

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Wednesday, January 27, 2010 at 6:00 p.m. in Conference Room C, Administration Building, One Capitol Hill, Providence, RI.

Members Present

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

Brian Goldman, Legal Counsel

STAFF PRESENT

Jeffrey M. Willis, Deputy Director
David S. Reis, Spv Environmental Scientist
James Boyd, Coastal Policy Analyst
Danni Goulet, Dredge Coordinator

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

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

Mr. Coia motioned, seconded by Mr. Dawson, to approve minutes of previous meeting, January 13, 2010. Mr. Goldman, after explaining the consistency review process, asked for corrections in the Weaver's Cove section of the minutes to clarify that the Executive Director was the reviewing authority for Federal Consistency process, not the CRMC. Mr. Goldman requested that every reference to the CRMC in that section of the minutes be replaced with the words "Executive Director." Motion to approve minutes with corrections was carried on unanimous voice vote.

3. **SUBCOMMITTEE REPORTS**

Vice Chair Lemont read out for rulemaking Chapter 7 of the Ocean Special Area Management Plan: Marine Transportation, Navigation and Infrastructure.

4. **STAFF REPORTS**

Mr. Goldman reported the votes that were held in the Executive Session at the January 13th meeting. Mr. Goldman stated that two votes were taken offering a renewal contract to the Executive Director with the first vote for a 3 year contract with a 2 year extension option. Mr. Goldman stated that there were 7 votes in the affirmative and one vote, Mr. Sullivan, against. Mr. Goldman stated that the second vote was for the contract in toto which received a unanimous vote.

Mr. Willis stated that the NOAA 312 Evaluation was postponed to the last week in February.

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

6. EDUCATIONAL SERIES PRESENTATION

A presentation was made by Ames Colt, the chair of the Rhode Island Bays, Rivers & Watersheds Coordination Team, regarding the Team's purpose and involvement in coordination of the environmental agencies within Rhode Island.

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

2008-07-031 JOHN KING -- Construct a residential boating facility to consist of: a 4' X 144' fixed timber pier, a (3' X 32') ramp, an (8' X 25') 200 square foot float and four (4) tie off piles. The terminus of the proposed dock extends to 115-feet beyond (-11 to -18) mean low water and requires a 65-foot length variance and a 50 square foot float variance. Located at plat 5, lot 77; 61 Narragansett Boulevard, Portsmouth, RI.

Mr. King was in attendance and was represented by Attorney Turner Scott. Also present for the applicant was Warren Hall, project engineer. Mr. Reis gave a brief overview to the Council of the application stating that the applicant was requesting a 65' length variance to reach -11 to -14 water depth at MLW. Mr. Reis stated that there were no significant environmental issues and no engineering issues with the application but that the water depth requiring the 65' length variance raised questions as the Council has a -3' minimum for normal use for boating facilities. Mr. Scott presented aerial photo to Council. Mr. Scott stated the photo had been sent to CRMC staff members Amy Silva and Michael Deveau on August 20, 2009. Mr. Scott stated that the project had received ACOE approval and had no navigational impacts as it was next door to a boat yard. Mr. Scott stated that as part of the project, Mr. King would be fixing up the ROW which was owned by Common Fence Point Improvement. Mr. Scott also pointed out that there were no SAV issues. Warren Hall sworn in as qualified engineer. Mr. Hall stated that he drew and was very familiar with the plan and the location of the proposed facility describing the location for the Council. The applicant, Mr. King is sworn in. Mr. King gave brief history of his ownership of the property to the Council. Mr. King stated that he had worked with staff when the float size was determined to be too large. Mr. King relayed his plans to fix up the ROW. Mr. King stated it was necessary for the facility to extend 65' beyond MLW as his custom made 52' Erwin sailboat draws 12' of water and the dock is necessary to be able to make it easier to accommodate his son who is in a wheelchair. Mr. Abedon asked if there would be depth issues at certain tide. Mr. King stated that the water depth is deeper at the end of the float. Mr. Hall stated that 75' out into the water the water depth quickly deepens. Mr. Scott made closing argument stating that there were no objections from either staff or public; Mr. King was willing and very happy to fix ROW; and that the project met special variance criteria. Mr. Coia motioned, seconded by Mr. Driscoll, approval of application. **Motion carried. Mr. Dawson was opposed.*

8. PUBLIC HEARING ON PROGRAM CHANGES BEFORE THE FULL COUNCIL:

Management Procedures -- Revise Section 5.7 Continuances; Revise Section 4.3 Schedule of Fees

Chair Tikoian opened the public hearing. Mr. Willis briefed the Council on the program change stating that the change would allow for continuance request to be subject to a continuance fee. Mr. Willis stated that the first request would result in a \$100 fee, the second request would result in a \$250 fee and the third request would result in a \$500 fee. No public comments. Chair Tikoian closed public hearing. Mr. Lemont motioned, seconded by Mr. Dawson, approval of program change. Motion carried on unanimous voice vote.

Red Book -- Revise the Water Type Designations of Providence Quadrangle

Chair Tikoian opened the public hearing. Mr. Boyd briefed the Council on the program change stating that the proposed change was to change Type 4 waters north of the Henderson Bridge to Type 1 waters due to low number of structures along the shoreline and that this area of the Seekonk River is designated in the Metro Bay SAMP as “Areas of Particular Concern”, i.e. conservation. Mr. Boyd stated that due to comments received, CRMC staff are recommending that the area from the Henderson Bridge north to a point 250’ north of the boat club property should remain Type 4 waters. No public comments. Chair Tikoian closed public hearing. Mr. Sullivan motioned, seconded by Mr. Driscoll, approval of program change with staff recommendation. Motion carried on unanimous voice vote.

Red Book - 4. Revise the Water Type Designations of the Providence Quadrangle (Seekonk River) 5. Revise the Water Type Designations of the Providence Quadrangle (Providence River) 6. Revise the Water Type Designations of the East Providence Quadrangle

The Council decided to combine Public Hearing Items 4, 5, 6 into one Public Hearing. Mr. Boyd gave a brief presentation to the Council stating that the City of East Providence had requested to modify waters Type 6 waters between Bold Point and adjacent to Wilkes Barre Pier to Type 4 waters. Also, presented on City’s request to revise water types south of Wilkes Barre pier to the Kettle Point shoreline to Type 5 and Type 2 respectively. Mr. Boyd stated that CRMC Policy and Planning Subcommittee considered the changes and as proposed to be modified by staff, agreed to put them out to Public Notice. Mr. Boyd stated that many public comments were received as a result of the Public Notice. Mr. Boyd stated that staff recommended the Type 6 line remains as is at point B. Mr. Boyd spoke about the permitting history of the Providence and Worcester (P&W) Quay both for CRMC and ACOE, stating that the CRMC permit for a port facility was extended to 2011 at the request of P&W. Mr. Boyd read the permit extension request letter from Adler Pollock and Sheehan, representing Providence and Worcester RR. Mr. Boyd suggested that in the Bold Point area, Line B be moved west to include the Providence Community boating facility in Type 4 waters, which is more appropriate to the public recreation activities on going there. Mr. Boyd stated that City of Providence Department of Planning and Development requested that the line be moved farther west to also include the “Shooters” parcels as the current use is not consistent with Type 6 waters. Mr. Boyd concluded brief presentation.

Mr. Lemont talked about the City of East Providence’s commitment to waterfront plan. There was much discussion on spot zoning around Wilkes-Barre Pier which would open the WB pier property up to complaints in the future for the Providence and Worcester quay. Mr. Willis stated that there was a federal permit issue associated with the water type around the P&W quay and that for consistency sake the area should remain Type 6 waters until the federal permit issue is resolved. Mr. Boyd stated that Providence and Worcester RR has a valid CRMC assent and change in the water Type flies in the face of the existing permit.

Presentation by the City of East Providence. Attorney Robin Main representing City of East Providence is present. Also present are Jean Boyle, Director of East Providence City Planning and Executive Director of East Providence Waterfront Commission, Scott Rabidue, Principal of Natural Resource Services, Steve Sheriden of the East Providence Harbor Commission, Bruce DuFresne, East Providence Harbor Master, and William Fassulli, Vice Chair of the East Providence Waterfront Commission. Ms. Main stated that the City Planning and the Waterfront Commission worked on both state and local level to rezone the entire area to allow for different types of development. Ms. Main suggested that the small area between Bold Point and the Wilkes-Barre pier should be Type 4 waters for 100’ offshore. It was stated that green jacket shoals is a vary shallow area and is not in a condition to do much due to the large volume of remnant piling and barge debris. Jean Boyle is sworn in giving brief description of expertise and ability to testify on subject. Ms. Boyle gave a brief presentation on the process of waterfront planning for East Providence and the participation between the City and CRMC in regards to the Metro Bay SAMP Urban Coastal Greenway regulations. Ms. Boyle stated that one goal is to protect Wilkes Barre Pier. Mr. Rabidue is sworn in testifying that he had been retained by the City of East Providence in 2006 to work with CRMC staff regarding water type changes in the Bold Point area. Mr.

Rabidue used aerial photo with water type color designations to show their suggestion of compromise which is that a small section of area around the Wilkes Barre Pier become Type 5 waters to be consistent with City zoning. Mr. Sheridan, Harbor Commissioner, sworn in and described his experience with Harbor Management. Mr. Sheridan stated that a tug area is necessary in the Wilkes Barre Pier area and recommended approval of staff recommendations. Mr. Dufresne was sworn in and talked about his experience in harbor management explaining the area around the pier saying that it consists of 1' – 2' of water depth, contained no commercial use, and would require a huge expense to clean and dredge. Mr. Dufresne stated that the obstructions in the area consisted of remnant pilings, docks and ships from the corner of Bold Point to Capital Terminal at Wilkes-Barre Pier. Mr. Fasulli was sworn in and spoke about how the water use should be in conformance with land use and that it had a statewide impact. City of East Providence concluded their presentation.

Lee Howard McVay, Jr. of New England Marine pilots sworn in. Mr. McVay stated that he supported the proposed water type changes requested by the City but substantial protection must be considered in the event of Marina construction to protect docks and boats from the damaging forces of tug boat propeller wash.

Todd Turcotte, President of Capital Terminal, sworn in. Mr. Turcotte talked of his extensive experience in the industry and the history of the area. Mr. Turcotte stated that in order to stay in operation the water type needed to remain Type 6. Mr. Turcotte distributed photos and drawings to consisting of aerial to describe Wilkes Barre Pier, photos showing tanker operation 24 hours a day 7 days a week utilizing tug boats as well. Mr. Turcotte explained the pipeline for distribution which brought product from pier two miles to the facility. Mr. Turcotte also explained the aspect of homeland security of operation needed to change and pier access was changes. Chair Tikoian suggested a collaborative effort between Capital Terminal and the City of East Providence. Mr. Turcotte talked about shoal area and how Capital Terminal is working toward rehabilitating area by removal of deteriorated piles.

Joel Cohen, Vice President of Promet Marine Svc, was sworn in and explains his experience in the working harbor and the history of their property. Mr. Cohen stated that supported the waterfront south of the Quay as it is designed not to interfere in water traffic, but if marina constructed there would be a problem with turning in the basin.

Bessy Schnepple (sp?) of the Fox Point Neighborhood Association was sworn in and read a letter to Council and into the record.

David Everett, Providence City Planner, was sworn in. Mr. Everett spoke about the "Shooters" site saying that he supported changing the line to include the site in Type 4 waters for the existing use and that the change was supported by existing local zoning code.

David Riley, Head of the Bay Gateway, sworn in. Head of the Bay Gateway is a citizens group involved in the Shooters property. Mr. Riley submitted letter for the record and stated that his group felt that to extend the water type demarcation to include Shooters in Type 4 waters was not a routine modification and premature. Mr. Riley talked about the tug boats that operate on a 24 hour 7 day basis and what a crucial piece of property Shooters was based on its location.

Don Pryor, Providence resident, was sworn in. Mr. Prior stated that he was not in support of the Water Type change at the Shooters property stating that the Council's decision would be viewed as "arbitrary and capricious."

John O'Flattery, Executive Director of the Sail Boating Programs, sworn in. Mr. O'Flattery stated he was in support of item B to include the sail boat facility in Type 4 waters.

Ms. Main, attorney representing the City of East Providence, gave closing statement reiterating that the water type changes coincide with City Zoning. Chair Tikoian asked if the City of East Providence had worked with Capital Terminal on the current water type issues. Ms. Boyle stated that they had worked with Mr. Turcotte's

predecessor Avery Knowle. Mr. Turcotte stated that there had been no communication between the parties since 2006.

Chair Tikoian closed public hearing.

Mr. Lemont asked Mr. Boyd if there was leeway to modify the water type change proposal in regards to the Capital Terminal property at Wilkes-Barre Pier. Mr. Boyd stated that CRMC staff position is to maintain type 6 water in area, but would not preclude mixed use development, as envisioned by the City. Mr. Lemont asked about leeway on the Shooter's side. Mr. Boyd stated that the CRMC permit and current uses are inconsistent with Type 6 waters. Mr. Willis suggested the Council reconsider this matter at a later date with staff working with the City of East Providence. Mr. Boyd adds to recommendation that Line B at a minimum include the Community Boating facility in Type 4 waters.

Mr. Sullivan asks Mr. Boyd if line B should be redefined as to the western boundary of the boating facility rather than the easterly boundary of the Shooter's parcel. Mr. Boyd agreed.

Mr. Sullivan motioned, seconded by Mr. Dawson, to move Line B west to include the community boating facility consistent with the western boundary but not to include the Shooters site. Motion carries on unanimous voice vote.

Mr. Lemont asks Ms. Boyle if the City would be okay with water type change for the area between Bold Point to Wilkes-Barre Pier 100' out from Shore to Type 5. City of East Providence agrees. Mr. Lemont motions, seconded by Mr. Coia, to approve the noticed water type changes and to include changing the existing Type 6 to Type 5 from Bold Point to Wilkes-Barre Pier 100' out into the water. Motion carries on unanimous voice vote.

9. Category "A" List

None were held.

10. Executive Session pursuant to R.I.G.L. 42-46-5(a)1 Personnel

Mr. Lemont motions, seconded by Mr. Sullivan, to have Executive Session.

Roll Call vote:

Mr. Sullivan	Aye	Mr. Abedon	Aye
Mr. Dawson	Aye	Mr. Gomez	Aye
Mr. Coia	Aye	Mr. Driscoll	Aye
Mr. Lemont	Aye	Chair Tikoian	Aye

Motion carries.

There being no further business to discuss. The hearing was adjourned at 8:50 p.m.

Respectfully submitted,
Grover Fugate, Executive Director

Reported by Lisa A. Mattscheck