

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, June 28, 2011 at 6:00 p.m. at URI Coastal Institute, Hazards A & B, South Ferry Road, Narragansett, RI.

Members Present

Anne Maxwell Livingston, Chair
Paul Lemont, Vice Chair
Raymond Coia
Bruce Dawson
Donald Gomez
Ron Gagnon, RIDEM
Guillaume de Ramel
Mike Hudner
Tony Affigne

Staff Present

Grover J. Fugate, Executive Director
Jeffrey M. Willis, Deputy Director
Kenneth W. Anderson, Spv Civil Engineer
Danni Goulet, Marine Infrastructure Coordinator
Jim Boyd, Coastal Policy Analyst

Brian A. Goldman, Esq.

Members Excused

David Abedon

1. **CALL TO ORDER**

Chair Livingston called the meeting to order at 6:00 p.m.

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

Chair Livingston called for approval of the minutes from previous meeting, June 14, 2011. Mr. Coia motioned, seconded by Vice Chair Lemont, for approval of the June 14, 2011 minutes. Motion carried on unanimous voice vote.

3. **SUBCOMMITTEE REPORTS**

There were none

4. **STAFF REPORTS**

Mr. Fugate updated the Council regarding his speaking schedule for the Ocean SAMP and marine spatial planning. Mr. Fugate informed the Council that the Dept of Administration is developing a new ocean policy to push states to have a marine spatial plan of which RI's Ocean SAMP is the example to be followed. Mr. Fugate informed the Council that the head of the NOAA federal agency would be in Rhode Island for a press conference to promote the Federal approval of RI's Ocean plan – the press conference would be held on July 22, 2011 at 12:00 at the URI Bay Campus. Mr. Fugate informed the Council of an event promoting RI's Urban Coastal Greenway plan to be held on July 26 at 10:00 a.m. at Johnson & Wales Bay Campus.

Mr. Goldman informed the Council that a decision was received from Superior Court regarding the CRMC case of James Benincasa and Laura Humphrey versus CRMC in which the Superior Court decision affirmed the decision of the Council and dismissed both appeals of the applicant and the objectors.

Chair Livingston stated that the Educational Series which would be Brian Goldman giving a briefing on the CRMC Legal Process would be at the end of the meeting.

5. UPDATE ON MATUNUCK BEACH

Mr. Fugate informed that Council that a summation from CRMC staff was provided in the Council agenda as an update on the Matunuck Beach issue and that staff was available for questions, if any. Mr. Affigne stated that he has visited the area and that there were many things he saw that did not appear on photos that were shown at the May 31st meeting between CRMC and the Town of South Kingstown. Mr. Affigne talked about the creosoted bulkhead under the first commercial building to the west. Mr. Affigne asked for a report on any further action CRMC may take in regards to the bulkhead having been installed in the area. Mr. Affigne inquired about an addition to an existing building on the water side of Matunuck Beach Road. Mr. Fugate explained the permitting process and stated that the addition project met CRMC regulations and was permitted. Chair Livingston informed the Council that there would be a group visit of the area. Mr. Fugate stated that many of the bulkhead walls were part of a series of violation notices that have been held in abeyance so the Council can make a decision. Mr. Fugate stated that no one has come in to apply for the emergency permits offered and that the creosoted bulkhead was not being held in abeyance. Jane Austin of Save The Bay commented that they were concerned that the project was not being considered as what they feel is more appropriate as a special exception. Mr. Affigne asked if there would be a time when they would be able to have a further discussion regarding the issues. Chair Livingston stated that when the Town submitted their applications, there will be a normal process of application review.

Chair Livingston inquired as to applicant's attendance and read the opening statement.

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

2005-08-044 PAYNE'S NEW HARBOR DOCK, INC. – Extend/expand existing marina facility as follows: extend main pier 12' x 80' northerly to 12' x 207' "T" head pier (east-west) with 10' x 18' "L" returns at each end. The proposal seeks to add approx. 15 boats to the existing marina boat capacity of 70 +/- . Located at plat 5; Ocean Avenue, New Shoreham, RI.

Present for the application is Ken Payne, owner, Nick Gorham, Esq., and Scott Rabideau, NRS.
Present for the Town of New Shoreham objecting to application is Donald Packer, Esq.

Ken Anderson gave brief overview of the application to the Council stating that Mr. Payne was asking to expand his marina by adding a 207' T on the end of pier and 18' returns on ends of T-head. Mr. Anderson stated that the boat count would expand by 15 boats. Mr. Anderson stated that staff had recommended approval of the application with slight modifications of the proposed configuration which would include removal of two end wings and reducing the terminus of the pier away from Mooring Field E. Mr. Gomez asked about the safety aspect if wings were removed. Mr. Anderson stated that there would be no impacts on boat safety. Mr. Gorham made a brief statement to the Council stating that the applicant agrees with staff report accept for a few issues with the recommendation. Mr. Gorham stated that it is the owner's belief that the T caps are necessary for structural support. Mr. Gorham stated that the owner is amenable to, and the Town of New Shoreham is in agreement, that a

modification to the project would be to move the T caps inward by ten feet. Mr. Gagnon asked about a dedicated slip for a pumpout. Being sworn in, Mr. Payne assured him the pumpout situation was adequate.

Mr. Packer stated that the Town objected to the project due to ownership of the land under the Great Salt Pond. Mr. Packer also stated that the Town was amenable to revising Mooring field E and the elimination of the "T" caps but are concerned with the prospect of rafting to the east of the marina. Mr. Packer stated that when Mr. Payne resubmits the modified plans, the town would like to see that dedicated slip for pumpout on the plans so that it may be enforced. Mr. Packer broached the issue of compensation for the use of public trust waters which was brought up by the Committee for the Great Salt Pond and the Town of New Shoreham.

Mr. Goldman stated that the ownership of the land issue raised by the Town has been determined both in Superior Court and Supreme Court that CRMC has jurisdiction within the Great Salt Pond. Mr. Goldman stated that Town did not need to be an applicant. Mr. Goldman also stated that the ability to enforce CRMC Assent stipulations usually falls to CRMC, however, the Council could designate authority if it so chose.

There was discussion on the submerged lands fees in which Mr. Fugate stated that if CRMC were to impose fees for this marina they would have to impose submerged land fees for all marinas.

Mr. Payne stated that he had a very good working relationship with the Harbormaster of the Town and agreed to work with him on any issue that came up.

Mr. Coia motioned, seconded by Vice Chair Lemont, for approval of application with the stipulation of moving the "T" caps in another ten feet. Motion carried on unanimous voice vote with one abstention from Mr. Affigne.

2010-08-068 SAVE THE BAY/JOHNSON & WALES – Construct and maintain a 14 foot wide by 240 foot long floating wave attenuator; construct a new 8 foot wide by 212 foot long public access fixed pier with a 26 foot square seasonal covered viewing area; construct a kayak dock with two launch ramps and modify the existing Marina Perimeter Limit. The wave attenuator is held in place with 6 mooring blocks and 6 helical anchors; the gangway float is held in place with 2 helical anchors. Located at plat 56, lot 257; 100 Save The Bay Drive, Providence, RI.

Present for the applicant is Jane Austin and Maureen Fogarty of Save The Bay and Rick St. Jean, PE, the engineer for the project.

Mr. Goulet gave a brief overview to the Council stating that application was for the modification of an existing wave fence which will be converted to a wave attenuator for protection of existing facility. Mr. Goulet stated that CRMC staff has worked with all other agencies both federal and state. Mr. Goulet stated that there is a recommendation for approval by staff. Mr. Goulet explained the project in phases stating that the wave attenuator will be phase I and phase II would entail an 8' x 212' long access pier which would be seasonally covered at the end for Save The Bay to perform their educational activities. Mr. Goulet stated that there would also be some kayak launches, that the facility is open to the public from sunrise to sunset, there is plenty of parking and sanitary facilities. Mr. Gomez asked about maintenance to which Mr. Goulet stated that maintenance would include checking

connections after any kind of storm event. Mr. St. Jean, Ms. Austin, and Ms. Fogarty are sworn in. Mr. St. Jean explained how the wave attenuator system worked. Vice Chair Lemont motioned, seconded by Mr. Coia, for the approval of the application. Motion carried on unanimous voice vote.

2011-03-023 WICKBAY PROPERTIES, INC. – Construct and maintain a modified Marina Perimeter Limit and extension of an existing dock (Dock S/M). The modification will not increase the overall boat count due to additional slip modifications within the existing Marina Perimeter Limit. Located at plat 91, lot 142; 65 Reynolds Street, North Kingstown, RI.

Mr. Dawson made a disclosure statement saying that he'd lived in North Kingstown for 39 years and that he was an active boater and had served on the North Kingstown Harbor Management Plan Steering committee for many years and also served on the North Kingstown Harbor Commission for six years prior to CRMC appointment. Mr. Dawson stated that he did not keep his boat in a slip but had used Wickford Cove Marina for winter storage. Mr. Dawson stated that all these facts would not effect his decision.

Present for the applicant is Mr. John Nicolls, Assistant Manager for Wickford Cove Marina and Larry Colantuono, General Manager of Brewers Wickford Cove Marina.

Mr. Goulet gave brief overview of the application to the Council stating that the applicant wished to expand the marina perimeter limit to extend an existing dock approximately 192 feet so as to be same length as existing docks that area at the marina; allowing for the berth of various length boats and larger size boats. Mr. Goulet stated that a few objections were received for the application during the notice process. Mr. Goulet explained the location of the dock using plans and photos.

Mr. Nicolls and Mr. Colantuono were sworn in and Mr. Nicolls made a brief statement to the Council stating that the applicant is requesting to extend one facility without an increase in maximum boat count. Mr. Nicolls stated that the facility was dredged recently and will provide for more space for the extension of the dock. Mr. Nicolls stated that there were misconceptions and misunderstandings amongst the neighboring properties who objected to the project. Mr. Nicolls stated that some statements of boat movement are inaccurate and that the larger boats do not have to back out or back in; they can be moved with yard skiffs or the boats turn themselves around without issue. Mr. Nicolls stated that he felt that the marina met the ACE's standards with respect to handling, maneuvering lane width standard and have an approval from the Army Corps of Engineers. Mr. Nicolls stated that the channel was not used frequently prior to their dredging of it as it was very shallow, that the neighbors in the area have benefited from the dredging of this area and that the neighbors will not be shut out from using the channel. Mr. Nicolls refuted the fact that Mr. Tandy's mooring was illegally removed and not put back. Mr. Nicolls stated that Mr. Tandy's mooring was located in an area in which Wickbay Properties was ordered by CRMC enforcement to remove the mooring and not replace it. Mr. Nicolls stated that the reasons they are asking for the expansion of the dock is to be able to realize their 155 boat count and perhaps have larger boats dock in their facility. Mr. Nicolls talked about the benefit to the community by bringing more money into the local area through tourists; the steady employment at the marina; the use of the water area after the dredging was performed, the possibility of public access to water by more people. Mr. Nicolls stated that they had received unanimous approval by the local boards – North Kingstown Harbor Commission and the North Kingstown Town Council; and also, approval on the federal level from US ACOE. Mr. Nicolls stated that they would agree to limiting the size of the boats kept of the eastern side of the last two 48' sections of the dock. Mr. Gomez stated that this type of project is permissible and a highly recommended use of Type 5 waters.

Susan Hanson Namiotka was sworn in and read a letter of concern from Mr. and Mrs. Tandy who live at 177 Steamboat Avenue, North Kingstown and could not be present. Mr. and Mrs. Tandy's letter mainly spoke about the mooring that was removed and not replaced. Mr. Goldman stated that the letter would be made part of the record as public comment. Mr. Dawson asked for clarification from Mr. Goulet regarding the Tandy property. Mr. Goulet confirmed that Mr. Tandy was served a violation for having too many boats on his residential boating facility. Mr. Goulet explained, at the request of Mr. Dawson, the removal and replacement of piling as part of the dredge project stating that Mr. Gray's pilings were returned to their appropriate location but Mr. Tandy's was not as it was not permitted. Ms. Namiotka stated that the mooring was paid for on a yearly basis to the Town by the Tandys. John Namiotka was sworn in and made a statement of concern regarding the marina expansion. Mr. Namiotka distributed photographs for reference only and commented that he felt the marina was large enough with being able to have 155 slips. Mr. Nicolls stated that there was an agreement with Mr. Gray to return the pilings in a different location and CRMC was aware of it. Greg Copper was sworn in and expressed concern that the marina was going to expand onto public waters but that there would be no compensation for it. Mr. Copper also expressed concern for navigational safety. Discussion from Council members and Mr. Goulet on restrictions for the eastern side of the dock extension. Mr. deRamel asked about the compensation for use of public land and it was explained that compensation is a difficult topic if not discussed for the entire state. Mr. Goulet explained the dredging procedure the marina went through.

Mr. Dawson motioned, seconded by Vice Chair Lemont, approval of application with the stipulation that the eastern side of the northerly two 48' docks berth a vessel with no more than a 16-foot beam. Motion carried on a unanimous voice vote.

(Brief Recess)

EDUCATIONAL SERIES – Brian Goldman, Esq. – CRMC Legal Process

Mr. Goldman gave a power point presentation to the Council regarding the legal processes of the organization – jurisdiction, hearing process, ex parte communications and Open Meetings Act.

6. CATEGORY “A” LIST

None were held.

7. ADJOURN

Mr. Dawson motioned, seconded by Mr. Gomez, to adjourn. Motion carried on unanimous voice vote. Meeting adjourned.

Respectfully submitted,

Lisa A. Turner
Recording Secretary