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February 27, 2009

Kimberley Gaffett, First Warden
Raymond J. Torrey, Second Warden
Kenneth C. LaCoste
Dr. Peter B. Baute
Richard P. Martin
Town of New Shoreham
P.O. Box 220
BI, RI 02807

Re: Deepwater Wind – Meteorological Tower Proposal

Dear Wardens Gaffett and Torey, and Councilors LaCoste, Baute and Martin:

This office represents Howell T. Conant, II and other members of his family, who own three properties on Coast Guard Road contiguous to and directly abutting Assessor's Plat 20 Lot 10, which is the proposed site for the erection of a meteorological tower by Deepwater Wind. It is my understanding that the Town Council intends to act upon Deepwater Wind's proposal at its meeting on March 2, 2009, purportedly pursuant to the provisions of Section 112 of the Town's zoning ordinance.

The Conant family vigorously objects to the consideration of Deepwater's proposed siting of the tower via Section 112's Special Temporary Permit provisions.

Section 112 provides in pertinent part that:

“The Town Council may, in circumstances of emergency or other urgent necessity for the public health and safety, grant special temporary permits ... to use property for uses otherwise prohibited, or permissible only by Special-Use Permit, provided that:

A. A permit may be granted only for a use or purpose that cannot be accomplished by compliance with the provisions of the ordinance. (Emphasis supplied).

It is clear from the language of Section 112, when it is given its plain and ordinary meaning, that Deepwater's proposal does not meet the exigent circumstance requirements for issuance of a Special Temporary Permit. Assuming without conceding, for argument sake only,

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Page two

that there is some tenuous connection between the public health and safety and the purposes for which the tower is to be erected, there simply is no emergency or other urgent necessity that we are aware of which warrants invoking the provisions of Section 112. Deepwater's proposal is a run-of-the-mill request for the commercial use of property in a residential zone and is profit motivated. Likewise, there is no apparent reason why the use Deepwater proposes for the site in question cannot be accomplished by its compliance with the Special-Use Permit provisions found in Sections 401 and 422 of the zoning ordinance. Therefore, the Council lacks the legal authority under the "compliance" provisions of Section 112 A. to issue the requested permit.

Low cost renewable energy is worthy of study, particularly in these tough economic times. However, it should not be at the cost of depriving the citizens of a host community their property rights without due process of law. Deepwater Wind's proposal for the Coast Guard Road site has only surfaced within the last nine days. It is my understanding that Coast Guard Road was identified as an alternative site for the tower, because use of the North Light site would have required many months of permitting by the federal government. Deepwater's apparent desire to save time and money is simply not enough reason to sidestep the procedures available to it under the Town's zoning ordinance, particularly at the expense of the countervailing right of abutting property owners to meaningful notice of the precise parameters of the proposal and a meaningful opportunity to be heard on its merits.

With all due respect to the Town Council, holding an informational meeting two days before taking the matter up at a Council meeting, is not only unwise, it violates fundamental notions of due process. Deepwater can and should be required to submit an application to the Zoning Board for relief, so that its proposal can be heard and decided in a formalized, deliberate, quasi-judicial process.

While the Conant family is hopeful that the Town Council recognizes that the use of Section 112 to fast-track Deepwater's proposal is inappropriate and unlawful, they are fully committed to litigating the merits of their objections if the Council does not. Moreover, the Conant's are not the only citizens concerned with this proposal. It is my understanding that other Coast Guard Road neighbors, such as Arthur Mallick and Donald Dakin, are troubled by Deepwater's proposal and the manner in which it is being considered, although I do not speak for them.

Please give this matter your careful consideration and I respectfully request that this correspondence be read into the record of the March 2, 2009 Town Council meeting. I would be happy to discuss this matter with you, the Town Manager and/or the Town Solicitor at your convenience.

Very truly yours,

A handwritten signature in black ink, appearing to be 'M. Hagopian', with a long horizontal flourish extending to the right.

Mark J. Hagopian

MJH

Cc: Howell T. Conant, II
Nancy O. Dodge, Town Manager
Clint Plummer (via e-mail)