

Edward Troiano v. Rhode Island Coastal Resources Management Council, No. 2018-2792 (April 19, 2022)

<https://www.courts.ri.gov/Courts/SuperiorCourt/SuperiorDecisions/18-2792.pdf>

Holding:

Rhode Island Superior Court concluded the Plaintiff was prejudiced by CRMC’s failure to provide him adequate opportunity for cross examination during the public hearings as well as CRMC’s failure to review the Plaintiff’s entire application before rendering its decision.

Key Takeaways:

1. CRMC’s failure to submit the summary relied upon by the Council in its decision precluded the Court from properly evaluating CRMC’s decision. Therefore, CRMC was ordered to review the application *de novo*.
2. When an administrative record is incomplete or the materials considered by an administrative agency are not fully known to the Court, the remedy is generally to remand the matter to the agency.
3. *“Allowing the Plaintiff the opportunity to offer rebuttal evidence is not a substitute for the right to question the witnesses who testified adverse to his application.”*

Facts:

On May 2, 2017 the Plaintiff applied to CRMC to create and maintain an oyster farm in the Nyatt Point area of Narragansett Bay in Barrington, Rhode Island.

The Plaintiff received support for his application from the Town of Barrington at a preliminary determination meeting.

On December 21, 2017 the Aquaculture Coordinator for CRMC issued a report concluding the Plaintiff met all regulatory requirements and recommended approval of the application.

On February 13, 2018 the Plaintiff’s application had a public hearing before the CRMC. The Plaintiff presented at the meeting explaining his application to CRMC. Six objectors were present as well, stating during the public hearing that they opposed the oyster farm application *“because they believed it would interfere with commercial fishing activities and recreational use of the bay.”*

The Council voted 4-4 on the Plaintiff’s application which resulted in a denial.

Plaintiff appealed CRMC’s decision pursuant to Section 42-35-15 of R.I. Gen. Laws, contending CRMC’s decision was made upon unlawful procedure because *“he was not afforded the opportunity to cross-examine objectors at the hearing and the CRMC improperly failed to consider a complete record of his application.”*

Analysis:

1. Right to Cross-Examine

Plaintiff argued he was denied due process because he was not allowed the opportunity to cross-examine the witnesses who testified against his application.

The Court determined that the Council did not afford the Plaintiff the opportunity to challenge the testimony of those objecting to the Plaintiff's application. The record showed the Council members who voted against the application did so "*primarily on the testimony of the objectors and issues that were raised during the hearing*", and that the Plaintiff did not have the opportunity to respond to each objector as they testified, and was only informed he could "*respond to what the objectors had to say*" after all the objectors had testified.

CRMC argued the Plaintiff effectively waived his right to cross examine the objectors by failing to call the objectors back up to be cross examined. The Court found no evidence that the Plaintiff waived his opportunity to cross examine, noting the Plaintiff may not have felt confident making such a demand of the council.

2. Failure to Consider Complete Record

The Plaintiff argued the Council did not consider the complete record, as "*fifty-four pages of shellfish surveys, maps, charts, DEM reports, and photos were not provided to the Council prior to he hearing.*"

CRMC argued the Council did not need to possess the additional materials at the meeting because "*CRMC staff appropriately and adequately summarized the materials provided to voting members of the CRMC.*"

The Court notes that the summary CRMC provided to the Council was not submitted to Court, and therefore the Court was not able to determine the Council made a decision based on legally competent evidence: "*In these instances, wherein the administrative record is incomplete or the materials considered by an administrative agency are not fully known to the Court, the remedy is generally to remand the matter to the agency.*"

Therefore, the Court concluded "*the Plaintiff was prejudiced by the Council's failure to provide him an adequate opportunity for cross-examination during the public hearing as well as its failure to review his entire application prior to rendering its decision.*"

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