

MINUTE ITEM

14. APPLICATION FOR RECREATIONAL PIER PERMIT, TIDE AND SUBMERGED LANDS OF TOMALES BAY, MARIN COUNTY; TEACHERS BEACH ASSOCIATION - W.O. 320.306.

The Executive Officer reported that a letter had just been received from Mr. Forrest E. Macomber, Attorney for the Teachers Beach Association, stating that: "The directors of Teachers Beach Association have concluded that they cannot afford to pay my expenses in attending another meeting before the State Lands Commission. For this reason, I will not attend the meeting of the Commission on September 27th." However, Mr. Macomber desired to discuss with the Office of the Attorney General the opinion which had been afforded the Commission prior to any Commission action thereon. Therefore, the Executive Officer recommended that consideration of this item be deferred, and advised that he would inform Mr. Macomber as to the opinion of the Office of the Attorney General.

There being no objection, action on Calendar Item 26 attached was put over to a future time.

Attachment

Calendar Item 26 (2 pages)

CALENDAR ITEM

26.

APPLICATION FOR RECREATIONAL PIER PERMIT, TIDE AND SUBMERGED LANDS OF TOMALES BAY, MARIN COUNTY; TEACHERS BEACH ASSOCIATION - W.O. 320.306.

An application has been received from Teachers Beach Association for a recreational pier permit for the use of tide and submerged lands of Tomales Bay, Marin County. This matter was calendared for Commission consideration at its meeting of August 28, 1962. Forrest E. Macomber, attorney and member of the applicant Association, was present and spoke on behalf of the applicant. The Executive Officer advised the Commission that certain legal questions had arisen relating to the specific facts herein and recommended that the Commission defer action on this matter until the September meeting, so that a review might be obtained from the office of the Attorney General.

Teachers Beach Association is a group of 12 individuals who purchased a 10-acre parcel of land near Shell Beach on Tomales Bay, north of Inverness. After the land was surveyed, each individual selected a lot which was conveyed to him as an individual. A strip of land leading to the beach and a beachfront strip were then set aside in common ownership for the use of the members (see Exhibit "A"). The property owners are also directors of the Association, which filed Articles of Incorporation on October 13, 1955, as a nonprofit corporation.

A recreational pier permit would provide the users with a 10-year use permit at no cost, the only payment being a \$5 statutory application fee. Teachers Beach Association maintains that as a nonprofit corporation it is entitled to a recreational pier permit within the meaning of Section 6503 of the Public Resources Code. The staff has taken the position that Teachers Beach Association does not qualify and is not entitled to a recreational pier permit within the meaning of the Code section. Rather, the erection of such a pier and its use by members of this organization place it in a category which comes within the scope of a commercial lease, as differentiated from a recreational pier permit issued to an individual littoral owner for his exclusive private and personal use. In this instance, rental for a commercial lease would be the minimum of \$150 annually.

In similar situations in the past, the Commission has authorized the issuance of a commercial lease. This policy has been supported by an opinion of the Attorney General dated February 20, 1961, in regard to the Del Monte Properties case (see Exhibit "B"). Staff Counsel has also prepared an opinion (see Exhibit "C") with respect to the instant Teachers Beach application, which opinion maintains that Section 6503 of the Public Resources Code is not applicable to the Teachers Beach Association. The Association contends the Attorney General's opinion is inapplicable and questions Staff Counsel's interpretation of the Code section.

The office of the Attorney General has concluded its review of the applicant's material and the exhibits furnished to the Commission. It is the opinion of the Attorney General that "the Commission should not issue a private recreational pier permit but that a commercial lease will be required to comply with its statutory authority and Rules and Regulations." (See Exhibit "D").

CALENDAR ITEM 26. (CONTD.)

The Association was advised that its application for a recreational pier permit would be submitted to the Commission with the staff recommendation that it be rejected.

IT IS RECOMMENDED THAT THE EXECUTIVE OFFICER BE AUTHORIZED TO REJECT THE APPLICATION OF TEACHERS BEACH ASSOCIATION FOR A RECREATIONAL PIER PERMIT FOR THE USE OF TIDE AND SUBMERGED LANDS AT TOMALES BAY ON THE GROUNDS THAT SUCH PERMIT IS NOT AUTHORIZED BY PUBLIC RESOURCES CODE SECTION 6503.