

**Minutes of the Rivers Council Meeting held
14 December 2005, 4:00 PM**
Conference Room B
William E. Powers State Administration Building
One Capitol Hill, Providence, RI

ATTENDANCE:

A. Members Present

Kevin Cute
Patrick Hanner
Meg Kerr (Chair)
Guy Lefebvre
Kevin Nelson
Sharon Pavignano
Will Riverso
Jane Sherman
Elizabeth Stone (DEM for the Director and Scott Millar)
Mike Walker

B. Members Absent

Dale Grogan
Elizabeth Gowell
Stephen Kearns

C. Watershed Councils in Attendance

Ann Morrill, Kickemuit River Council
Edward Callender, Salt Pond Coalition
Christopher Freshette, FOTM
Greg Gerritt, FOTM
Arthur Plitt, FOTM, BRWC
Bob Nero, PRA and Watershed Council

D. Guests in Attendance

Juan Mariscal, RI Water Resources Board
Evan Matthews, Quonset Development Board
Scott Wolf, Grow Smart RI
Russ Chateauneuf, RIDEM, OWR
Bob Ballou, RIDEM

CALL TO ORDER:

- 1. The Chair called the meeting to order at 4:05 PM**
- 2. Conference Call with Sandra Whitehouse on SOP and the Rivers Council.**

Sandra briefed the Council on the 12-09-05 memo from Representative Naughton to the Council (posted on our web site at http://www.ririvers.org/PDF%20Files/Sandra_MEMO.pdf). How SOP will be fully implemented is still uncertain as many of the boards and commissions have not

been reconstituted. 35 Boards and Commissions that were redefined during the 2005 Legislative session and then subsequently vetoed by the Governor are still subject to their original legislation. The Rivers Council's board was redefined in 2004, removing legislators from the Council, but leaving Lt. Governor appointments and state agency directors. It is likely that the legislature will reassign the Lt. Governor seats to the Governor or to the General Manager of the WRB (should the Rivers Council become part of the WRB) and it is still unclear if state agency directors can be members of boards and commissions. The bills will need to be resubmitted and the Rivers Council should deliberate and provide input to the Legislature on the preferred makeup of the Council.

The Rivers Council also needs to consider whether we would like to be "within" the Water Resources Board. If we are within the Board, the General Manager will likely have appointing authority, and the Rivers Council will likely lose its seat on the Bays, Rivers and Watersheds Coordination Team. The Council's present "associated function" is unique language for the seventy two boards and commissions that were the subject of SOP legislation in 2005.

Q&A

Mr. Lefebvre: What is half of the seats on the Rivers Council were assigned qualifications leaving half at-large.

Ms. Whitehouse: The statutory language said that the Governor "should consider" the qualifications. It did not require that the qualifications be followed. The Governor vetoed the bill.

Mr. Lefebvre: Another possibility would be to have 5 Department Heads (or their designees) as agreed by the Governor and General Assembly, 5 Legislatively prescribed qualified appointees made by the Governor and 5 Public or At-Large appointees made by the Governor. Most parties agree that fifteen members is about the right number. This approach would provide the RI Rivers Council continued coordination with relevant departments and agencies, and this approach would also "split the difference" with legislatively prescribed positions (favored by the General Assembly) and at-large positions (favored by the Governor.)

For the department and agency positions, I recommend: RI Department of Environment Management, RI Department of Health, Coastal Resources Management Council, RI Water Resources Board and the RI Economic Development Corporation.

For the five legislatively prescribed members, I recommend representatives from the following domains: Municipal government (RI League of Cities & Towns), Conservation (Environment Council of RI), Business (Chamber of Commerce), Environmental law (RI Bar Association), Environmental science (RI Chapter of the National Association of Environmental Professionals).

Ms. Sherman: What other boards and commissions are comparable to the Rivers Council?

Ms. Whitehouse: Although I don't have the lists in front of me, the Historic Preservation Commission and the Farm Forest and Open Space Commission are mid-sized boards with comparable authority.

Ms. Sherman: How are these funded? Are they within state agencies?

Ms. Whitehouse: The Rivers Council is the largest entity that is within a state agency.

Mr. Lefebvre: We need to consider the differences between an associated function and being within the WRB. Why can't we define the associated function and set a precedent for others to follow. We could develop an MOU between the Rivers Council and the WRB.

Ms. Whitehouse: H5816 that was introduced last session kept the associated function and defined it to mean receiving administrative support and working closely with. The bill also

clarified that the Rivers Council is within the Executive Branch. It is critically important to define whether the Rivers Council is within the Executive Branch or within a state agency.

ACTION ITEMS:

3. **Approval of minutes November 9, 2005.** Ms. Sherman moved approval, seconded by Mr. Cute, all approved.
4. **Review and approval of Friends of the Moshassuck application for recognition.** Ms. Kerr briefed the Council on the application. Mr. Millar and Ms. Grogan (review committee) were satisfied with the follow up actions taken by FOTM and recommend approval. Ms. Stone confirmed Mr. Millar's recommendation. Mr. Riverso moved that the Council approve the application and take the recognition to Public Hearing. Mr. Cute seconded and all approved.
5. **Approval of meeting schedule for 2006.** Ms. Kerr distributed the Council's meeting schedule for 2006. Ms. Sherman moved approval, seconded by Ms. Stone, all approved.
6. **Approval of Rivers Council workplan for 2006.** Ms. Kerr distributed the workplan. Mr. Lefebvre asked if participation in the TF Green EIS had been added to the workplan. Ms. Kerr said that it had been added. Ms. Stone asked that the Rivers Council coordinate with DEM's Carol Murphy and Russ Chateaufneuf on our buffer protection work. Mr. Lefebvre moved approval of the workplan, Mr. Cute seconded and all approved. The final workplan is posted on the Rivers Council web site: www.ririvers.org.
7. **Review of PRA-WC reports for 2004 grant and request for 2005 grant.** Mr. Nero reported on the PRA-WC 2004 grant. To date \$2,000 of the \$6,000 grant has been spent. Mr. Walker asked how the expenditures relate to the approved workplan. Mr. Nero responded that the PRA has completed developing a brochure. The newsletter will be published in January and the membership drive will start early in 2006. Ms. Kerr asked for copies of the report to be distributed to the Council. The review was tabled until the end of the meeting.

PRESENTATION AND DISCUSSION

8. **Scott Wolf, Executive Director Grow Smart Rhode Island briefing on the Housing and Conservation Trust Fund Study Commission.**

Grow Smart Rhode Island has been working for several years to establish a closer dialogue and coordination between affordable housing advocates and land conservation advocates. They believe that expanding affordable housing opportunities and accelerating the preservation of undeveloped land are two key land use priorities for Rhode Island's future well being. They also believe that these need to be closely coordinated with one another. We don't want to see affordable housing in forestland or greenfields, but we also don't want to see unnecessary barriers to affordable housing erected in areas where dense development can be accommodated.

The Housing and Conservation Trust Fund Study Commission is chaired and staffed by GSRI and has two charges: 1) Look at the feasibility of activating the Trust Fund and 2) Look at how Rhode Island can use the community housing land trust model to its advantage.

The Commission consists of representatives of the housing, environmental and development communities. DEM is an active participant, though not an official voting member. The Commission has been meeting for more than a year.

Research: The Commission has looked at other efforts around the country to provide dedicated funding for housing and conservation activities. They have spoken with Gus Seelig, the

Executive Director of the Vermont Housing and Conservation Trust Fund, the only other state housing and conservation trust fund in existence. They have looked at different potential funding sources, different administrative structures, and different potential roles for the trust fund and we are still fine-tuning the final recommendations on a number of these topics. A report is due to be submitted to the Governor and the Legislative Leadership by February 1st of 2006.

Although the report is not complete, the following indicate the Commission's direction:

- We will recommend that the Housing and Conservation Trust Fund be activated and funded.
- The fund should have a board that seeks to coordinate as much as possible affordable housing and land conservation activity.
- The fund should not duplicate or complicate existing affordable housing and land conservation efforts run through RI Housing and DEM respectively.
- The fund be supported by a combination of bond funding for start up costs and a dedicated funding source to sustain the fund for the long term.
- The fund should fill gaps in the existing affordable housing and land conservation activities of state and local government. On the housing side it perhaps could include shoring up efforts to preserve existing affordable housing units and providing more funding for rental and home ownership opportunities for people with 60% of family median income and below. On the conservation side, we see the fund supporting both large tract land conservation and expanded park and recreational opportunities with the latter potentially being a significant focus.
- We are likely to recommend some expansion of the board's membership and quorum requirements - nine Board members are named in the earlier legislation. We think that should be increased by at least two. We also believe that several state agencies named as non- voting members in the original legislation should have voting status and that would include DEM, RI Housing, among others.

The major unresolved issues revolve around the funding source for the fund. The Commission has narrowed the choice to two sources – increasing the real estate transfer tax and a mortgage recording fee. Both are controversial.

Mr. Wolf concluded by saying that promoting more affordable housing is potentially a winning land conservation strategy. It is more important than ever that housing and land conservation be coordinated with increasing development pressures in the state. This plan is being shaped in the context of several other major planning efforts including the update of the state land use plan and the update of the state's first ever strategic state housing plan.

Q&A:

Mr. Lefebvre: The Community Comprehensive plans should make zoning consistent with plan recommendations. Is this commission looking at this issue?

Mr. Nelson: State law requires towns to make their zoning consistent with Comp plans. The problem is that there is no enforcement.

Mr. Callender: Some town comp plans are 13-14 years old.

Mr. Nelson: State law requires that the plans be updated every 5 years.

Mr. Wolf: 28 Cities and Towns have developed Housing Plans.

Mr. Callender: The concern in South County is that affordable housing is being developed as a small percentage of large developments. The developers are then using the expedited permitting for affordable housing as a way to get the development approved.

Mr. Wolf: This is being considered within the State Affordable Housing Plan.

Ms. Sherman: In urban areas, it is critically important to maintain parks for urban recreational activities. If the fund increases allowable density, it is important to include amenities so people will want to stay in the more densely developed areas. We need parks in our urban areas. Also, increased density has an impact on river quality. We need to keep an eye on rivers as recreational resources as well as natural habitats.

Ms. Kerr: Are urban interests represented on the Study Commission?

Mr. Wolf: I can provide you with a list of members (attached to these minutes)

Mr. Gerritt: As you make recommendations for urban development, keep in mind green buildings. Living in the space needs to be affordable!

Mr. Nelson: The state Guide Plan has a number of elements on recreation, housing, etc. It is useful to keep these policies in mind when developing the plan.

Mr. Wolf: People are encouraged to participate!

9. DEM Presentation on cesspool phase out bill (Elizabeth Stone)

Cesspools are a clear risk to human health and although DEM has introduced phase out legislation since 2002, it has not been successful. The strategy for 2006 is to develop a plan that begins to phase out high-risk cesspools and is acceptable to the legislature. RIDEM estimates that there are as many as 50,000 cesspools still in service in RI. Approximately 800 – 1,000 are already replaced annually. Cesspools appear to be concentrated in coastal communities and several communities have already incorporated phase out provisions in their wastewater management ordinances. The approach for 2006, which is still being reviewed by the Governor's Office, will likely target cesspools:

- Within 200 feet of the inland edge of all shoreline features bordering tidal water areas (in CRMC's jurisdiction)
- Within 200 feet of all inland water bodies
- Within 200 feet of all public wells
- Within 200 feet of all surface water drinking supplies.

Within all high risk areas, cesspool inspections will be required within a 4 year time period. All cesspools that have failed will need to be abandoned within one year. All cesspools within sewer areas will need to be abandoned and hooked up to the sewer within 2 years. All other cesspools will need to be phased out by ~2012. Cesspools in municipalities with comparable on-site wastewater management programs that incorporate a cesspool phase-out component will be exempted. Waivers will be considered for financial hardship or for areas where sewerage is imminent. For all properties that are subject to sale (throughout the state), sellers will be required to provide prospective buyers with a 10-day opportunity to have an inspection conducted, at the buyer's expense. If the optional inspection is conducted, the report is forwarded to DEM. If the cesspool has failed, it needs to be phased out within a year.

The challenges to passing cesspool phase out legislation include costs (inspections cost about \$300, replacement costs from \$8,000 to \$20,000 or more for advanced systems, sewer tie-ins cost \$1,000 - \$2,000). The issue is not appealing and there is no sense of urgency. DEM will work with partners to build constituency support by looking at the impacts on fishable/swimmable goals. They will also explore further financial support mechanisms.

Q&A:

Mr. Nelson: This is such an obvious problem. You have the full support of the Rivers Council.

Ms. Sherman: The strategy should target within 200 feet of all water, not just public beaches.

Mr. Lefebvre: Has the bill passed out of committee?

Ms. Stone: Only in the first year.

Mr. Nero: I have heard of states that do not permit any leachate. Have you?

Mr. Chateauneuf: I have head of regulations that do not permit any leachate in highly protected areas. Not entire states.

Mr. Chateauneuf: It is good to keep in mind that we would like to pass something this session. Making the bill inclusive and restrictive and then not getting it passed does nothing to address the problems posed by cesspools. People are very concerned with the financial impacts of cesspool phase out. There are estimates that it will cost \$300 million to deal with all the state's systems.

Ms. Sherman: But if you look at small streams and ponds, cesspools have a larger impact. There is less water to dilute the waste.

Mr. Ballou: Previous bills were statewide within 200 feet of all waterways. The response from the legislature was NO WAY! It is too expensive and too big.

Ms. Sherman: Maybe the bill should start with low flow areas.

Mr. Cute: Do you have data on impacts?

Ms. Sherman: It is logical. If there is less water, there is less dilution.

Mr. Chateauneuf: If a system is found to be failing – and DEM finds out about that particular system – we have the necessary regulatory tools to address it right now.

Mr. Nero: What benefits do newer systems have?

Mr. Chateauneuf: Conventional systems will remove pathogens and reduce phosphorus. They do not reduce nitrogen.

10. ACTION: PRA application

The Council returned to the tabled item. Ms. Sherman moved approval of the PRA 2005 grant application on a reimbursable basis. Mr. Cute seconded and all approved.

Mr. Walker voiced concerns that the 04 grant has not been completed. How do we know that the 05 grant will be accomplished. If we do not see results, we should revisit the grant.

11. Other Business

Mr. Lefebvre reported that he has an agreement for the Rivers Council to be part of the TF Green review process. As requested by the Council, Mr. Lefebvre has changed the membership so Guy is the lead and Mr. Nelson is the alternate.

Mr. Lefebvre requested time at the next meeting to discuss the Rivers Council legislation. Ms. Sherman requested information on similar boards and commissions. (initial research is attached to these minutes)

ADJOURNMENT

The Chair adjourned the meeting at 6:05 PM.

Next meeting January 11, 2006 at 9:00 AM

Rhode Island Housing & Conservation Trust Study Commission

Agency	Designated Representative
Audubon Society of Rhode Island	Dorothy Mathurin*
Church Community Housing Corporation	Stephen Ostiguy
Grow Smart Rhode Island	Scott Wolf
Housing Network of Rhode Island	Joseph Garlick
RI Association of Realtors	Monica Staaf
RI Association of Executive Directors for Housing	Michael McLoughlin
RI Builders Association	Tom McNulty
RI Chapter of American Planning Association	Katia Balassiano
RI Land Trust Council	Rupert Friday
RI Housing and Mortgage Finance Corporation	Erin Reedy
RI Housing Resources Commission	Ray Neirinckx
RI League of Cities and Towns	Daniel Beardsley
The Nature Conservancy	Kathleen Wainwright

*Due to lack of staff time, the Audubon Society was initially unable to participate on the Commission. We have kept them informed about all Commission meetings, with Ms. Mathurin serving as the point of contact.

What is the status of similar boards and commissions?

Common Cause ("Making Government Work" November 30, 2006) divides the officers and agencies of state government (which the legislature must oversee) into six categories:

1. **FIVE** general officers elected by the people and their departments (Gov, Lt. Gov, Secty of State, AG, General Treasurer)
2. **FOURTEEN** departments within the Exec Branch (DOA, DBR, DCYF, DOC, Elderly Affairs, Elem and Secondary Education, DEM, DOH, Board of Governors for Higher Education, Labor and Training, Mental Health, Retardation and Hospitals, Dept of Human Services, DOT, PUC.
3. **TWENTY-ONE** quasi-public corporations (including NBC, Quonset Dev Corp, WRB Corporate, EDC, RIPTA, Resource Recovery Corp)
4. **A number of** Entities with significant financial and/or regulatory powers which are not in the executive branch and are not quasi-public corporations (including CRMC, RI Ethics Commission, State Board of Elections, State Retirement Board)
5. **The judiciary and 19 boards, commissions and officers which appear in the state budget enacted for FY06.**

These include

- Office of the Child Advocate (budget \$546,681, FTEs 5.8)
 - RI State Council on the Arts (budget \$3,982,358, FTEs 8)
 - Rhode Island Commission on Women (budget \$86,557, FTEs 1.0)
 - Commission on the Deaf and Hard of Hearing (budget \$352,942, FTEs 3.0)
 - Fire Safety Code Board of Appeal and Review (budget \$266,894, FTEs 3.0)
6. **FIFTY FOUR** Boards and Commissions with state-level executive and administrative function do not receive individual appropriations in the state budget (they may be funded or supported by one of the executive branch departments). These include
 - RI Rivers Council (46-28-5) FY05 Leg Grant \$52,500
 - Economic Policy Council (Ex. Order 03-06) FY05 Appropriation \$300,000
 - Agricultural Lands Preservation Commission (42-82-3)
 - Public Finance Management Board (42-10.1-1)
 - RI State Labor Relations Board (28-7-4)
 - State Conservation Committee (2-4-3)
 - State Properties Committee (37-6-1)
 - Children's Crusade for Higher Education (Ex.Order 1990-31)
 - Public Finance Management Board (42-10.1-1)