



The Town of Fenwick Island

800 Coastal Highway, Fenwick Island, DE 19944-4409

302-539-3011 ~ 302-539-1305 fax

www.fenwickisland.delaware.gov

REGULAR MEETING OF THE TOWN COUNCIL

December 30, 2024, at 8:30 a.m.

Town Hall

Minutes

Members Present: Bill Rymer, Natalie Magdeburger, Janice Bortner (Zoom), Jacque Napolitano (Zoom), Kurt Zanelotti (Zoom) Susan Brennan (Zoom)

Others Present: Erin Ellinger, Kathy Grab, Mark Tingle

Flag Salute and Call to Order

1. For Discussion and Possible Action:

- a. Joining as Appellant/Plaintiff in legal actions to be filed in Delaware challenging DNREC and Secretary Shawn Garvin's approval of cable landing at 3 R's Beach from Maryland's Offshore Wind Project.
- b. Joining as Appellant/Plaintiff in legal actions to be filed in Delaware challenging DNREC and Secretary Shawn Garvin's approval of permits for coastal construction in subaqueous lands and wetlands to run electrical cables through Indian River Bay from Maryland's Offshore Wind Project.

Mayor Magdeburger said we have been asked to join in the appeals arising from DNREC and Secretary Garvin's approval of three permits allowing coastal construction.

The permits issued include:

- One (1) Subaqueous Lands Permit/Lease from the Division of Water ("DW")
- One (1) Wetlands Permit from the DW
- One (1) Beach Preservation Coastal Construction Permit from the Division of Watershed Stewardship ("DWS")

One appeal has to do with the granting of the permit to land electrical cables from Maryland's Offshore Wind Project onto 3 R's Beach. The other two appeals have to do with granting coastal construction on wetlands and subaqueous lands from 3 R's Beach cable connection under and into Indian River Bay that would be necessary to connect to a transmission station. The plan that's been approved is what US Winds proposed. Export cables will come ashore from the lease area to land at 3 R's Beach parking lot, south of the Indian River Inlet Bridge, via horizontal drilling, which is basically a water blasting technique. Water blasting transition vaults are proposed to be buried under the existing parking lot. From the transition vaults, the export cables would enter the Indian River Bay. US Wind will conduct jet-plowing and dredging through 10 miles of the bottom

habitat of the Indian River Bay to install high voltage transmission cables from 3 R's Beach to a substation in Millsboro, Delaware. DNREC acknowledges that this activity has the potential for disrupting fisheries in the impacted waterbodies.

The legal proposal is that Jane Brady, through her law firm, as well as another attorney, Stephanie Ballard, would represent Fenwick Island, DE, pro bono in filing these appeals. The general legal arguments would include, among other things, challenging the actions of DNREC and Secretary Garvin in:

1. Applications that were not complete at the time of the filing as receiving zoning approval for the substation was a necessary prerequisite, which they did not have and now do not have.
2. An additional 500 plus documents were uploaded after the time for public comment had expired, therefore depriving the public from commenting on the documents, many of which had to do with, among other things, mitigation plans for the expected and unknown harm to the environment and industries dependent on our waterways such as the fishing industry.

They have about 49 million dollars tied up in studying the effects of what this cable will do. It includes fish, studies, shellfish, population, monitoring recreational access facilities, commercial shellfish activities. They want to compensate some of the commercial fishermen through the time that there's exposure to damage.

The third piece is a challenge regarding the approval. The National Wildlife and Fisheries did not approve the disturbance around and in the Indian River Bay, as the waterway and surrounding wetlands are part of one of the top 20 most important estuaries in the country, providing spawning grounds for fish and shellfish. So, again, scientifically challenging that this is not a good thing for our environment, and we should be protecting our environment at all costs.

The fourth area is that generally there's no substantial evidence to support the Secretary's decision with regards to disturbing the environment.

One person who is involved is Jane Brady who is representing the Caesar Rodney Institute, and the other petitioners. Judge Brady served as Attorney General from 1995 to 2005 in the State of Delaware. She was the first woman to serve as Attorney General of the State of Delaware. She graduated from Christiana High School and the University of Delaware, and then Villanova University School of Law. From 1977 until 1990 is when she served as the Deputy Attorney General in the Department of Justice, and she was also a civil prosecutor in Sussex County. She was appointed to the Superior Court of Delaware in 2005, where she served with distinction until 2017, and she's currently a partner in the law firm of Halloran, Farkas & Kittila.

Judge Brady would be working on behalf of Fenwick at no charge. We would be a co-applicant with others she's representing, including the Caesar Rodney Institute.



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Councilmember Bill Rymer asked for clarification between this agreement and the suit we joined with Ocean City against the Federal Government. Mayor Magdeburger said this is not seeking monetary damages, we are invoking our statutory right to appeal. BOEM is going after the federal permitting process whereas this is going after the Delaware permitting process.

Councilmember Kurt Zanelotti asked if the 49 million is part of the US Winds budget. Mayor Magdeburger said this is the money that was provided to the state by US wind.

Mayor Magdeburger added that today is the last day the appeal can be filed. She said this is primarily an administrative action and will mostly be handled by the lawyers.

A MOTION to accept and join as an appellant plaintiff in the legal actions to be filed in the State of Delaware in challenging DNREC and Senator Sean Garvin's approval of the cable landing at 3 R's Beach, as well as the approval of the permits for the coastal construction in the subaqueous lands and wetlands to run electrical cables through Indian River Bay from the Maryland's Offshore Wind Project.

Moved by: Natalie Magdeburger

Seconded by: Kurt Zanelotti

MOTION passed unanimously.

Resident Mark Tingle said this is something we should do but we should make a monetary contribution to the Cesar Rodney Institute to help fund the operation. He said that at a minimum we should have a direct link on the Town's website, encouraging residents to make contributions.

2. Old Business

None

3. New Business

None

4. Public Participation

Mark Tingle said he attended the last ACT meeting and wanted to personally thank Mayor Magdeburger for standing up for the Town's stance on the wind turbines.

5. Adjournment

A MOTION to adjourn the meeting at 8:54 AM.

Moved by: Bill Rymer
Seconded by: Jacque Napolitano

MOTION passed unanimously.