

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, November 23, 2010 at 6:00 p.m. in Conference Room A of the Administration Building, One Capitol Hill, Providence, RI.

MEMBERS PRESENT

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

STAFF PRESENT

Jeffrey M. Willis, Deputy Director
David Reis, Spv Environmental Scientist
Brian Harrington, Enforcement
Louise Ford, Fiscal Officer
David Beutel, Aquaculture Coordinator

Brian Goldman, Legal Counsel

1. CALL TO ORDER

Chair Tikoian called the meeting to order at 6:00 p.m and made brief statement regarding process of approval from the Council.

2. APPROVAL OF THE MINUTES OF THE PREVIOUS MEETING:

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

3. SUBCOMMITTEE REPORTS

There were none.

4. STAFF REPORTS

Mr. Fugate reported to the Council about the OSAMP Team meeting on Martha's Vineyard regarding the Areas of Mutual Interest (AMI) between Rhode Island and Massachusetts that is contained within the Ocean SAMP as a potential site for wind energy development. Mr. Gomez inquired as to the status of the Block Island wind farm in State waters. Mr. Fugate stated that Deep Water was waiting for their PUC hearing and that when the Supreme Court renders a decision Deep Water will move to complete remainder of studies and potentially submit an application shortly after that.

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 Administrative Fine hearings with the Council acting as hearing officer and that it would be the last meeting of the year for the Council to hear Administrative Fines.

5. BUDGET PRESENTATION - FY 2011 and FY 2012

Mr. Willis presented to the Council on the Agency's FY 2012 Budget submittal to the Department of Administration. Mr. Willis stated that the Agency was asked to provide two documents – an unconstrained budget and a constrained budget. Mr. Willis explained that within the unconstrained

budget, the agency requested five new positions (3 policy positions and 2 permitting positions) due to the added responsibilities the agency has taken on from new and growing programs that CRMC is responsible for. Mr. Willis explained that within the constrained budget document, the agency is asking to maintain level funding while continuing to do the work that the agency is doing now and into the future. Mr. Gomez asked what would happen if someone were to leave the agency, would there be on staff back-up for maintaining that vacant position's workload. Mr. Willis stated that many staff members have overlapping planning/permitting responsibilities and that there is no additional contracting money to hire additional help. Mr. Gomez stated his concern for loss of the corporate knowledge if someone were to leave as it is evident that many of the CRMC staff members are long time employees. Mr. Lemont requested that the language on sea level rise be removed from the budget. Mr. Willis agreed. Mr. Dawson expressed disappointment that the agency was not requesting further enforcement staff stating that he did not feel two people were enough in the enforcement area. Mr. Willis explained the process of submitting the budget proposal to administration and House Finance Committee. Chair Tikoian stated that he felt the agency needed to maintain the firewall regarding any upcoming application for wind energy operations and requested that the 2nd paragraph on page 6 be removed. Vice Chair Lemont motioned approval of budget submittal with the two revisions and removal of Item 15. Motion seconded by Mr. Dawson. Motion carried on unanimous voice vote.

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

2010-07-048 MATTHEW BEHAN – Three acre aquaculture farm in Ninigret Pond. Located at Town Dock Road, Charlestown, RI.

Matthew Behan present. Mr. Beutel gave brief overview of application to the Council stating that Mr. Behan proposed a three acre aquaculture operation in Ninigret Pond using the rack and bag method to grow oysters and a bottom planting method for little necks. Mr. Beutel stated that the application had been vetted through all the normal channels with no objections. Mr. Beutel stated that all concerns were addressed in the application which was the most thorough submittal he had ever reviewed. Mr. Beutel stated that the reviewing agencies were very impressed with the level of detail provided by Mr. Behan. Vice Chair Lemont motioned, seconded by Mr. Dawson, approval of application. Chair Tikoian asked if the aquaculture process was getting better due to the level of education regarding Rhode Island aquaculture. Mr. Beutel stated that through the level of outreach, the reviewing process has improved. Motion carried on unanimous voice vote.

2010-08-054 ST. BERNARD'S ROMAN CATHOLIC CHURCH – Convert the existing church and support building for residential use. The church, rectory and parish hall will all be converted to provide multiple residential dwelling units (39 one bedroom elderly apartments and 1 three bedroom apartment) and office space. An existing building extension, shed and garage will be razed and a new larger addition constructed that would provide more dwelling units. Located at plat 91, lots 61 and 62; 404 Tower Hill Road, North Kingstown, RI.

Stephen Haire, counsel for the applicant, present. Mr. Reis gave brief overview of application to the council stating that the request was to convert an existing church and support buildings into a low-to-moderate income residential development. Mr. Reis stated that the existing church, parish hall and rectory will be converted to provide 39 one-bedroom elderly apartments and one three bedroom apartment and office space. Mr. Reis stated that a minor variance was required for part

of the stormwater management system and setback. Mr. Reis stated that CRMC staff had no objection to the application. Mr. Haire stated that reports had been reviewed and had no further comments to make. Mr. Dawson motioned, seconded by Mr. Coia, for approval of application. Motion carried on unanimous voice vote.

6. **ADMINISTRATIVE FINE HEARING**

08-0037 Stephen and Margaret Lee, White Avenue, East Providence, RI

Mr. Harrington was sworn in and gave brief summary of enforcement action to the Council stating that in April of 2008 enforcement staff visited the Lee property at 29 White Avenue in East Providence and found unauthorized decks and fences had been constructed on a coastal feature and that unauthorized earthwork and vegetative clearing had been undertaken. Mr. Harrington stated that a Cease and Desist Order had been issued along with a \$2,500.00 Notice of Administrative Fine which were appealed and an application submitted. Mr. Harrington explained that an Administrative Fine Hearing was held in November of 2008 and that the Hearing Officer ruled that restoration plans were to be submitted and that plans were acceptable and a Consent Agreement was to be prepared by staff to resolve the violation. Mr. Harrington stated that a second hearing was scheduled for April as a restoration plan was not received but an extension was requested by the Lee's attorney as they had hired Scott Rabideau to prepare a plan. Mr. Harrington stated that in February of this year, another Administrative Fine hearing was scheduled with another extension request from the Lee's attorney but that Mr. Lee attended and a meeting was held between Mr. Lee and himself. Mr. Harrington stated that at that meeting in February, Mr. Lee stated that he would submit the materials so their application could be reviewed administratively. Mr. Harrington stated that a plan was not received and Administrative Fine Hearing was scheduled for September 30th which was continued again due to the fact the Mr. Lee's attorney was still court excused. As no plan has been received as of yet, the hearing was schedule for this evening. Mr. Harrington stated that staff was still agreeable to entering into a consent agreement as long as a restoration plan is received soon. Mr. Coia asked if it is normal for an enforcement case to continue for 2.5 years. Mr. Goldman stated that he thought the situation was resolved after the first hearing and that as far as the continuances go, sometimes staff agrees to them and sometimes they refer them to legal counsel. Mr. Lee was sworn in. Chair Tikoian asked Mr. Lee if they were present to submit a restoration plan. Mr. Lee stated that they were and Mr. Rabideau stated that the plan was not ready for submittal at this time. Mr. Lee explained to the Council that he had become unemployed in May of 2010 and that money was very tight and he could not afford to have the plan drawn. Mr. Rabideau was sworn in and explained to the Council that in order to have the deck properly moved back, a grading plan needed to be submitted to staff for review. Mr. Rabideau explained that he could not do a grading plan as he is not an engineer or a land surveyor and that Mr. Lee could not afford to hire another professional to do the plan at this time. Mr. Rabideau stated that he could provide a two dimensional picture of how the deck could be lifted up and moved back off the coastal feature and how the coastal feature would be restored. Chair Tikoian clarified with Mr. Harrington that the retaining wall was also part of the violation and needed to be eliminated also. Mr. Rabideau stated that there was an application submitted in 2008 that is still pending, and with the submittal of a properly designed plan, the Lees could keep the deck within so many feet of the coastal feature if amenable to staff. Mr. Rabideau stated that the area had a very developed coastline. Discussion on extent of fill behind retaining wall, and condition of site prior to construction. Mr. Rabideau stated that the lawn went to where the

deck is situated now. Mr. Lee stated that there was a retaining wall there prior to construction which he rebuilt and that there was a landing with stairs going down to beach which existed prior to owning the property. Mr. Fugate stated that the portion of the deck that's overhanging is what is generating the special exception and that if the deck was pulled back the special exception requirement would be eliminated. Mr. Lemont asks what applicant and Council can agree upon to resolve situation. Mr. Lee stated that the would move the deck back 16 inches to be off the bluff and Mr. Rabideau stated that the stairs would be applied for as a walkover structure down to the water and that there is a nice stairway to the water on a neighboring piece of property that was permitted. Vice Chair Lemont stated that the effort to improve the property should not be overlooked. Chair Tikoian stated that the violation aspect of the hearing cannot be overlooked. Mr. Harrington stated that the stairway on the neighboring property is a violation as well that CRMC staff are working through. Mr. Harrington stated that it is staff's opinion that there is also fill on top of the bank, under where the deck is, there's several feet of fill that had been added. Mr. Lee contends that he did not fill underneath the deck. Mr. Reis is sworn in. Mr. Reis stated that to review the current application, he looked at previous applications submitted for the same property, so that based on site inspection, aerial photographs and prior plans, it is determined that the bluff is about 10 feet further seaward where the retaining wall is from the prior plans submitted in 2004. Mr. Reis stated that he and Mr. Lee had had discussions on this subject and that the applicant had acknowledged the placement of approximately two feet of fill behind the retaining wall. Mr. Reis stated it would be best to have a grading plan but in an effort to resolve the violation, staff was willing to have a meeting at the site and stake the area out that needed to be graded back to the stakes to create an appropriate slope. Chair Tikoian asked if the 30 days would be appropriate to have a site meeting and submit a plan of what would happen to resolve the violation. Mr. Lee asked how moving the retaining wall would be good for the environment. Mr. Reis stated that his report recommended the removal of the prohibited retaining wall and that the deck is not the issue it is the retaining wall and the fill that is the issue. More discussion on timeframe as it is the wrong season to remove the retaining wall and grade as it will not have time to vegetate and the slope will be subject to erosion. Mr. Reis stated that CRMC can give recommendations for seed and slope and it could be planted at the right time of year. Mr. Reis talked about the agencies invasive species program to help the applicant deal with the knotweed. Chair Tikoian brought up subject of the Fine for discussion. Mr. Harrington stated that if a Consent Agreement is drawn, the fine would be reduced to an administrative fee, typically being \$250.00 for first time violation. Chair Coia motioned, with a clarification from Mr. Goldman, for the Council to order a restoration plan be submitted consistent with the staff's recommendation, and that the plan submitted would be embodied into the Consent Agreement and a \$250.00 fee. Vice Chair Lemont seconded motion. Mr. Harrington stated that in terms of a time table they typically order by May 31st. Timeframe added to motion. Motion carried on unanimous voice vote.

10-0073 Jeffrey and Bonnie Glazer, Charlestown Beach Road, South Kingstown, RI

Continued as per request of applicant.

Category "A" List -- None held

7. **ADJOURN**

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

Respectfully submitted,

Lisa A. Mattscheck