

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, October 25, 2011 at 6:00 p.m. in Conference Room A of the Administration Building, One Capitol Hill, Providence, RI.

Members Present

Anne Maxwell Livingston, Chair
Paul Lemont, Vice Chair
Raymond Coia
Dave Abedon
Bruce Dawson
Donald T. Gomez
Ron Gagnon, RIDEM
Tony Affigne
Guillaume de Ramel

Staff Present

Jeffrey M. Willis, Deputy Director
Kenneth W. Anderson, PE, Spv Engineer
Amy Silva, Senior Environmental Scientist
Richard Lucia, Principal Civil Engineer

Brian Goldman, Esquire

Members Excused

Michael Hudner

1. **CALL TO ORDER**

Chair Livingston called the meeting to order at 6:00 p.m. Chair Livingston stated that Mr. Fugate would not be in attendance due to health issues. Mr. Willis acted in his place. Chair Livingston stated that the educational series would be postponed until the next meeting.

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

Chair Livingston called for approval of the minutes from the October 11, 2011 meeting. Vice Chair Lemont motioned, seconded by Mr. Coia, for approval of minutes. Motion carried on unanimous voice vote.

3. **SUBCOMMITTEE REPORTS**

There were none.

4. **STAFF REPORTS**

Mr. Goldman also updated the Council on the Enforcement action on the Koolen case saying that Laura Miguel, Brian Harrington and himself were in Superior Court earlier that day. Mr Goldman explained that Mr. Koolen had arrived in court pro se and asked the court for a 60 day continuance so that he could hire a lawyer. Mr. Goldman stated that the Judge continued the matter to Friday, November 18, 2011 and issued an interim order that no further floats, boats, docks are to be brought into the location.

Mr. Goldman made an opening statement regarding the proceedings and the Assent receipt process.

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

2011-06-080 PAUL WILSON -- Construct and maintain a new limited marina with 7 slips and establish a new marina perimeter limit. Located at plat 117, lot 207; Brown Street, North Kingstown, RI.

Mr. Wilson was present as well as Rick St. Jean, PE. Mr. Anderson gave brief overview of application to the Council stating that the applicant wished to conduct a seven-boat limited marina with a recommendation of approval from staff. Mr. Anderson stated that the application required a 15' length variance from Section 300.4 – an offset requirement from a Federal navigation project. Mr. Anderson stated that staff stipulated public access and operation and maintenance plan for the marina. Mr. Wilson and Mr. St. Jean were sworn in. Mr. Dawson motioned approval of application adding two stipulations – that no vessel that is tied to the docks would overhang the end of the docks; and the area must remain open so transient boaters could access the back side of the northern dock. Vice Chair Lemont seconded the motion. Motion carried on a unanimous voice vote.

6. PUBLIC HEARING ON DECLARATORY RULING REGARDING APPLICABILITY OF SECTION 130 – SPECIAL EXCEPTION:

2009-10-090 P. Z. REALTY, LLC – Construct and maintain single family dwelling to be serviced by a RIDEM approved OWTS and private well. Located at plat 4 lot 157; Kennedy Lane, Charlestown, RI.

Mr. Robert Puddicombe, Principal of P Z Realty, LLC present along with Donald Packer, Esq and co-counsel Peter Lewis, Esq. Mr. Willis gave a brief overview to the Council stating that the application was before the Council for determination of the applicability of the special exception. Mr. Willis stated that through research of the application and project, CRMC staff felt that the application required a special exception but that the applicant and the applicant's attorney disagreed with staff's determination. Amy Silva, CRMC Staff Environmental Scientist, gave a more detailed overview stating that the previous subdivision of the land and merging of lots created the requirement for a 200-foot buffer as it is located in lands of critical concern. Ms. Silva stated that to get relief from the buffer requirement a special exception is required if the lot was subdivided after November 12, 1984. Ms. Silva stated that the lot did not meet the special exception criteria. Mr. Goldman explained the land development subdivision enabling act to the Council as clarification of staff's position. Mr. Packer stated that he had reviewed CRMC's record and went on to explain Mr. Puddicombe's position. Mr. Packer stated that a 20K sf lot and a 25 acre lot were combined and then divided to make an 11.7 acre and a 9.1 acre lot. Mr. Packer stated that since both lot 155 and 157 existed prior to 1984, they do not feel that with the changing of the location of the lot line they would forfeit any pre-existing rights for lots. Discussion on the definition of subdivision as it pertains to CRMC regulations. Mr. Willis clarified CRMC's regulations Section 320 stating that a subdivision includes a resubdivision. Mr. Willis stated that staff's position is that because that subdivision happened after a date identified in the program, the only way to get relief from that provision is to meet the special exception criteria. Mr. Puddicombe was sworn in and stated that the regulation grants his land a relief because it existed previous to the advent of the regulatory regime. Mr. Affigne worked to clarify CRMC's regulatory responsibility stating that lot lines were moved and then resubdivided making it necessary to meet special exception criteria. Mr. Puddicombe disagreed because of the absence of a specific timeframe in the CRMC regulations. Mr. Willis explained CRMC's regulatory program of the overall "Redbook" which encompassed all of the special area management plans and the management procedures. Mr. Packer submitted copies of previously issued permits which had similar circumstances but were not

required to meet special exception criteria. Ms. Silva explained the reasons why the previously permitted projects did not fit the same regulatory requirements which included different land use categories and earlier versions of the SAMP. Mr. Puddicombe explained to the Council that he had worked very closely with CRMC staff for over a year, through the process of submitting engineered designed plan for a bridge at staff's request, without any mention of the special exception criteria needing to be met. Mr. Packer stated that Mr. Puddicombe was under the impression that all the changes made to the properties was an improvement to the development. Mr. Packer stated that it would be challenging to prove that the project provided for public benefit. Mr. Willis and Mr. Packer agreed to schedule a meeting to further discuss ways for the provision of public benefit. Mr. Goldman explained to the Council that if they ruled that the application required a special exception, that decision could be appealed in Superior Court. Chair Livingston stated that in the event the Council ruled in favor of the special exception requirement, the applicant could continue to work with staff to meet said requirement. Mr. Willis stated that another option would be for Mr. Puddicombe to comply with the regulations of the 200-foot buffer. Mr. Affigne motioned that, based on the matter before the Council; the change in the lot lines does trigger the CRMC's requirement for a special exception. Mr. Gomez seconded the motion. Motion carried on a unanimous voice vote.

7. Enforcement Actions before the Full Council:

11-0079 LAWRENCE S. JARNES – Construction of residential boating facility without permit on property located at plat 203, lot 323, 207 Beechwood Drive, Warwick, RI.

Mr. Goldman reviewed the merits of the case with the Council and update that he had received a photo of the site at 4:00 p.m. that afternoon showing that the remainder of the dock had been removed but the three steps remained. Mr. Goldman stated that Mr. Jarnes was in compliance with part of the Order of the CRMC Hearing Officer, but still needs to apply for the three steps. Mr. Goldman recommended to the Council that they order Mr. Jarnes to apply for the three steps within 10 days of the ruling. Mr. Coia asked about the status of the Administrative Fine. Mr. Goldman stated that it would be handled with the Final Order of Fine which would be appealed. Mr. Coia expressed his concern over the lack of cooperation of the land owner. Discussion amongst members regarding the enforcement/fine process. Mr. Affigne motioned to give Mr. Jarnes ten days to make application for the steps. Mr. Dawson seconded the motion. Motion clarified to say apply for the steps or remove the steps. Motion carried with one vote in opposition by Mr. Coia.

8. CATEGORY "A" LIST/ENFORCEMENT REPORT

None were held.

7. ADJOURN

Vice Chair Lemont motioned, seconded by Mr. Dawson, to adjourn. Motion carried on unanimous voice vote. Meeting adjourned at 7:02 p.m.

Respectfully submitted,

Lisa A. Turner
Recording Secretary