

III. Jurisdiction and Venue

3. This Court has jurisdiction over this matter pursuant to R.I. General Laws 42-35-15(b).
4. Providence County Superior Court is the proper venue for this action pursuant to R.I. General Laws 42-35-15(b).

IV. Facts

5. On February 13, 2017, Mr. Troiano applied to CRMC for an aquaculture preliminary determination (“PD”) regarding a proposed ½ acre aquaculture lease; specifically, an oyster culturing site (hereafter referred to as the “lease site”). The lease site is located approximately 600 feet offshore from the Nayatt Point area in the Town of Barrington in Upper Narragansett Bay. The lease site is also in an area of water known as Conditional Area A, an area covering approximately 5,600 acres of Narragansett Bay, demarcated by a line north from the southeast corner of the Rocky Point pier in Warwick, to the southwest (landward) corner of the Colt State Park pier in Bristol, south of a line from the flag pole at #178 Adams Point Road on Adams Point in Barrington to the Rhode Island Department of Environmental Management (“DEM”) range marker at Jacobs Point in Warren, and south of a line from the Rhode Island DEM range marker on a pole located on Conimicut Point, to the center of the Old Tower at Nayatt Point.¹
6. Pursuant to CRMC regulations a PD meeting was held on March 15, 2017, at Barrington Town Hall.

¹ Mr. Troiano initially proposed a 1-acre site also in the Town of Barrington. During that evaluation process, a density survey and conversations with shellfishermen revealed that the initial area had significant quahog densities and was used by commercial shellfishermen. These same shellfishermen referred Mr. Troiano to the current lease area stating that the area had never been productive and was not used commercially.

7. On April 26, 2017, Mr. Troiano received a report of Preliminary Determination from CRMC's aquaculture coordinator David Beutel. The report detailed that the Town of Barrington supported the lease and that there were no objections from DEM. The report noted that CRMC expected opposition from the commercial shellfish industry on the grounds that shellfish "could grow there" and that shellfishermen were fearful of the "precedent of more shellfish aquaculture in Conditional Area A."¹ Mr. Beutel detailed in the PD report that CRMC and DEM staff conducted a site assessment survey of the proposed area.² The result of this survey was, "A low density of quahogs was observed on the hard sand site: 0.27 quahogs per square meter. The low density is not sufficient to support a commercial wild harvest of shellfish on the proposed site."
8. On May 2, 2017, Mr. Troiano filed an application for assent to conduct aquaculture activities, specifically oyster culturing, on the lease site. The application specifically addressed the facts that: the site would only be ½ acre³; was located in a very shallow area not used by commercial shellfishermen, which was in fact, recommended by shellfishermen because of its historic lack of productivity; and that independent data from current and historical surveys conducted by DEM and CRMC confirmed an extremely low shellfish density, not suitable for commercial shellfishing.
9. On November 9, 2017, Mr. Troiano submitted supplemental material to CRMC to be included in his application package. The material included:

¹ There is one current aquaculture site approved in Conditional Area A, which is approximately 3 acres in size.

² A site assessment is conducted by CRMC on all aquaculture preliminary determination requests to determine quahog density and commercial viability. The test is conducted by CRMC personnel using a bullrake or tongs. A density of over 5.00 quahogs per square meter is considered commercially viable and not suitable for aquaculture.

³ The lease site was reduced to ½ acre and upon information and belief would be the smallest aquaculture lease in the state.

- a. DEM quahog density surveys conducted in the lease area for the last 21 years showing a mean density of .47 quahogs per square meter;
- b. aerial and satellite photographs from the past 25 years showing the location of the quahog fleet in relation to the lease site;
- c. photographs taken by Mr. Troiano of the quahog fleet in relation to the lease site;
and
- d. a map of the upper bay, including the lease site, compiled during a study conducted by University of Rhode Island Professor Sheldon Pratt, et al., showing softshell clam density survey sites. The sampling in and around the lease area produced zero softshell calms.

10. On December 21, 2017, Mr. Beutel submitted a staff report regarding the lease site. The report noted that Mr. Troiano met all the requirements of the Rhode Island Coastal Resources Management Plan ("CRMP") for category B applications as detailed in Sections 1.3.1(A); aquaculture 1.3.1(K); and submerged aquatic vegetation 1.3.1(R) and recommended approval of the application.

11. On February 13, 2018, Mr. Troiano appeared before the full CRMC for a hearing on his application. Present at the hearing were eight council members. Upon information and belief, none of these eight members were from the Town of Barrington or served as a representative from the Town of Barrington. CRMC procedure dictates that, "When contested cases are heard, the Council must include a representative from the community involved when no CRMC member is from that town."

12. The hearing began with a summary of the application by the only expert witness to provide testimony, CRMC's own staff aquaculture expert, Mr. Beutel. Mr. Beutel again recommended approval of the application.
13. Mr. Troiano was then called to testify. Prior to doing so, he specifically asked the CRMC chair for the opportunity to cross examine potential objectors present at the meeting. The chair responded to Mr. Troiano, "If you had questions, you can present them to a limited extent."
14. During the hearing, a total of six objectors initially gave sworn testimony. Following the six objectors the chair asked if there were any additional objectors present. The official transcript reflects that there was no response. CRMC legal counsel, Mr. Longo, subsequently prompted four other members of the audience to "...stand up and state your name and say you agree for the record." The four individuals did so, stating only that they "agree" but at no point expounding upon what they agreed with.
15. R.I.G.L. Section 42-35-10 specifically sets forth that during a contested hearing, "A party may conduct cross examinations required for a full and true disclosure of the facts." Testimony given by the first six objectors was contradicted by the expert testimony of Mr. Beutel, the testimony of Mr. Troiano, and independent facts and evidence in the official application file. In the case of the last four objectors, no specificity was articulated as to the substantive objection they were asserting. Mr. Troiano was not provided, at any point, the opportunity for cross-examination of the objectors to bring these issues to light.
16. Following the testimony of objectors and supporters, a motion was made by Mr. Hudner, CRMC Council member, to approve the lease with the stipulation that the lease

site could not be expanded upon in the future. The motion was seconded by Mr. Shahagian. The motion resulted in a tie vote, with four members voting in favor and four opposed. Pursuant to R.I.G.L. Section 46-23-4, a majority vote of the members of the CRMC present at a meeting shall be required for action.

17. Immediately after the vote, Mr. Longo stated that the “application failed” and the meeting was then adjourned.
18. The CRMC online permit database reflects the latest entry for Mr. Troiano’s application on February 13, 2018, as “council decision-denied.”
19. At no point during the hearing or since were any findings of fact and conclusions of law rendered by CRMC with regard to Mr. Troiano’s application as required under R.I.G.L. Section 42-35-12.
20. Although the CRMC has not provided Mr. Troiano with mailing notice of a final decision as to his application, the aforesaid tie vote, the effect of which was to deny the approval; Mr. Longo’s articulation that the “application failed”; and the last entry in CRMC’s database documenting the application was denied by council decision, constitute a final order of said agency, denying Mr. Troiano’s application and is subject to judicial review pursuant to RIGL 42-35-15(a) and (b).

V. Claims for Relief

21. Plaintiff incorporates the allegations contained in ¶¶1 through 20 above in the count set forth below.
22. The actions and decision of the CRMC including, but not limited to, those described herein were:
 - (1) In violation of constitutional or statutory provisions;

- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error or law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

WHEREFORE, Plaintiff prays that this Honorable Court enter judgment:

- a. Reversing the ruling of Coastal Resources Management Council's denial of Mr. Troiano's application;
- b. Remanding this matter back to Coastal Resources Management Council with direction to issue an assent for the proposed lease site in accordance with CRMC's aquaculture staff recommendations and stipulations as set forth by the Council's motion to approve the application;
- c. Granting such other and further relief as this Honorable Court deems just and proper.

PLAINTIFF,
Pro Se,

/s/ Edward Troiano

Edward Troiano
4 Connecticut Avenue
Barrington, RI 02806
(401) 641-8510
Etroiano1@cox.net

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