

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, November 16, 2010 at 5:00 p.m. in Conference Room A of the Administration Building, One Capitol Hill, Providence, RI.

MEMBERS PRESENT

Michael Tikoian, Chair
Paul Lemont, Vice Chair
David Abedon
Ron Gagnon
Donald Gomez
Robert Driscoll
Ray Coia

STAFF PRESENT

Jeffrey M. Willis, Deputy Director
David Reis, Spv Environmental Scientist
Laura Miguel, Enforcement
Brian Harrington, Enforcement
Tom Medeiros, Sr. Civil Engineer
Rich Lucia, Sr. Civil Engineer

Brian Goldman, Legal Counsel

1. CALL TO ORDER

Chair Tikoian called the meeting to order at 5:00 p.m.

2. APPROVAL OF THE MINUTES OF THE PREVIOUS MEETING:

Chair Tikoian called for approval of the minutes from the previous meetings. Vice Chair Lemont, seconded by Mr. Coia and Mr. Dawson, motioned to approve the minutes of the previous meeting. Motion carried on unanimous voice vote.

3. SUBCOMMITTEE REPORTS

There were none.

4. STAFF REPORTS

Mr. Willis informed the Council of this issuance of a Letter of Authorization for Aquaculture Commercial Viability for Adam Silkes.

Chair Tikoian informed the Council of his attendance at the Narragansett Town Council meeting regarding Narragansett Beach project to re-establish the town beach. Chair Tikoian stated that he offered a solution to the Narragansett Town Council by way of accepting clean material being dredged from North Kingstown area if Narragansett would transport it. Chair Tikoian stated that Narragansett was receptive to the idea but that in the end it did not work for the Town. Chair Tikoian stated that he offered to establish a joint task force between Narragansett and CRMC to elevate the project and perhaps acquire additional funding. Chair Tikoian asked for input and participation from Council members.

Chair Tikoian went through agenda items to see if applicants were in attendance. Everyone present for applications. Chair Tikoian stated that the Council would also be having their first Administrative Fine hearings with the Council acting as hearing officer.

4. FEE WAIVER REQUEST

2010-06-068 Johnson and Wales University/Save the Bay

Mr. Willis stated that an application had been submitted in response to a previous permit and that along with the submittal came request to waive the fee. Mr. Willis stated that the project was for a wave attenuator system. Vice Chair Lemont motioned, seconded by Mr. Coia, to approve the request to waive the fee. Motion carried on unanimous voice vote.

2010-11-002 Jacquelyn McDonald d/b/a North Cove Landing

Mr. Willis stated that the application submitted was a part II submittal for affordable housing and that they were requesting a fee waiver as they had already paid a \$10,000 fee for part I application. Chair Tikoian asked if the \$10,000 fee would be sufficient for the review required for the second project. Mr. Willis stated that as part of the preliminary review it seemed that the setbacks and buffers were met but that it required a stormwater review. Mr. Coia motioned, seconded by Mr. Driscoll, to approve the fee waiver. Motion carried on unanimous voice vote.

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

2010-03-007 JOSEPH A. MENNA – Construct and maintain a residential boating facility consisting of a 4’ x 173’ fixed timber pier. The facility will extend to 100’ beyond Mean Low Water, therefore requiring a 50’ variance to the 50’ standard beyond Mean Low Water (ref. RICRMP 300.4.E.3.I.(2)). Located at plat 5, lot 66; 169 Narragansett Boulevard, Portsmouth, RI.

Joseph Menna present as well as Turner Scott, Esq. and Warren Hall, PE.

Mr. Lucia gave brief overview of the application to the Council stating that a 50’ length variance was being requested which would bring the dock to a water depth of -5’ at MLW. Mr. Lucia stated that the facility would serve mainly as a touch and go facility due to the size of vessel owned by Mr. Menna.

Mr. Scott presented for the applicant giving a brief history of the application. Mr. Scott stated that there was a request from staff to modify application to reduce size of dock to extend 75’ beyond MLW requiring only a 25’ length variance. Mr. Scott stated that the applicant offered to reduce the facility to 80’ beyond MLW which would have a water depth of -4.5’ at MLW. Mr. Scott stated that the boat that would inhabit the space draws 5’ of water. Vice Chair Lemont motioned, seconded by Mr. Dawson, to approved application with the reduction to 80’ beyond MLW. Mr. Dawson stated that he would like a stipulation in the assent which stated that the boat had to be tied on the north side of the dock due to the dock’s close proximity to the property line. Mr. Scott stated that the applicant agreed. Mr. Gomez requested that a requirement be made to remove the steps. Mr. Scott stated that the applicant would do that. Motion carried on unanimous voice vote.

2008-04-030 JAMES PORTER & JOAN TOUCHETTE – construct and maintain: a residential boating facility consisting of a 4’ x 17’ access ramp, a 4’ x 74’ fixed pier, a 3’ x 25’ ramp and a 6’ x 20’ float. A 15’ variance is required to RICRMP 300.4.E.3.(e) since the dock will extend 65 feet beyond mean low water (standard is 50 feet beyond mean low

water). The facility will be 20 feet from the northern abutting property line and 25' feet from the southern abutting property line, the lot with the proposed dock will be merged with the lot across the street at 100 Riverside Drive which contains a single family dwelling. Located at plat 6-6, lot 2A; 100 Riverside Drive, Tiverton, RI.

James Porter present along with attorney, Turner Scott and engineer, Bill Smith.

Mr. Lucia gave brief overview of application to the Council stating that the applicant is proposing to build a residential boating facility in Type 3 waters of the Sakonnet River in Tiverton. Mr. Lucia stated that the facility will extend 65' beyond MLW requiring a 15' length variance to bring the water depth to 3' at MLW. Mr. Lucia stated that the facility was located 25' off the southern property line and 20' off northern property line and had received a letter of no objection from the northern abutter. Mr. Lucia stated that there were no objections from staff to the project but that due to a letter of objection that had been received from southern abutting property owners, Mr. and Mrs. Theroux, the application required Council review.

Mr. Scott stated that he and the applicants worked with staff to come to an agreeable modified version of the application and stood by staff comments.

Marc and Jennifer Theroux were sworn in and handed out a google overhead photo on which a dock was drawn. The Theroux's presented their objection to the Council stating that they were not in favor of the dock being approved because the property is not contiguous to the residence and that it was directly in front of their property which would inhibit their use of the waterfront accessibility. Mrs. Theroux stated that the plat and lot map from the town was inaccurate and provided a more accurate version. Mr. Lucia stated that CRMC staff had no objections and the project met the CRMP standards. Mr. Lucia stated that in cases where the subject lot is not contiguous the staff would require the lots be tied together legally. Mr. Gomez asked about lateral access. Mr. Lucia stated that during MHW, the water was right up to the riprap which makes it difficult to walk and that the facility is at road level. Mr. Dawson asked how many vessels would be kept at dock. Mr. Scott stated that there were two boats but that only one would be kept at dock and the facility would act as a touch and go for the sailboat. Mr. Scott stated that the Porters were more than accommodating for public access to the water and also offered the Theroux's access to the dock during their ownership of the land. Mr. Driscoll motioned, seconded by Mr. Dawson, approval of application. Chair Tikoian stated that he had concerns due to the aspect of non-contiguous property and that he would oppose the approval of the project. Motion carried with one opposed.

2010-05-121 MATTHEW AND VIVIAN LACROIX – Raze existing two-bedroom, single-family residence and to construct a three-bedroom, single-family residence. The existing residence is serviced by public water and sewers; the proposed structure will be as well. Located at Plat N, lot 183; 89 Stanton Avenue, Narragansett, RI.

Matthew La Croix present as well as Kristen Sherman, Esq and Joseph Frisella, PE. Mr. Medeiros gave brief overview of application to Council stating that the applicant proposed to raze an existing structure and rebuild dwelling adjacent to Type 1 waters of the Harbor of Refuge in Narragansett with wetland to the east and north of the project. Mr. Medeiros stated that the project triggered the requirement of a 50' buffer zone and a setback requirement of 75'. Mr. Medeiros stated that the applicant was proposing a 5' buffer zone and a 22' setback which required a 45' buffer zone variance and a 53' setback variance. Mr. Medeiros stated that staff recommendation was for denial of the project due to RICRMP Section 120 Variance Criteria not

being met. Ms. Sherman introduced Mr. LaCroix and Mr. Frisella giving history of owner's association to property stating that the applicant's have owned the property for 15 years and wished to retire to Narragansett but that the 518 s.f. dwelling could not handle a family of their size and needed a larger dwelling. Mr. LaCroix was sworn in and made a brief statement to the Council stating that his family had grown and he wanted to provide a home in Narragansett where the family could gather in comfort. Mr. LaCroix stated that the house was serviced by town sewer system and town water. Mr. LaCroix stated that the home also provided an aesthetic upgrade to the area as well as a safety improvement as they would be building the home higher on pilings than the dwelling there as present. Mr. LaCroix also pointed out that they had received local building and zoning board approval. Mr. Frisella was sworn in and qualified as an expert witness. Mr. Frisella stated that he was familiar with the area and site plans which were stamped by him. Ms. Sherman submitted picture taken on November 15, 2010 submitted as exhibit and marked by Mr. Goldman as LaCroix Exhibit #1. Mr. Frisella stated that the lot size was 10,933 sf with flat topography and very little buffer at the present just some minor foliage in front of the current deck. Review of large scale plans pointing out coastal features and wetland area. Ms. Sherman submitted to the Council, "Proposed Site Improvements" plan which Mr. Goldman marked as LaCroix Exhibit #2 and also a 2008 aerial photo of property and surrounding properties which Mr. Goldman marked as LaCroix Exhibit #3. Mr. Frisella stated that both exhibits were a true and accurate depiction of property. Mr. Frisella testified that the existing dwelling was closer to the water and wetlands than neighboring dwellings; that the foundation did not meet current standards for FEMA and State Building code and was subject to destruction with powerful storm event. Mr. Frisella stated that the proposed dwelling was set at equal distance from coastal feature and wetlands and that the proposed dwelling size was 1,122 s.f. Mr. Frisella stated that the proposed project met all CRMC standards except the buffer standards. Mr. Frisella described the stormwater design for the property stating that the retention area would handle existing runoff due to the regrading and contouring of the property and that there would be silt fence around the property lines. Mr. Lemont asked Mr. Frisella if the plans could be revised to move the proposed dwelling further NW away from the water and wetland area. Mr. Frisella stated that it might interfere with the lot access and parking. Mr. Medeiros stated that an option could be reducing sf of foundation but building up to provide more room. Ms. Sherman stated that applicant would welcome guidance from the Council and would like to make an effort to compromise but was not afforded the opportunity at the staff level. Mr. Medeiros stated that the applicant had the benefit of two previous preliminary determinations which he and his partner Tracy Silvia had worked on and offered that an administrative approval could be granted if the house size was decreased. Mr. Medeiros stated that the buffer zone variance requirement could be avoided with downsize but that the setback could not be met but variance to this requirement could be minimized. Mr. Medeiros offered that a 770 s.f. dwelling, which could be multi-story, would not trigger buffer zone. Ms. Sherman objected for the record the change in dwelling size and made an offer of proof as to why the dwelling needed to be one level stating that the LaCroix family planned this dwelling as their retirement home and did not wish to have a two story home as the years progressed for them. Mr. Lemont stated that he could not support the project as his and he recommended that the owners and Mr. Frisella meet with staff and rearrange/resize dwelling so as to be able to receive administrative approval of application. Chair Tikoian also gave guidance to applicant on moving the dwelling on the lot and stated that his inclination was to continue the application so that the project could be revisited on the staff level. Mr. Lemont motioned, seconded by Mr. Dawson, the continuance of 30 days. Motion carried on unanimous voice vote.

6. ADMINISTRATIVE FINE HEARING

Chair Tikoian stated that the Council would now be acting as Hearing Officer as a result of the 312 NOAA Evaluation. Mr. Willis provided a synopsis of procedure stating that with the process being new they would appreciate any ideas or direction from Council to staff as to how to present cases. Mr. Willis introduced Ms. Miguel and Mr. Harrington to the Council as CRMC enforcement staff stating that most enforcement matters are resolved through enforcement staff. Mr. Willis stated that an enforcement matter will be brought to the Administrative Fine Hearing level only when a resolution cannot be found on the administrative level. Mr. Goldman briefed the Council on Administrative Fine hearing procedure. Chair Tikoian stated that the Council would hear Administrative Fines at the first meeting of every month but that this month it a catch up month and would hear them at both November meetings.

10-0046 Jim DePasquale

Ms. Miguel and Mr. Harrington were sworn in. Mr. Harrington gave a summary of events to the Council stating that they had responded to an anonymous phone call reporting unauthorized tree cutting. Mr. Harrington stated that a Cease and Desist Order was issued and an Administrative fine was assessed at \$2,500.00 which was appealed. Mr. Harrington stated that two continuances were requested and granted with a rescheduling for today. Mr. Harrington stated that the CRMC issued a permit for house (A2009-02-056) in which stipulation D stated that no alterations without CRMC approval. Mr. Harrington stated that some trees were cut on Town owned property as well.

James DePasquale present as well as Anthony DeSisto, Esq. Mr. DePasquale sworn in. Mr. DeSisto asked Mr. Harrington how many trees had been cut and what their widths were. Mr. Harrington stated that although he did not count the downed trees there were several medium width trees that were cut and the landscapers gave the implication that they had cut the trees. Mr. DeSisto stated that if trees were cut on neighboring properties there were no other citations that had been issued. Mr. Harrington stated that he had sent copies of DePasquale Cease and Desist Order and Administrative Fine letter to abutting property owners. Mr. DeSisto asked that five photos be put in the record. The photos were authenticated and marked as Exhibits DePasquale 1-5. Site Plan of DePasquale property prepared by Barker Land Surveying marked as Exhibit DePasquale 6. Mr. DePasquale stated that there was confusion based on the plan where the CRMC jurisdictional line was. Mr. DePasquale stated that his intention was only to remove dead trees from property and to clear area near the sewer line. Mr. DeSisto stated that the mitigating factors for case were that Mr. DePasquale was mistaken in regards to CRMC's jurisdiction and that this was the first time Mr. DePasquale had been cited for anything and that as soon as CRMC enforcement staff came down the work was stopped. Mr. DeSisto stated that Mr. DePasquale was asking for the Administrative Fine to be either withdrawn or reduced and that he was willing to plant replacement trees as restoration. Mr. DeSisto stated that the town was notified of the cutting of trees on their property and that they did not want to be involved in the situation. Mr. DePasquale stated that he had called the Town Manager, the town Planner and the Director of Public Works – each time being referred to the other person. Chair Tikoian asked what Mr. DePasquale was offering in terms of Restoration Plan and expenditures. Mr. DeSisto stated the Mr. DePasquale was offering to work with CRMC staff on the restoration plan. Mr. Lemont asked what species of trees were cut. Mr. Harrington stated that he was unsure but that it looked to him and Ms. Miguel as if Mr. DePasquale was cutting trees to create a view corridor. Mr. Lemont stated that as it was the first Administrative Fine Hearing before the Council that a tone needed to be set and that he supported the \$2500.00 fine. Mr. Coia stated that he supported the appeal due to the fact that it was first offense, owner stopped cutting immediately, there was not a reckless regard to standards. Mr. Coia stated that the Council had seen many cases where the violations did not stop but this was not the case and was in favor of mitigation. Mr. Gomez stated

that he also supported mitigation in this case. Mr. Coia asked questions regarding what staff was looking for in “proper restoration” and what size trees they would look to have planted as this could be very expensive. Mr. Coia also expresses concern about Mr. DePasquale having to plant trees on property that is not owned by him and not cared for by Town. Mr. Driscoll stated that he was in favor of mitigation as well based on the fact that the property owner was cooperating to resolve issue. Chair Tikoian suggested a \$1,500.00 fine and order of restoration. Mr. Coia stated that that could bring the total back up to over \$2,500.00 fine. Chair Tikoian stated that he wanted to put the value on the fine not the restoration. Mr. Dawson motioned for a \$1,000.00 fine and restoration order to work out with staff. Mr. Coia seconded the motion only for further discussion. Mr. Coia asked what the mechanism for return to Council. Mr. Goldman stated that the mechanism would be that if a resolution could not be worked out, staff would send back to Council. Chair Tikoian respectfully disagreed. Motion carried on a 5 to 3 vote with Mr. Gagnon, Mr. Lemont and Chair Tikoian opposed.

10-0049 Adler Brothers Excavation
10-0049 Atlantic Lawn and Garden

Ms. Miguel gave brief timeline summary of enforcement case stating that the uniqueness of the case before the Council is that the owner had already entered into a Consent Agreement with CRMC and paid an administrative fee. Ms. Miguel explained that before the Council was the contractors who performed the work in question, Atlantic Law and Garden and Adler Brothers Excavation. Ms. Miguel stated that a previous permit issued in 2007, which was recorded in land evidence records for this property, granted approval to remove shed and provided for vegetative clearing only in shed area. Ms. Miguel stated that a phone call was received reporting excavation work on the property and that the work appeared to be beyond the scope of the permit issued in 2007. Ms. Miguel stated that a Cease and Desist Order was issued for work being done within pond, stream and wetlands located on the property all of which were disturbed by work. Ms. Miguel stated that the owner had purchased the property three months previous to the work being done and intended to do whatever necessary to resolve the violation. Ms. Miguel stated that Mr. Adler was asked about and confirmed his knowledge of Freshwater Wetland regulations within the state of Rhode Island. Ms. Miguel stated that the Administrative Fine was issued to both contractors who had prior knowledge of regulations and should have informed owner of such. Representing property owner, Guy Lombardo, is Quentin Anthony, Esq. Mr. Anthony did not have any questions for staff. Mr. Coia questioned the term “egregious violation” and asked for explanation. Ms. Miguel stated that the filling, excavating and clearing while an active permit clearly stipulated that this activity was not permitted; the familiarity with the Freshwater Wetland Regulations and that all features on site being significantly disturbed is what lead to term usage. Ms. Miguel stated that in answer to requirements of Consent Agreement Mr. Lombardo had submitted an application for site restoration. Mr. Goldman explained that the Administrative Fee paid along with the signed Consent Agreement covered the expenses of staff while negotiating the settlement. Mr. Anthony questioned property owner Mr. Lombardo who stated that he bought the property (after being away from the State for 40 years) at the end of March which contained a 4000 s.f. man-made pond. Mr. Lombardo stated that in June half the surface of the pond was filled with phragmite and was silt filled, also that the trees surrounding the pond were over taken by vines and were struggling to survive. Mr. Lombardo wanted the phragmites removed from the pond and the vines removed. Mr. Lombardo stated that he cut the vines himself and left to die and that he instructed the excavation company to remove the silt from the pond and cart off site. Mr. Lombardo stated that work was stopped when CRMC arrived and that construction fence and hay bales had been placed around stream. Mr. Lombardo stated that Atlantic Lawn and Garden was working on different area of property setting masonry out of CRMC’s jurisdiction. Mr.

Lombardo stated that he contracted Mr. Rabideau to submit application to CRMC for restoration plan. Mr. Anthony stated that his client had already spent \$8,000 in consultant fees and planned on spending another \$18,000 to \$20,000 for restoration. It was established that the application had been accepted but not approved as of yet. Mr. Anthony stated that they would like to have the fees waived against the contractors. Ms. Miguel explained CRMC jurisdiction for this property. Mr. Abedon stated that professionals needed to be held to a higher standard. Mr. Anthony stated that Mr. Lombardo wished to stand behind his contractors and pay their fine but he thought that a better use of fine money would be that it go toward the restoration expense. Mr. Anthony stated that the work done on the property by contractors was at the direction of Mr. Lombardo. Ms. Miguel stated that because Mr. Lombardo had just moved back to RI after long absence, the contractor who was aware of the regulations should have notified property owner of permit requirements or at the very least asked if a permit had been granted. Mr. Lemont motioned, seconded by Mr. Dawson, to uphold the \$2,500.00 fine against Adler Brother and for staff to research Atlantic Lawn and Garden's presence on site. Ms. Miguel stated that she would talk to staff present at time of site visit and review the photos. Motion carried on unanimous voice vote.

Category "A" List -- None held

7. ADJOURN

Vice Chair Lemont motioned, seconded by Mr. Coia, for the adjournment of the meeting. Motion carried on unanimous voice vote. Meeting adjourned.

Respectfully submitted,

Lisa A. Mattscheck