made. I just feel
10 that it's coming in too late. It's just an attempt
11 to keep delaying it. The hours and the meetings
12 and all that we had, and I did read through -- and
13 I'm not sure I can bring it up, but the decision
14 document that's on the agenda tonight, I read
15 through that. And I kind of agree with that. So I
16 just think it's a very bad time to bring it in.
17 What are we going to do, discuss it for another
18 meeting, hold it again, another subcommittee, and
19 then wait for the next configuration? I mean, you
20 sat through --

21 MR. SAHAGIAN: I agree.

22 MR. GOMEZ: -- all these meetings, and you
23 saw, you know, what we did and tried to be
24 extremely fair, and we arrived at the conclusion it

1 was a dangerous spot for, you know, sailboats and
2 people on skis and a whole bunch of things. So, I
3 mean, I've never, that I can remember, voted
4 against an oyster lease since I've been here in
5 like, whatever, 12 years or something. It's kind
6 of my favorite subject, right? The lobstering's
7 gone away and the fishermen have to do something,
8 and it's great, but I think it's a bad spot.

9 And, therefore, I just -- I thought we
10 discussed it to the end and -- but I understand,
11 you know, the legal position of it. I just don't
12 want to withdraw my motion. If nobody wants to
13 second -- second it, then you can, you know, vote
14 denial, you know, move denial, and we'll go through
15 a roll call.

16 CHAIRMAN COIA: All right. There has been
17 no second. Is there an additional motion?

18 MR. SAHAGIAN: I move that we deny the
19 opportunity for new evidence based on
20 Attorney DeSisto's recommendation and the
21 regulations.

22 CHAIRMAN COIA: Is there a second?

23 MR. GAGNON: Second.

24 CHAIRMAN COIA: Motion's made -- motion by

1 Mr. Sahagian, seconded by Mr. Gagnon. Any
2 discussion?

3 (NO RESPONSE)

4 CHAIRMAN COIA: Hearing none, I'll poll
5 the Council on that vote. Mr. Izzi?

6 MR. IZZI: Aye.

7 CHAIRMAN COIA: Ms. Hall?

8 MS. ROBINSON HALL: Aye.

9 CHAIRMAN COIA: Mr. Gagnon?

10 MR. GAGNON: Aye.

11 CHAIRMAN COIA: Ms. Reynolds?

12 MS. REYNOLDS: Aye.

13 CHAIRMAN COIA: Ms. McGovern?

14 MS. McGOVERN: Aye.

15 CHAIRMAN COIA: Mr. Gomez?

16 MR. GOMEZ: Aye.

17 CHAIRMAN COIA: And I, too, Raymond Coia,
18 vote aye.

19 (MOTION PASSED)

20 CHAIRMAN COIA: So that's that. And if
21 you'd like to continue with the posture and our
22 proceeding this evening.

23 MR. DeSISTO: So this matter, as I said
24 earlier, was vetted extensively at the subcommittee

1 level. You have the subcommittee decision. You
2 have the transcript, the record, all of the
3 documents that were submitted. You've all taken a
4 look at it. And at this point, again by statute,
5 specifically Section 46-23-20.4(a), the matter is
6 in order for deliberation at this time. So I think
7 it's appropriate to deliberate, discuss, and make
8 the appropriate motion on the subcommittee
9 recommendation to deny the application.

10 MR. SAHAGIAN: Mr. Chair, can I ask
11 Mr. DeSisto a question?

12 CHAIRMAN COIA: Yes.

13 MR. SAHAGIAN: Tony, compared to the
14 recent Barrington aquaculture farm that was denied
15 here and appealed to Superior Court and overturned,
16 would you consider this similarly situated?

17 MR. DeSISTO: Not in terms of location,
18 but that was an application that was denied by the
19 Council actually, and recently the Superior Court
20 overturned that decision.

21 MR. SAHAGIAN: Okay.

22 MR. DeSISTO: And that was an aquaculture
23 lease -- an aquaculture lease. It was in upper
24 Narragansett Bay off of Nayatt Point, and I believe

1 it was a 2-acre lease. In that matter, the staff
2 had recommended approval, and it was denied.

3 MR. SAHAGIAN: Thank you. Mr. Chair, may
4 I have the floor?

5 CHAIRMAN COIA: Yes, Mr. Sahagian.

6 MR. SAHAGIAN: So I am not advocating by
7 any way to approve this application as submitted.
8 For a starter, the floating devices, you know,
9 aesthetically are just unpleasing. And, at the
10 very least, we would owe neighbors and residents,
11 citizens of Rhode Island, you know, a fiduciary not
12 to have something unattractive like that.

13 But a couple of things that stand out.
14 Number one, the Barrington aquaculture getting
15 overturned by the Superior Court, I think we have,
16 you know, like a slippery slope here. There's a
17 chance, okay, based on the fact that Dave Beutel
18 wrote a staff report that's favorable to this
19 application as submitted, right, who is the
20 aquaculture guru of the Northeast, okay.

21 Based on the fact that the town
22 harbormaster indicated there wouldn't be any
23 navigational issues, testimony in the record,
24 there's a chance, if we deny this, the

1 Superior Court could overturn it, and the entire
2 three acres could get approved. So that concerns
3 me.

4 I think what we have to try -- my position
5 is, I think what we have to weigh out is what would
6 happen or where -- I shouldn't say what would
7 happen -- where would the applicant -- at what
8 level not appeal? If we approve 20 percent, would
9 he appeal and maybe win and get the entire 3 acres?
10 If we approved half.

11 So I really think that we have to, you
12 know, think critically because two or three years
13 from now, if we deny it, once again, based on the
14 evidence, based on the staff report, based on the
15 harbormaster, the entire project could get
16 approved, which I think would be a travesty. Okay.
17 So I'm just sharing my thoughts and concerns.

18 I did some math. Okay. If -- what was
19 presented, if we reduced it by 39 percent, okay, it
20 would be a rectangle approximately 175 by 460.
21 Okay. It would be -- the reduction would be from
22 sea to land, okay, which would be an additional
23 50-foot buffer.

24 And, Mr. DeSisto, one other question. Are

1 my personal experiences on that pond relevant?

2 MR. DeSISTO: Under the case of
3 Restivo v. Lynch, if you can articulate the bases
4 for your personal knowledge, yes.

5 MR. SAHAGIAN: So I'm familiar with that
6 area. I live in Narragansett. I've taken my son
7 tubing in that area. As presented, I feel there's
8 enough room there. But reducing it a third, you
9 know, affords even more room.

10 So once again, based upon on the evidence,
11 based on Dave Beutel's staff report recommending
12 approval of the entire project, based on my
13 personal experience, based on -- and I have some
14 notes -- Page, I think, 77 in the transcript, with
15 the harbormaster indicates it would not be a
16 navigational hazard, as presented, I think my
17 reduction I think is fair.

18 It definitely meets the burdens in the
19 Red Book. And once again, Dave Beutel's report
20 indicates that the entire 3 acres met the burdens
21 in the Red Book.

22 So, at some point, I will make that
23 motion, but I want to hear from everybody else.
24 Thank you.

1 CHAIRMAN COIA: I just want to ask
2 Mr. DeSisto something first. If you can enlighten
3 the Council as to our ability to modify the
4 schematics or the footprint on the application. I
5 understand what Mr. Sahagian is saying, so I'd like
6 to know our ability to do so.

7 MR. DeSISTO: Okay. I'm looking at
8 46-23-6(2)(B). "The Council shall be authorized to
9 approve, modify, set conditions for, or reject any
10 such proposal." And that's for applications.

11 CHAIRMAN COIA: Have we ever done that in
12 the past?

13 MR. DeSISTO: Yes. But, also,
14 specifically in regard to this situation, this type
15 of a situation, under 46-23-20.4, The Council may,
16 in its discretion, adopt, modify, or reject the
17 findings of fact and/or conclusions of law of a
18 subcommittee. However, that any such modification
19 or rejection of the proposed findings of fact or
20 conclusions of law shall be in writing and shall
21 state the rationales therefor.

22 CHAIRMAN COIA: Have we ever done that in
23 the past?

24 MR. DeSISTO: Yes.

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1 CHAIRMAN COIA: I'm sorry. I just
2 wanted -- I interrupted how you were finishing.

3 MR. DeSISTO: No, I'm all set.

4 CHAIRMAN COIA: Mr. Gomez.

5 MR. GOMEZ: Yes. My biggest concern
6 involves safety. And I was kind of on the edge
7 whether when we were talking about kayaks and
8 paddleboards and skiers, and I thought that they
9 could adjust to that.

10 And we did try different layouts, removing
11 a lane, changing to a polygon instead of a
12 rectangle or a square and move things off the beach
13 more, and none of them were satisfactory. But the
14 nail in the coffin for me was when one person or
15 multiple people came up and talked about sailboats
16 going in and out of that cove and the rocks
17 associated with coming in, especially if you have a
18 blow on or you had to take a certain direction to
19 tack to come in, and there's just not enough room
20 to navigate a sailboat. Not a big one, just, you
21 know, recreational-type sailboats, in and out and
22 especially in, and avoiding the corner markers in
23 the field.

24 So that's where I came across, and it was

1 really a safety issue versus anything else. I
2 mean, we tried very hard on the subcommittee to
3 accommodate, you know, a layout that would be
4 satisfactory. And I know Dave, and I know his
5 original layout, and we determined, as a
6 subcommittee, that that layout would just not do
7 it, and so we moved on from Dave's recommendation
8 and tried to find additional alternatives. And
9 they were either unsatisfactory to the applicant,
10 or they were for various reasons or to the people
11 that were against it. And it was the safety issue,
12 especially sailboats.

13 You know, paddleboards and kayaks, they're
14 pretty capable of steering out of trouble. Skiers,
15 well, if you want to be stupid, I guess you could
16 be. And then we got down to two and one and how
17 often. And so that was really iffy. But the
18 sailboat question really stuck with me. So that's
19 my input.

20 CHAIRMAN COIA: I was on the subcommittee,
21 and referring to your statement that we tried to or
22 made suggestions as to alternatives, my
23 recollection is that we tried to move it outside of
24 the original footprint, being put it somewhere

1 else, put it on the other side, bring it over
2 there. So my read or understanding from
3 Mr. Sahagian is you've got the original footprint,
4 and you're just bringing it in from there. You're
5 not moving it outside or anything like that,
6 correct?

7 MR. SAHAGIAN: Correct.

8 CHAIRMAN COIA: Okay. So I see that a
9 little bit different. As I said, I was on the
10 subcommittee. I did have an issue with the full
11 set of the 3 acres the way it was. I learned a lot
12 about waterskiing over that and turning radiuses
13 and the like. I did have some concern for that,
14 but my concern was as the footprint was presented
15 in the original application.

16 I listened to many of the
17 opponents/objectors and their arguments, testimony,
18 concern, as to the safety if it went out as far as
19 it went out. But with some modifications, as
20 Mr. Sahagian has indicated he may incorporate into
21 a motion, I think that's something I could support
22 because it will alleviate some concerns of the
23 objectors, but also afford Mr. Raso, the applicant,
24 an opportunity to do what he asked to do.

1 Yes, Ms. Hall.

2 MS. ROBINSON HALL: Thank you. I want to
3 address, first, this Barrington decision. Just to
4 be clear, is that Judge Keough's decision in April
5 of '22 that you're referring to? Is that the
6 decision that you're referring to?

7 MR. DeSISTO: That would be the one,
8 correct, yes.

9 MS. ROBINSON HALL: And I just -- we don't
10 have that decision, you know, the facts of that
11 case before us, nor do we have the law before us,
12 but a quick read of that decision seems really
13 inapplicable to the matter before us because the
14 Superior Court's review of that focused on failure
15 to provide an opportunity for cross-examination.
16 That's not an issue in this matter.

17 And secondarily, failure of the record to
18 adequately reflect that all the evidence at the
19 hearing that was presented was adequately
20 considered by the Council. That also is not
21 pertinent or relevant to this case.

22 With respect to the ability to modify, of
23 course, there is the authority to modify, but I
24 just want to raise two issues. One, modifications

1 of pending applications, which this is not
2 necessarily in the review period, but under
3 Rule 1.4.12 we have a provision where the executive
4 director has the discretion to set a review fee if
5 the modification was permitted after the staff
6 reports are completed. Which really gets to the
7 issue of the fact that there is actually a
8 substantive review that has to be done by the
9 staff. We wouldn't have a review fee if it wasn't
10 the need for a substantive review.

11 So, first, I feel that a substantial
12 modification, and, in this case, 39 percent is a
13 substance change, would require staff review. We
14 even have a fee for a review.

15 Secondly, under our rules, 1.5 with
16 respect to notice, 1.5.1A talks about completed
17 applications, formal applications, relevant here.
18 That there's an array of people that get noticed in
19 the area or areas so affected by the proposed
20 activity in accordance with the APA.

21 And in that light, is the issue of notice.
22 So even -- even where we have review fee, we also
23 have the issue of public notice. And in this
24 situation, guided by the Administrative Procedures

1 Act in particular and also by Rhode Island law,
2 where changes are substantive, which is more than
3 minor, we have an obligation to uphold our -- under
4 the APA, the transparency that's required is to
5 have public notice of something that's more than
6 minor. Otherwise, we more or less nullify the
7 entire public notice process.

8 Interested parties, whether it be
9 municipality or those that regulations call in
10 areas that may be impacted, they -- they lose their
11 opportunity, and they're precluded from that
12 opportunity to attend public hearing where they
13 might have had an opportunity to participate, they
14 might have had an opportunity to weigh in on the
15 application as submitted. And they don't have that
16 opportunity if we do a more than minor change at
17 this juncture.

18 So I'm very compelled by Rhode Island law,
19 and certainly the idea of this jurisdiction that
20 this Council has, which is public trust, submerged
21 lands and waters. I mean, we have -- we held it in
22 trust for the public. And to not have notice of a
23 39 percent change or however you want to -- however
24 you do it, it's not minor. It's more than minor,

1 which is what Rhode Island case law says. And
2 that -- I think that's concerning, and I don't
3 think that's properly -- that's something that we
4 have the jurisdiction or authority to do.

5 CHAIRMAN COIA: Do you want to respond to
6 that, Mr. DeSisto?

7 MR. DeSISTO: Well, of course.
8 Section 1.4.12 states that, "when an applicant or
9 his or her consultant submits a redesigned site
10 plan for proposed activity after staff reports have
11 been completed." So this circumstance isn't that
12 because this isn't coming from the applicant.

13 I think what's happening in deliberations
14 is that Mr. Sahagian is proposing a reduction on
15 the existing plan. So this major change is lesser
16 than what was originally proposed. So the question
17 becomes whether or not that reduction, that smaller
18 amount, warrants going through a hearing again.

19 And I'm not -- that is definitely a policy
20 consideration. But I do think that 1.4.12 is not
21 applicable here because it's not coming from the
22 applicant. This is deliberations from the Council.
23 The analogy would be somebody proposes a
24 200-foot dock, the Council approves it but only at

1 170 feet. That type of a thing.

2 A few weeks ago, you approved an
3 application where the dock actually moved off of
4 where it was. Same size, just in a slightly
5 different location. And I think that's what needs
6 to be discussed here, rather than that issue. And
7 I'm not -- believe me, that's something that you
8 all have to decide. I'm not telling you that. I'm
9 just trying to give you the outlines for the law.

10 MS. ROBINSON HALL: Yeah. I think it's
11 not so much that it's on point exactly. It's that
12 it's analogous to the idea that, when you make a
13 change, the point is that there is the need for
14 staff review of that change if it's not -- if it's
15 more than minor. And for us to -- a major change,
16 whether it's less or more, it's not -- it's not a
17 flat landscape. You know, it's not -- we're not
18 changing the contours of this desk. We're talking
19 about a marine environment that has a lot of
20 variables that I'm not sure we're equipped to
21 really assess as a Council. That's really
22 something the staff has to do.

23 So that was my point. I agree that it's
24 not exactly on point, but I think it's analogous to

1 the idea that we're not voting on a changed size of
2 a tabletop. We're voting on a major change --
3 whether it's big or small is not the point, it's
4 not minor -- of a marine ecosystem that is
5 something that is a variable that we don't -- we're
6 not the experts, they are. Staff is the experts.

7 MR. DeSISTO: I think that's definitely
8 the issue that needs to be deliberated, you're
9 correct.

10 MS. ROBINSON HALL: Thank you.

11 CHAIRMAN COIA: Mr. DeSisto, am I correct
12 that Mr. Beutel, at the time of his testimony, was
13 a staff member?

14 MR. DeSISTO: You know, he came back on
15 this one. I think he was retired but agreed to
16 come back to testify on his report.

17 CHAIRMAN COIA: At the time of his review,
18 was he a staff member?

19 MR. DeSISTO: At the time of his review,
20 yes, he was a staff member.

21 CHAIRMAN COIA: Okay. And he reviewed and
22 gave an opinion on a 3-acre footprint, correct?

23 MR. DeSISTO: Yes.

24 CHAIRMAN COIA: And am I correct that he

1 was of the opinion -- and I think the record
2 reflects it -- that he had no objection to it?

3 MR. DeSISTO: Correct.

4 CHAIRMAN COIA: Okay. And what we're
5 doing is reducing the 3-acre parcel that he
6 reviewed and gave the opinion that he had no
7 objection to it, correct?

8 MR. DeSISTO: Yes.

9 CHAIRMAN COIA: Okay. So I understand
10 what Ms. Hall is saying, and her argument that
11 maybe staff needs to review this, but we're not
12 moving it. It's just shrinking what was already
13 opinions that there was no objection to. So I
14 don't think it necessary, myself. I'm comfortable
15 utilizing the extensive record that we have and the
16 prior -- well, not the prior because he still holds
17 it -- the expertise of Mr. Beutel in his prior
18 testimony. Yes, Mr. Gomez.

19 MR. GOMEZ: I feel like I concur with the
20 presentation given by Ms. Hall down at the end
21 there, but -- and we're fighting through some of
22 the legal issues here a little bit, I think.

23 But I think the real slippery slope here
24 is that, when this Council decides that we can

1 arbitrarily pick a dimension and a -- you know,
2 what's it's configuration, rectangle, trapezoid,
3 polygon, what is it? You know, we just start
4 putting that down, that's a slippery slope because
5 at that point, let's try this, let's try that. The
6 applicant, you know, hasn't even gotten up to say,
7 gee, I agree with that yet or that type of an
8 issue.

9 So I support the idea that it would need
10 to be reviewed. You know, if we propose a new
11 layout as a Council, I feel that the staff needs
12 time to review it and come back to us.

13 MR. SAHAGIAN: Mr. Chairman --

14 CHAIRMAN COIA: Let me just ask a question
15 of Mr. DeSisto. On follow-up to Mr. Gomez's
16 comment. If Mr. Raso is not pleased with the
17 decision here this evening, he has the ability to
18 appeal it?

19 MR. DeSISTO: Yes.

20 CHAIRMAN COIA: Or the applicant can
21 appeal it, correct?

22 MR. DeSISTO: Yes.

23 MR. GAGNON: A follow-up question to that.

24 CHAIRMAN COIA: Yes.

1 MR. GAGNON: Do the intervenors also have
2 the ability to appeal our decision?

3 MR. DeSISTO: Yes, yes.

4 MR. GAGNON: So there's a good chance this
5 is going to be appealed one way or the other?

6 MR. DeSISTO: Yes, yes.

7 MR. GAGNON: So to me I think we should
8 just stick with the subcommittee's recommendation
9 and let the chips fall where they may after. We
10 don't even know what the plan looks like in terms
11 of reducing it. I don't know what it looks like.
12 I don't know how it will work with what's going on
13 out there.

14 As we said, there's no chance to have
15 staff review it. I'm more comfortable with dealing
16 with the staff -- the subcommittee recommendation
17 and making a decision on that, and then let things
18 move forward after that.

19 MR. SAHAGIAN: Mr. Chair, may I have the
20 floor?

21 CHAIRMAN COIA: Yes, Mr. Sahagian.

22 MR. SAHAGIAN: So, at this time, based on
23 all the evidence in the record, based on the staff
24 report, based on the fact that Mr. Beutel, the

1 aquaculture guru of the Northeast, based on the
2 town harbormaster indicating the 3 acres would not
3 cause any navigational hazard, I move that we
4 modify the application, and we reduce it by 31 --
5 39 percent, I'm sorry, and we approve 80,500 square
6 feet, okay, which would be inside of the footprint
7 that was originally presented, which was
8 approximately 130,000 square feet. And we
9 eliminate all the floating devices. That's my
10 motion.

11 MS. McGOVERN: I'll second that.

12 CHAIRMAN COIA: A motion has been made by
13 Mr. Sahagian, seconded by Ms. McGovern. Any
14 discussion? Yes, Ms. Hall.

15 MS. ROBINSON HALL: I agree with
16 Mr. Gagnon that we don't have a sense of what this
17 application looks like under those contours. You
18 know, doing some simple mathematics regarding this
19 ecosystem is inapplicable to the mandate given to
20 us by the Legislature and under our own rules and
21 regulations.

22 And this idea of eliminating floating
23 devices, I mean, that's a change of aquaculture
24 gear. We have not -- no one in staff has examined

1 a change in gear. A change in gear for fisheries
2 in aquaculture, and we're going to decide that that
3 meets the requirements under the rules and the
4 regulations under the mandate from the Legislature?
5 I -- I don't think we have that expertise at all.

6 So I -- I just would like to raise the
7 fact that this is really getting into the weeds on
8 aquaculture design, ecosystem impact, user impact,
9 impacts we can't really contemplate given no
10 information whatsoever other than dimensions.

11 MR. SAHAGIAN: Mr. Chair, may I speak on
12 my motion?

13 CHAIRMAN COIA: Yes. It's discussion,
14 yes.

15 MR. SAHAGIAN: So once again, the
16 professional staff recommended approval for
17 3 acres. My proposal reduces it by 39 percent. So
18 when someone indicates we don't have the
19 professional ability to make that decision and
20 determination, I rely -- we should all rely on the
21 evidence in the record and the staff report as
22 presented by Mr. Beutel for a 3-acre expansion.

23 CHAIRMAN COIA: With floating devices?

24 MR. SAHAGIAN: With floating devices.

1 CHAIRMAN COIA: That he reviewed?

2 MR. SAHAGIAN: That he reviewed.

3 MS. REYNOLDS: Mr. Chair.

4 CHAIRMAN COIA: Yes, Ms. Reynolds.

5 MS. REYNOLDS: I was also on the
6 subcommittee and sat through extensive hours, and
7 my primary concern was safety.

8 Mr. Sahagian, could you just explain --
9 and I understand this is a subset of what was
10 already approved and that it's included in that
11 same footprint, and, as such, I think it was part
12 of Mr. Beutel's review -- how did you determine
13 that sort of very specific amount, 39 percent of a
14 reduction? Like, how did -- where are those
15 numbers from?

16 MR. SAHAGIAN: Sure.

17 MS. REYNOLDS: And does it have anything
18 to do with what might impact safety. And how --
19 how many acres is 81? How does that compare?

20 MR. SAHAGIAN: It's just shy of 2 acres.
21 The original application was for 3 acres. So,
22 basically, 80,500 feet is just shy of 2 acres. And
23 I brought it back 175 by 460 to pick up about 50 --
24 an additional 50 feet of buffer from the water

1 towards the land, which I thought would address any
2 additional safety issues for waterskiers. And once
3 again, the town harbormaster said, as presented,
4 there wouldn't be any navigational hazard, but I
5 just scaled it back even more out of an abundance
6 of caution.

7 CHAIRMAN COIA: Any further discussion?

8 MS. ROBINSON HALL: Yes.

9 CHAIRMAN COIA: Yes, Ms. Hall.

10 MS. ROBINSON HALL: I have some further
11 questions to your questions, which I think are
12 excellent, regarding your calculation.

13 So we don't have a picture of where this
14 is. It's east, it's west, it's south, it's north,
15 somewhere in that configuration. And you're saying
16 that, based on your opinion, that would resolve
17 some of the user conflicts.

18 And also you refer repeatedly to
19 Dave Beutel's staff report. He did not review a
20 project that looks like that, nor did his review,
21 and I don't know -- I didn't see anything in the
22 record. And I'm looking at his report relative to
23 him reviewing this with the different gear that
24 you're now talking about.

1 So when you say it's based on the expert,
2 this guru of New England, and I respect Mr. Beutel
3 deeply, I think we're bound to the record, and I
4 don't think the record reflects that he reviewed an
5 application without floating gear. That doesn't
6 mean there's no gear. That just means there's
7 floating gear. So what gear is replacing that? No
8 gear? Less gear? More gear? I'm just wondering
9 if you can clarify that because I'm not seeing that
10 in the record.

11 MR. SAHAGIAN: The underwater gear would
12 replace it.

13 CHAIRMAN COIA: Yes, Mr. Gomez.

14 MR. GOMEZ: The proposal, as I remember,
15 the applicant was looking for multiple shellfish
16 types. There was some bottom planting of clams or
17 quahogs or something along with the oysters, and it
18 was critical on the water depth. And so under the
19 proposed 39 percent reduction, is that out in the
20 deeper water where it poses more of a hazard for
21 the sailboats and things coming in? Does it come
22 closer to the shore? I think these questions need
23 to be answered by staff. If we propose just a
24 reduction, it's in a certain footprint, and you

1 haven't stated what the footprint is. 20 feet
2 offshore? 100 feet offshore? The water depths and
3 things like that.

4 So I still think we're at a point that
5 this is a slippery slope, and that, if we propose
6 such a change, I think staff really needs to look
7 at it.

8 And Dave -- Dave was right 99.9 percent of
9 the time. This is one of the last he did, and I
10 believe the review, he was not on staff when he
11 came in, he just came in to support his
12 presentation. And that original layout was
13 immediately -- which I believe he ended up with a
14 trapezoid of some sort -- I think that was
15 immediately rejected. And we started the
16 discussion on where and how many and how many rows
17 and how many feet off the beach and water depth so
18 that we could do multiple shellfish layouts and
19 things like that.

20 So I think there's just too much going on
21 here to approve, let's just reduce 39 percent. I
22 think it needs more professional review if, in
23 fact, we were to move Mr. Sahagian's motion.

24 CHAIRMAN COIA: Are you more inclined to

1 vote to approve the 3 acre as presented?

2 MR. GOMEZ: Me? No, absolutely not.

3 MR. SAHAGIAN: Mr. Chair, I move the
4 question.

5 MR. IZZI: Can I ask a question?

6 MR. SAHAGIAN: I'll withdraw that.

7 MR. IZZI: When you were discussing the
8 modification, Mr. Sahagian, you indicated that the
9 shell bed area would move over 50 feet, and I
10 assumed that it would move over 50 feet landward?

11 MR. SAHAGIAN: Correct.

12 MR. IZZI: All right. So to Don's point,
13 it's not just the 39 percent reduction in the
14 original footprint. It's 39 percent reduction
15 bringing it down to the approximately 2-acre area
16 moving it 50 feet landward from where it was
17 originally.

18 MR. GOMEZ: And that's not the motion.
19 It's just to reduce it by 39 percent. Not to move
20 it landward or, you know, position it.

21 CHAIRMAN COIA: I think he said it.

22 MR. SAHAGIAN: I said landward.

23 MR. GOMEZ: Did you? Sorry, Jerry.

24 MR. SAHAGIAN: Mr. Chair, I move the

1 question.

2 MS. REYNOLDS: One last question.

3 CHAIRMAN COIA: Yes.

4 MS. REYNOLDS: I'd like to ask
5 Mr. DeSisto. Would it be viable for us -- I am
6 supportive of the idea of finding a compromise
7 solution for this, but I am concerned about public
8 safety. If this is something that could actually
9 be put on paper and drawn so that we can actually
10 see where this would be and staff might weigh in on
11 it, and then we can hear it after that and so we
12 have more information to have in front of us of
13 what this actually looks like and how these changes
14 would be actually put in place and then have that
15 come back to the Council.

16 MR. IZZI: I assume that would be in the
17 form of a motion?

18 CHAIRMAN COIA: Well, I mean, there's a
19 motion and a second. We're in discussion.

20 MR. DeSISTO: There's actually a pending
21 motion now. So I think you have to vote on this
22 motion first, and it could be susceptible to a
23 further motion if approved. If it isn't approved,
24 then another motion could be in order.

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1 MR. IZZI: Correct.

2 CHAIRMAN COIA: A motion has been made and
3 seconded. Motion made by Mr. Sahagian, seconded by
4 Ms. McGovern. I will now poll the Council.

5 Mr. Izzi?

6 MR. IZZI: Aye.

7 CHAIRMAN COIA: Ms. Hall?

8 MS. ROBINSON HALL: No.

9 CHAIRMAN COIA: Mr. Gagnon?

10 MR. GAGNON: No.

11 CHAIRMAN COIA: Ms. Reynolds?

12 MS. REYNOLDS: No.

13 CHAIRMAN COIA: Mr. Sahagian?

14 MR. SAHAGIAN: Aye.

15 CHAIRMAN COIA: Ms. McGovern?

16 MS. MCGOVERN: Aye.

17 CHAIRMAN COIA: Mr. Gomez?

18 MR. GOMEZ: No.

19 CHAIRMAN COIA: I, too, vote aye.

20 MR. DeSISTO: That's a 4-to-4 vote, so the
21 motion fails. Is there another motion, because
22 another motion is in order.

23 CHAIRMAN COIA: Is there another motion?

24 MS. REYNOLDS: I'd like to make a motion

1 that we consider the revisions as proposed by the
2 earlier motion but actually have this reviewed by
3 staff and come back to Council with the staff
4 opinion about the reduction.

5 MR. GOMEZ: Second.

6 MR. DeSISTO: I'm sorry, can I get that --

7 CHAIRMAN COIA: I'm sorry.

8 MR. DeSISTO: Can I get the motion.

9 CHAIRMAN COIA: Can you read it back.

10 (WHEREUPON, THE MOTION WAS READ BACK)

11 CHAIRMAN COIA: Is there a second?

12 MS. ROBINSON HALL: I have a question.

13 CHAIRMAN COIA: I'm sorry, Don, you
14 seconded it?

15 MR. GOMEZ: I did.

16 CHAIRMAN COIA: Okay. Discussion?

17 Ms. Hall.

18 MS. ROBINSON HALL: So for clarification,
19 are you saying, then, that they would submit a
20 revision to the staff, an actual revised plan for
21 staff's review as part of ongoing negotiations; is
22 that what you're suggesting?

23 MS. REYNOLDS: Not the applicant, but I
24 think that it should -- if it would be possible for

1 Mr. Sahagian to put this on paper with what you
2 felt this might look like.

3 MS. ROBINSON HALL: Wait. So what's his
4 expertise of that? Does he have expertise? Do you
5 do this for a living? It seems like that should be
6 something done by somebody -- I mean, we have a lot
7 of regulations about who's qualified to submit
8 plans. Wouldn't that be something --

9 MR. SAHAGIAN: Mr. Willis, can the staff
10 prepare a 39 percent reduction in the footprint
11 that was submitted by the applicant?

12 MR. WILLIS: We can do the math. We can
13 site a 39 percent reduction in that footprint, but
14 the caveat is, is it exactly as you tried to
15 describe tonight. I wouldn't --

16 MR. SAHAGIAN: Moving it landward to
17 39 percent. Can the staff formulate 80,000 square
18 feet in the original footprint going landward?

19 CHAIRMAN COIA: Mr. DeSisto, please.

20 MR. DeSISTO: I have a procedural question
21 for the moving member. Patricia, are you asking
22 that the matter be referred to the staff for a
23 report on this -- on the prior motion?

24 MS. REYNOLDS: I think just this

1 discussion actually shows the problem. How would
2 the applicant know where to put this if we can't
3 even decide what it should look like on paper? So
4 I think somebody has to put this on paper so that
5 we can take a look at it and review it. And I
6 think that that's unreasonable to expect the
7 applicant to know how to build or construct this if
8 we don't even know.

9 So I don't know how to get to that point
10 at this, but I think if staff would be able to give
11 us something that conforms to what we are
12 considering so that we can see what it looks like,
13 and an opinion on that. That's what I'm looking
14 for. No?

15 MR. IZZI: No, no, no. I just --

16 CHAIRMAN COIA: Mr. Gagnon.

17 MR. GAGNON: I guess, in addition, if that
18 was to happen, we'd also need -- I guess we'd be
19 saying that they would have to use bottom gear,
20 which would mean we need some kind of assessment
21 about the marine environment and the impacts from
22 bottom gear on the marine environment, which I
23 think is getting to be a little bit more to ask of
24 staff than they normally would do.

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1 CHAIRMAN COIA: Hasn't staff already -- I
2 guess I'm asking this out loud, but hasn't staff
3 already given an opinion on the bottom gear?

4 MR. GAGNON: The proposal was floating
5 gear.

6 MS. ROBINSON HALL: No.

7 MR. GOETSCH: There was a survey done on
8 the bottom of this site, the 3-acre site, as part
9 of the review of the preliminary determination, and
10 that information was used when the application was
11 considered by the Marine Fisheries Council. So
12 there has been an assessment of the bottom. That
13 was not only done by CRMC staff but also by DEM.
14 And I believe they used their venturi device to
15 actually take bottom samples looking for the
16 presence or absence of shellfish, such as soft-shell
17 clams and quahogs. And it is also noted that there
18 was no eelgrass found in that area.

19 CHAIRMAN COIA: Okay. Mr. Willis, please.

20 MR. WILLIS: Just to follow up on both
21 comments. If the Council directed staff to take
22 this information back and try to address the
23 80,500 square feet, 50 feet off to the east, we
24 would look at those natural resource issues with

1 the data that's on the record in the file already.
2 And we have to take that information that's already
3 been part of this discussion at the subcommittee
4 level and now here again to address Mr. Sahagian's
5 footprint within the newly revised footprint within
6 the original footprint. I would take that
7 information that we already have to try to address
8 those issues.

9 MR. DeSISTO: So I'm sorry, but the motion
10 would be then, as stated, but it would be a
11 referral to the staff for a report -- with the
12 evidence that's already in the record for a
13 report on the proposal in the prior motion; is that
14 what -- basically, that's the motion?

15 MS. REYNOLDS: Yes, that's the motion.

16 CHAIRMAN COIA: I think, Mr. Gomez, you
17 seconded that?

18 MR. GOMEZ: Yeah, but -- okay. We need to
19 get into some little bit more discussion because we
20 haven't detailed what the area is. There was
21 Beutel's original recommendation, are we talking
22 inside of that? We had several discussions that
23 led us to a different configuration relative to the
24 layout, moving it in and out but keeping the

1 original square footage intact, and the desire of
2 the applicant on, you know, some deep water, some
3 shallower water, that type of thing.

4 So unless we say or ask the staff to
5 either recommend where it goes, or if we say, well,
6 it's going to be a rectangle or it's inside of
7 Beutel's original, which was modified from a
8 previous one, I believe. So we really don't know
9 what we're trying to fit this reduction into. I
10 don't know what that area looks like. I don't know
11 if it's a rectangle. We haven't voted on any of
12 that.

13 The subcommittee looked at it, they
14 changed the original layout to a more amenable
15 configuration, that is opposed to the original,
16 stretched out, you know, pointy areas, to try to
17 accommodate 20 feet along the shoreline and things
18 like that. So we don't have a configuration in
19 hand that we would apply this reduction to. We
20 don't know what that is because we haven't voted on
21 the fact finding and the decision on what the area
22 is. What we looked at is more of a denial based on
23 the safety, but we don't have an area to look at,
24 unless we go back to the original application,

1 which is a highly irregular shape.

2 So just something to consider. You know,
3 so if we do this motion, then we'd allow -- we need
4 to allow the staff to pick compatible dimensions on
5 the reduced area based on conditions of bottom and
6 whatever, but within the original proposed area.

7 But, you know, if it needs to be a rectangle
8 instead of this other trapezoidal thing, let staff
9 decide that. In addition to trying to just fit --
10 fit a smaller thing in a configuration because we
11 don't know what that configuration is unless we go
12 back to the original area requested or approved by
13 Dave.

14 CHAIRMAN COIA: Yes, Ms. Hall.

15 MS. ROBINSON HALL: So I have three
16 questions for -- for you, Mr. DeSisto.

17 One, is that, thinking forward, if this
18 matter was to be sent back and having the staff
19 somehow draw or design the elements of this
20 revision, the burden of proof in all of our
21 applications is on the applicant. So in a
22 decision-making role on a contested case, you know,
23 shifting that responsibility to the staff doesn't
24 seem in line with our application procedures.

1 And so I guess that's a question to you.
2 Is that -- does that trigger a concern relative to,
3 down the road, assuming some kind of an appeal, we
4 have before us a design that is not submitted by
5 the applicant, who's got the burden of proof to
6 prove that the design meets the standards. So I'm
7 wondering about that, number one.

8 But number two, I'm also wondering about
9 relative to our role, as you articulated, reviewing
10 the subcommittee report, the findings of fact and
11 the conclusions of law and the 147 letters of
12 objection and the numerous public hearing comments
13 that are part of the record that we reviewed,
14 reviewed and very clearly make findings based on
15 all of that, that are not based on different gear.

16 So I wonder if our role then changes in
17 terms of reviewing that subcommittee decision when
18 the findings of fact now are not in alignment with
19 the record. And although the staff would review it
20 in line with what's -- you know, the review that's
21 been done by staff, it's a different project. So
22 I'm wondering how that impacts our role relative to
23 these findings of fact and the conclusions of law
24 because we weren't at the hearing.

1 And then, third, I'm wondering if you can
2 advise regarding what the Superior Court has said
3 before regarding public notice and substantive
4 changes that are more than minor, that it usurps
5 the political -- the public participation role by
6 having modifications that are greater than minor.
7 So I'm wondering if you can advise the Council on
8 those three points.

9 MR. DeSISTO: Well, it's a three-part
10 question. And what I'm assuming is that the first
11 motion was made, and it failed on the 4-4 vote, and
12 Ms. Reynolds is just seeking to get some Council
13 input on the motion on a more formal basis, when
14 they've had a chance to take a look at it. So the
15 question is whether or not the Council has the
16 ability to do that in connection with a report
17 coming in from a subcommittee.

18 And assuming that -- and I don't doubt
19 that will be the case, but assuming what Mr. Willis
20 said was correct, that the Council -- that the
21 staff will take a look at what's on the record and
22 see how that fits in with the proposal to reduce
23 the proposal that it is and make a report to the
24 Council on this -- on this motion.

1 So the question is, is whether or not you
2 see a reduction of this nature as a new application
3 or if you see it as a reduction of an existing
4 application. But because of the issues that were
5 raised -- and I don't -- I'm not trying to put
6 words into Ms. Reynolds' mouth; I'm trying to
7 interpret what the motion is -- that staff input on
8 the proposal to reduce is necessary based on the
9 evidence in the record.

10 And I just -- I rely on the case of
11 Wolff v. Wynne. It's a Superior Court case from
12 2003, 2003 RI, Supra Lexis, 43, as to what the
13 Council can do in matters of this nature.

14 And, you know, based on your earlier
15 comments about the relative expertise of the
16 Council in matters of this nature, I'm assuming,
17 and, again, I'm -- I don't want to put words in
18 Ms. Reynolds' mouth, but she would like to rely on
19 the staff's expertise in this area as to whether or
20 not this type of a reduction is something that
21 should be considered by the Council, I think. And
22 I'd ask for a confirmation on that. But if that's
23 the case, then I think the motion is in order.

24 MR. GOMEZ: Is what?

1 MR. DeSISTO: The motion is in order. And
2 I'm sorry, I don't mean to turn my back to you all
3 but --

4 MR. GOMEZ: Oh, no, it's all right.

5 MS. ROBINSON HALL: I'm not suggesting
6 that it's not in order. I'm just getting -- I'm
7 asking for clarification, legal advice to the
8 Council to help understand how to, you know, vote
9 on the motion. I think it's absolutely in order.
10 But I'm trying to get clarification, and I'm not
11 sure -- maybe I don't understand what you're
12 saying. But I don't think there's any question
13 that there's opportunity for staff to review
14 modifications.

15 MR. DeSISTO: That's why -- by the way,
16 that's why I asked to have the motion read back.

17 MS. ROBINSON HALL: Right.

18 MR. DeSISTO: Because I wanted to make
19 sure that I had a proper understanding of the
20 motion.

21 MS. ROBINSON HALL: But my question still
22 is -- I'll just put aside the public notice part of
23 the three-part question for a moment because it
24 seems that we can have this discussion without

1 getting to that right now. I'm still not clear on
2 this notion of staff review. What is that they're
3 reviewing?

4 I don't know that it's appropriate or in
5 align with our regulations, and I'm asking for you
6 to advise on this relative to the applicant's
7 burden of proof that the staff draw something and
8 also draw it with new gear on behalf of the
9 applicant. How does that impact judicial review
10 later, and how does that impact our role relative
11 to simply affirming or denying or approving or not
12 approving a subcommittee report.

13 So I'll just stop at that first part of
14 the question. I still have the second part of the
15 question that I'll hold until I can maybe get some
16 clarification on that to inform my question.

17 MR. DeSISTO: May I ask -- Mr. Chair, may
18 I ask Ms. Reynolds if what she's asking for is to
19 refer the matter to staff for a report on the prior
20 motion?

21 MS. REYNOLDS: Yes, that is correct.

22 MR. DeSISTO: And that would be based on
23 what's in the record that has been developed by the
24 subcommittee?

1 MS. REYNOLDS: That is correct.

2 MR. DeSISTO: Okay. And that would be for
3 a view to have the matter referred back to Council
4 for a vote again on Mr. Sahagian's motion?

5 MS. REYNOLDS: Yes.

6 MR. DeSISTO: Okay.

7 MR. GOMEZ: I have a question.

8 MR. DeSISTO: Sorry, I keep turning my
9 back to you.

10 MR. GOMEZ: How does this impact the
11 original subcommittee decision, which we haven't
12 addressed? Is the intent maybe to modify it? I
13 mean, the recommendation was to say no. So we're,
14 obviously, changing the subcommittee's findings of
15 fact -- well, the findings of fact are the findings
16 of fact, but the decision that they ultimately came
17 to, to come up with basically a new concept. So
18 should we maybe vote on the subcommittee decision
19 and either reject it or accept it? And if we
20 reject it, then we can move on from there. I think
21 there's some -- we're adding some confusion.

22 We have a subcommittee report that goes
23 through an answer, which you want changed to a
24 reduction of an area that we've already heard

1 findings of fact and numbers of things. We have
2 come in with a recommendation. Should we accept
3 that now or reject it now or just table it? I
4 mean, I don't understand.

5 MR. DeSISTO: This is how I viewed the
6 original motion from Mr. Sahagian. Under
7 Section 46-23-20.4, "The Council may in its
8 discretion adopt" -- that wasn't the motion --
9 "modify" -- which I believe was the motion -- "or
10 reject the findings of fact and the conclusions of
11 law." I think the motion was to modify the report.
12 That motion failed on a 4-to-4 vote.

13 The next motion is to refer the proposed
14 modification of the subcommittee report to the
15 staff for a determination on some of the issues
16 that have been discussed here, but based on the
17 record that's -- the evidence that's in the record.

18 MR. GOMEZ: Yeah, okay.

19 MR. DeSISTO: And that's been confirmed by
20 Ms. Reynolds.

21 MR. GOMEZ: Yup.

22 MR. DeSISTO: I think that's where this
23 stands now. If this motion fails, then I'm going
24 to ask for another motion just to make sure that

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1 the record is complete.

2 MR. SAHAGIAN: Mr. Chair, I'd move the
3 motion.

4 CHAIRMAN COIA: All right.

5 MS. ROBINSON HALL: I have a question.

6 MR. SAHAGIAN: I move the motion.

7 MS. ROBINSON HALL: I still have a
8 question.

9 MS. McGOVERN: I'll second it.

10 CHAIRMAN COIA: All right, Ms. Hall, yes.

11 MS. ROBINSON HALL: Just to be clear, when
12 you say, send it -- refer it to the staff, we're
13 referring what exactly to the staff? What are they
14 going to look at? I just want a clarification.
15 Refer it to the staff. Refer what to the staff?
16 Just so a description by a member of the Council,
17 that gets referred to the staff, they have nothing
18 to look at?

19 MR. DeSISTO: That's my understanding,
20 yes.

21 MS. ROBINSON HALL: So no one draws a
22 plan? Staff refers -- they look at no plan, they
23 look at no information about the new gear? I just
24 want to be clear.

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1 MR. DeSISTO: I can't speak to what the
2 staff is going to do.

3 MS. ROBINSON HALL: But when you say,
4 refer it, there is no it.

5 MR. DeSISTO: Actually, you've got to ask
6 the movant. I'm not -- it's not my motion.

7 MS. ROBINSON HALL: No. I'm asking for
8 clarification, when you say, refer it, just so we
9 understand. It's just an idea.

10 MR. SAHAGIAN: Mr. Chair, I move the
11 question.

12 MS. ROBINSON HALL: Thank you.

13 CHAIRMAN COIA: You're welcome. Okay.
14 Motion has been made and seconded. I will now poll
15 the Council. Mr. Izzi?

16 MR. IZZI: Aye.

17 CHAIRMAN COIA: Ms. Hall?

18 MS. ROBINSON HALL: No.

19 CHAIRMAN COIA: Mr. Gagnon?

20 MR. GAGNON: No.

21 CHAIRMAN COIA: Ms. Reynolds?

22 MS. REYNOLDS: Aye.

23 CHAIRMAN COIA: Mr. Sahagian?

24 MR. SAHAGIAN: Aye.

1 CHAIRMAN COIA: Ms. McGovern?

2 MS. McGOVERN: Aye.

3 CHAIRMAN COIA: Mr. Gomez?

4 MR. GOMEZ: Aye.

5 CHAIRMAN COIA: I, too, vote aye as the
6 Chair. So that motion passes. That will be
7 referred, as indicated in our -- in the motion and
8 discussion.

9 (MOTION PASSED)

10 CHAIRMAN COIA: I think that's all that
11 comes before us on this matter, correct?

12 MR. DeSISTO: Yes.

13 CHAIRMAN COIA: All right. That
14 concludes --

15 MR. CAPIZZO: Mr. Chairman, just
16 before you conclude this proceeding, just for the
17 record, Christian Capizzo on behalf of the
18 intervenors Kevin Hunt, Alicia Cooney,
19 Steven Quigley, and David Latham. I just --
20 Mr. Chairman and Mr. DeSisto, I just want to note
21 the intervenors' objection to the proceedings, just
22 to preserve our right.

23 MR. DeSISTO: Understood. Thank you.

24 CHAIRMAN COIA: Okay. That brings us

1 to -- the next matter on our agenda is public
2 hearing on proposed rulemaking 650-RICR-30-05-01.

3 COURT REPORTER: Excuse me, can you just
4 wait until they clear out.

5 (PAUSE)

6 CHAIRMAN COIA: Back on the proposed
7 jointly promulgated regulation 650RICR-30-05-01.
8 Mr. Willis.

9 MR. WILLIS: Thank you, Mr. Chair. This
10 is a public meeting -- sorry, this is the public
11 hearing on proposed rulemaking for the CRMC,
12 who is jointly doing rulemaking with the
13 Department of Environmental Management, as well as
14 the Rhode Island Infrastructure Bank to adopt the
15 Ocean State Adaptation and Resilience Fund
16 regulations.

17 This is the public hearing where we accept
18 any comments on these proposed rules. There is no
19 action tonight by the Council. The only purpose of
20 this is to have a hearing on the proposed rules and
21 gather input from the public should they wish to
22 speak. We will take that input tonight, and at a
23 later date bring the matter to the full Council for
24 an actual vote of the rules to become permanent.

1 But this is just a public hearing to solicit input
2 from the public.

3 CHAIRMAN COIA: Is there anyone present
4 this evening from the public that wishes to speak
5 on this?

6 (NO RESPONSE)

7 CHAIRMAN COIA: I'll close the public
8 hearing on it. And I would entertain a motion to
9 adjourn.

10 MR. SAHAGIAN: Motion to adjourn.

11 CHAIRMAN COIA: Motion made. And seconded?

12 MS. McGOVERN: Second.

13 CHAIRMAN COIA: All in favor say, "aye."

14 (WHEREUPON, A VOICE VOTE WAS TAKEN)

15 CHAIRMAN COIA: Opposed?

16 (NO RESPONSE)

17 CHAIRMAN COIA: Motion carries.

18 (MOTION PASSED)

19 CHAIRMAN COIA: We stand adjourned.

20 (MEETING ADJOURNED AT 7:14 P.M.)

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C E R T I F I C A T E

I, Cindy M. Tangney, a Commissioner in and for the State of Rhode Island, hereby certify that the foregoing pages are a true and accurate record of my stenographic notes that were reduced to print through computer-aided transcription.

In witness whereof, I hereunto set my hand this 26th day of January, 2023.

CINDY M. TANGNEY, RMR

My Commission (RI) Expires on 06/30/2025