

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Wednesday, June 10, 2009 at 6:00 p.m. at the Foundry, Department of Environmental Management; Room 300; 235 Promenade Street, Providence, RI.

MEMBERS

Michael Tikoian, Chair
Paul Lemont, Vice Chair
Ray Coia
Don Gomez
David Abedon
Bruce Dawson
Michael Sullivan

MEMBERS ABSENT

None Absent

STAFF PRESENT

Jeffrey M. Willis, Deputy Director
Ken Anderson, Supervising Engineer
Brian Goldman, Legal Counsel

1. Chair Tikoian called the meeting to order at 6:00 p.m. and made a brief statement on the Council's permitting process.

2. **APPROVAL OF THE MINUTES OF THE PREVIOUS MEETING:**

Mr. Coia motioned, seconded by Mr. Dawson, to approve minutes of previous meeting, May 12, 2009. Motion carried on unanimous voice vote.

3. **SUBCOMMITTEE REPORTS**

Vice Chair Lemont stated that at the Policy and Planning Subcommittee Meeting on February 17, 2009 there was a discussion on fee changes regarding out-of-state applicants for beach vehicle permits which at the present time is \$100.00 but would increase to \$150.00. Chair Tikoian stated that the change would be publicly advertised and would be scheduled before the Council on the next agenda.

4. **STAFF REPORTS**

Nothing to report.

5. Chair Tikoian stated that a Continuance was requested within the appropriate time-frame on behalf of Dr. Hafer and that continuance was granted by Council. Chair Tikoian added request to CRMC application file 2006-04-062.

Chair Tikoian announced to Council that there would be a stakeholders meeting of the Ocean Special Area Management Plan in the Hazards Room of the Narragansett Bay Campus at URI on Tuesday June 30. Chair Tikoian stated that the purpose of this meeting would be for Dr. Robin Kenney to discuss marine mammals of Narragansett Bay, Block Island Sound and nearby waters relating existing data for the RI Ocean SAMP. Chair Tikoian urges Council members to attend.

6. **CHAIR TIKOIAN READ THROUGH THE AGENDA TO SEE WHICH APPLICANTS/ ATTORNEYS WERE PRESENT.**

All applicants and/or their attorneys present. Chair Tikoian stated that three items on the agenda were continued at the applicant's request.

Chair Tikoian stated that a continuance request had been granted for CRMC File Number 2007-12-048 Karen Sue application as well as the earlier stated CRMC File Number 2006-04-062 Hafer application.

7. **APPLICATIONS WHICH HAVE BEEN OUT TO NOTICE FOR 30 DAYS AND ARE BEFORE THE FULL COUNCIL FOR DECISIONS.**

2008-08-061 MILL CREEK MARINE -- Construct and maintain a new Dry Stack storage marina with indoor storage for 168 boats that includes two buildings, a boat ramp, a bulkhead boat launching area, floats, parking and storm water management facilities. Located at plat 194, lot 4; Little Allen Harbor, Wescott Road, North Kingstown, RI.

Present for the applicant is Attorney John Boehnert of Partridge, Snow and Hahn. Ken Anderson gave brief overview of application stating that the applicant was proposing a new dry stack storage marina with the capacity of 168 boats in Allen's Harbor, North Kingstown. Mr. Anderson stated that it met all standards of the marina standards in the CRMP, provided low impact development, compliant with stormwater management, and had a small component of dredging. Mr. Anderson stated that CRMC permitting staff recommended approval of application. Jeff Willis stated that this application is the first embodiment of the new changes to the marina section of Section 300.4. Vice Chair Lemont motioned, seconded by Mr. Dawson, approval of application based upon the record before the Council and recommendations of staff. Application carried on a unanimous voice vote.

2007-09-055 JAMES BENINCASA – Construct a residential boating facility to consist of a 4' x 92.5' fixed timber pier, a ramp and 3 floats (5' x 30 = 150 sq ft). The terminus of the dock extends to 95.5 feet beyond MLW requiring a 45.5- foot variance to the 50-foot MLW standard. Located at plat 16, lot 17; East Passage/Narragansett Bay, 17 Baker Road, Portsmouth, RI.

The property owner, James Benincasa is present for application as well as Attorney Kristen Sherman of Adler Pollock and Sheehan. Also present as witnesses for the applicant are engineer, Todd Chaplin, and Mr. Bernon. In opposition of the applicant is Attorney Seth Handy representing objectors Rose Aidinoff, Ken and Cheryl Chernack, John and Laura Humphrey, Mike Fahey and Joe Jacques. Mr. Handy will only present one witness to testify, Mr. Humphrey.

Ms. Sherman stated that the application had been before the Council at the January 13th, 2009 meeting and was denied. Ms. Sherman stated that a motion for reconsideration was made at the next meeting of the Council to reconsider this matter. Ms. Sherman stated that there have been changes made to the application which formed the basis for the motion to reconsider.

Mr. Anderson gave the Council a brief overview of the application stating that further objections had been received and have been given to Council. Ms. Sherman stated that they had just received the packet of objections on this day. Ms. Sherman stated that the objections to Mr. Benincasa's dock application were from Mr. Gray regarding stability of the proposed structure. Ms. Sherman stated that the applicant has taken that into consideration and redesigned the dock structure moving the floats to create an "L" shape to increase the stability of the dock still maintaining the 150 square foot which is the standard. Ms. Sherman stated that a variance of 45.6 feet was still needed due to site conditions. Ms. Sherman argued that the neighbors' objections to this dock was that they did not want a dock in the area. Ms. Sherman also stated that she tried to discuss concerns with Mr. Handy with no positive results. Ms. Sherman stated that within the council's regulations, docks are not prohibited in this water area, as seen by the Weyerhaeuser dock and the Carnegie Abbey dock.

Ms. Sherman expressed procedural concerns regarding the objections that were submitted stating that they were submitted outside of the five-day CRMP rule and not submitted previously when the applicant was first before the Council. Ms. Sherman stated that only one of the objectors, Mr. Humphrey, was an actual abutter to the Benincasa property and that the original objection by Mr. Humphrey raises all the same issues as stated in the objection submitted recently.

Ms. Sherman calls witness Todd Chaplin, president of the Mount Hope Engineers in Swansea MA. Mr. Chaplin was sworn in. Mr. Chaplin was qualified as an expert witness. In answer to Ms. Sherman's questions, Mr. Chaplin stated that he had kayaked in the area and sailed with small sailboats, had observed the applicant's site many times and gave the Council a brief description of the site as well as wind and wave conditions. Ms. Sherman and Mr. Chaplin reviewed a plan along with the Council pointing out water depth, site conditions and dock length, structure and configuration. Ms. Sherman asked Mr. Chaplin to discuss water level in regards to the different tides, such as storm event tides and moon tides. Mr. Chaplin stated that 75 feet past mean low water was the best solution to have the floater start at a three foot water depth at mean low water which would provide enough water (approx -4') for Mr. Benincasa's future vessel. Ms. Sherman questions Mr. Chaplin environmental impacts from the dock position. Mr. Chaplin stated that the dock is a fairly standard residential dock design and not of excessive length and did not feel that it posed any environmental issues. Ms. Sherman questioned Mr. Chaplin in regards to personal experience of kayaking in the area and its navigational patterns, using an authenticated aerial photo procured from Google Earth plotted in his office with dock superimposed along with Mr. Benincasa's house so it's relative to scale. Mr. Chaplin stated that because there is not an area for public access that the area was generally used by the neighboring property owners for kayaking, sailing, swimming or just walking along the shoreline and fishing. Mr. Chaplin stated that there are two private moorings in the area. Lateral Public access was discussed and it was established that the shoreline is rocky and access can occur only at low tide or at some high tides getting your feet wet. Mr. Chaplin stated that it was easily possible to kayak in the area without getting anywhere near the shipping channel and it would be equally as easy to kayak around Mr. Benincasa's dock in a similar fashion as they kayak around the Weyerhouser dock. Ms. Sherman distributed a plat and lot map to Council for demonstrative purposes to point out that some of the objecting abutters may not have the view and aesthetic issues as stated in objection letters. Cross Examination of Mr. Chaplin by Mr. Handy. Mr. Handy questioned Mr. Chaplin about the length of the dock based on the water depths adjacent to the dock and the ability to cross under the dock asking Mr. Chaplin to point out elevation markings on the drawings. Mr. Chaplin answered by saying that the elevation levels which are marked on the plan are at 10' or 10.6' and that the requirement is five feet at the point of mean high water. Mr. Handy questioned Mr. Chaplin about the width standards for the pier to which Mr. Chaplin stated that the fixed pier is four feet wide but the floaters are 5' wide. Mr. Handy asked Mr. Chaplin about the pound per square foot on the floating dock to which Mr. Handy answered 40 PSF. Mr. Handy questioned Mr. Chaplin regarding the details of the gangway section of the drawing also asking about size and placement of bolts to be used in construction of facility. End cross examination. Vice Chair Lemont speaking from experience of boating in the area as well stated that there were some very rough waters coming from the northeast down past Hog Island and asked Mr. Chaplin if this was considered when designing the dock. Mr. Chaplin stated that although it can be very choppy in the area it is not an excessive fetch area. Discussion ensued on fetch conditions for this area with Mr. Anderson clarifying for the Council the redbook's definition of excessive fetch. Mr. Gomez asked Mr. Chaplin to point out the major differences from previous submission. Mr. Chaplin answered that the difference is the position of the floater being set as an "L" instead of straight off the end of the dock stating that he believed it provides a more stable structure with additional pilings being at the inner corner of the L-shape and on the end. Mr. Anderson clarified the plan differences for the Council stating that the fixed pier was lengthened by ten feet to reach the water depth necessary for vessel to be tied to the inside of the "L".

Mr. Abedon asked about on lateral access to which Mr. Willis explained ways in which lateral access can be met. Mr. Chaplin stated that there is more that 5' of passage under the dock providing lateral access. Ms. Sherman stated that her client would be willing to stipulate to an additional foot or so to meet council's concerns on lateral access. Mr. Abedon questions Mr. Chaplin about water depth at floater. Director Sullivan asked Mr. Chaplin's method of obtaining water depth. Mr. Chaplin stated that they used survey water depths as well as his personal experience of the water. Director Sullivan discussed with Mr. Chaplin his knowledge of water craft in regards to water depth needs. Director Sullivan suggested reducing the length of the dock to get

less of a water depth. Mr. Chaplin stated that it was possible to reduce the length of the dock but his fears are that the boat would bottom out when faced with an excessive full moon low tide or a storm event low tide. Discussion on minimum water depth standard.

Ms. Sherman calls Mr. Benincasa who is then sworn in. Mr. Benincasa gives the council a brief overview of his ideas for his property and the uses for the dock he is requesting. Cross Examination of Mr. Benincasa by Mr. Handy. Mr. Handy asked Mr. Benincasa if he had access to any other marina facilities in the area. Mr. Benincasa stated that he bought waterfront property so that he could have a dock in front of his house, and that it was unfair to suggest that he pay 4,000 to 6,000 a linear foot to be able to enjoy the water. Mr. Handy asked about the moorings in the area to which Mr. Benincasa said there were moorings.

Opposition presented by Attorney Handy who stated that he represented four parties objecting to the application. Mr. Handy made an oral motion to intervene for the Council's consideration which was denied by the Council. Mr. Handy stated that the motion for reconsideration is to reconsider the original design rather than a new design and that a new design would have to be an entirely new proceeding. Mr. Handy explained to the Council that the time frame of the receipt of the objections was due to an absence of notice and asked that if the Council was not going to consider the objections due to tardiness that a continuance be granted in order to allow the objectors the opportunity to be heard. Chair Tikoian stated that the objections were part of the record and a continuance was not needed. Mr. Handy stated the three issues for objection: aesthetic and ecological impact, existing uses and interference of such uses, and the facility is incompatible with boating due to the fetch in area. Mr. Handy also stated that the project is noncompliant with the technical standards and that a variance is not warranted in this case.

Brief recess.

Attorney Handy called Mr. Humphrey to testify. Mr. Humphrey is sworn in and explains to the Council where his lot is in respect to the Benincasa lot using the plat and lot map brought in by Attorney Sherman. Mr. Humphrey describes the shoreline to the Council at the request of Mr. Handy stating that the shoreline is extremely shallow and rocky and goes out a long way at low tide. Mr. Handy distributes pictures of the area to the applicant and to the Council. Discussion on the use of the pictures; and it was decided that due to markings on the photos, only photos 1, 4, 6, 7, and 8 would be authenticated and admitted as exhibits. Photos authenticated. Mr. Humphrey stated that he walked the beach regularly from Carnegie Clubhouse to the remains of Weyerhauser Pier which burned a few years ago and is visible from his house. Mr. Humphrey testified that he could see the shore in front of the Benincasa lot. Mr. Humphrey testified as to his use of the shoreline stating that he walked, and that his children, a son and a daughter, use the area to kayak and sail. Mr. Humphrey testified that there are 12 moorings off the shore. Mr. Humphrey testified about the Blue Trail which was created by the Aquidneck Island Planning Commission. Mr. Humphrey testified about the water conditions stating that in the winter months the waves are quite strong against his seawall. Mr. Humphrey is cross-examined by Attorney Sherman regarding the age of his children and his own boating experience. Mr. Humphrey answers that his children are 18 and 24 and that he is not a boater. A neighbor, Dr. Bernon, is sworn in and speaks in favor of Mr. Benincasa's application. Dr. Bernon states, at the request of Director Sullivan, that he is able to paddle under the Weyerhauser dock and has paddled under smaller spaces as well. Attorney Sherman makes closing arguments stating that they are willing to accept direction and compromises could be made with Council. Attorney Handy makes closing argument citing Section 200.2.C.3 and Section 300.4.B.2(b). Mr. Handy also states precedential value of Council's decision and the potential cumulative impact of that decision. Mr. Handy states that no ecological survey was completed as required by Section 300.4.E.3. Mr. Handy states that there would be an adverse impact on public trust uses in the area.

Chair Tikoian opens the floor for Council input. Vice Chair Lemont states that he originally voted to deny dock but with testimony and argument, he would support the approval of the dock. Mr. Dawson stated that he did not like the location of the dock and feels a responsibility to act against this particular dock. Mr. Gomez stated that he voted to approve the dock in January and after hearing testimony this night states that the applicant cannot be denied to prevent change in the area. Mr. Gomez states that his concern lies in precedence setting and cumulative impact, however, he also states that it meets CRMC standards and staff has not

objections. Mr. Gomez recommended that a 20-foot reduction would help with visual impact. Director Sullivan states that he feels that a request to get out to four feet is excessive and might support a reduction in length of facility to which he and Mr. Anderson figured that the dock could be brought in so that there was two feet of water depth and bring the dock up a foot for better lateral access. Chair Tikoian stated that the Council does not take their responsibilities for the coastal environment lightly. Chair Tikoian pointed out that the staff identified that there was no SAV in the area; the ACOE granted an approval for this structure. Chair Tikoian stated that the applicant did everything possible to try to assure that the environment will be protected and assure lateral access and is willing to make concessions that are appropriate for the area. Director Sullivan motioned, seconded Vice Chair Lemont, to approve the dock if it were to extend no more than 50 feet beyond mean low water, and be built at a height of six feet above, that it be built to the standards built within 300.4.E.1. Discussion on the motion at hand. Mr. Anderson clarifies dimensions for Council. Vice Chair Lemont withdraws second. Director Sullivan amends his motion to be 55 feet beyond mean low water with the same caveats of built to standard, built to six foot and it would necessitate the five-foot variance. Vice Chair Lemont seconds the motion. Motion approved with one opposed.

7. Category "A" List

None were held.

Chair Tikoian request Council to set schedule for next meeting. It is decided that there would be no meeting on June 23rd. The next meeting would be Monday, July 13th.

There being no further business to discuss. The meeting was adjourned at 8:43 p.m.

Respectfully submitted,
Grover Fugate, Executive Director

Reported by Lisa A. Mattscheck