

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, February 14, 2012 at 6:00 p.m. in Council Chambers of the Jamestown Town Hall at 93 Narragansett Avenue, Jamestown, RI.

Members Present

Anne Maxwell Livingston, Chair  
Paul Lemont, Vice Chair  
Dave Abedon  
Donald Gomez  
Ronald Gagnon, RIDEM  
Guillaume de Ramel  
Michael Hudner  
Tony Affigne

Staff Present

Grover J. Fugate, Executive Director  
Jeffrey M. Willis, Deputy Director  
Kenneth Anderson, Spv Engineer  
Jim Boyd, Coastal Policy Analyst  
  
Brian Goldman, Esq.

Members Excused

Raymond Coia  
Bruce Dawson

1. **CALL TO ORDER**

Chair Livingston called the meeting to order at 6:00 p.m. and made opening statement.

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

Chair Livingston called for approval of the minutes from the previous meeting. Vice Chair Lemont motioned, seconded by Mr. Hudner, for approval of minutes from January 24, 2012 meeting. Motion carried on unanimous voice vote with Mr. Affigne abstaining from vote.

3. **STAFF REPORTS**

Mr. Fugate informed the Council that the Department of the Interior, Bureau of Ocean Energy Management will be in Rhode Island on February 15, 2012 for a 2:00 p.m. meeting with the Habitat Advisory Committee at the University of Rhode Island and then a 4:30 p.m. meeting with the Fisherman's Advisory Board. Mr. Fugate explained that the meeting will be a briefing on the Massachusetts position and also to bring them up to date on the RI wind project.

4. **SUBCOMMITTEE REPORTS**

There were none.

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

**2010-05-070 CITY OF NEWPORT -- Construct and maintain a public "Touch and Go" boating facility consisting of 393 linear feet of concrete floating docks and associated pilings. Located at "Ann Street Public Boating Facility"; Thames Street, Newport, RI.**

Chair Livingston explained that a Motion to Stay the Ann Street Pier matter had been filed and the Council needed to decide if they were going to grant the Stay or continue to hear the application in Subcommittee forum.

Present for the applicant, the City of Newport, is Joseph DeAngelis, Esq., Adler Pollock & Sheehan, and Joseph Nicholson, Jr., Esq., Law Offices of Joseph Nicholson, Jr. Present for the objector, Newport OnShore Marina is Turner Scott, Esq., Miller Scott & Holbrook; for the objector, 41 North and 802 Partners is Sean Coffey, Esq., Burns & Levinson; for objector, Astoria Realty, Gregory Fater, Esq.; and for objector 359 Thames Street, James Mullowney, Pro Se.

Mr. Coffey gave a brief review of the motions considered at the meeting of January 24, 2012, one regarding littoral boundaries in which a motion was denied by Council to continue until the littoral boundaries were determined even with testimony that Brian Goldman indicated that the CRMC does not have authority to determine littoral boundaries. Mr. Coffey stated that the Objectors would file in Newport Superior Court on the Littoral Boundaries. Mr. Coffey pointed out inconsistencies in littoral boundary placement on plans throughout the years stating that previous boundaries were determined by harbor line and currently the plan uses extension of property lines.

Mr. Coffey expresses the objectors concerns that the application as submitted will infringe on their littoral rights which have not been established by Superior Court. Mr. Coffey stated that the CRMC should not proceed until lines are determined. Mr. Coffey stated that the City of Newport filed an objection to Motion to Stay criticizing the petition or motion to stay as veil or attempt to further delay the application placing further financial hardship on the City of Newport. Mr. Coffey stated that the objectors had been trying to meet with and work with the City of Newport to come to an agreement for the use of the area. Mr. Coffey stated that the appropriate action would have been for the City of Newport to have approached the owner in attempt to resolve the issues with respect to littoral boundaries. Mr. Coffey spoke about the hardship to objectors saying that this is the third time they have had to come before Council to object to same application, also expressing concern regarding the cost to objectors in pursuing the case in Superior Court. Mr. Coffey asks the Council to adjourn the CRMC hearings until such time as to resolve the issues of littoral rights in Superior Court.

Mr. Scott representing Newport Onshore stated that although the applicant is a municipality, they are a property owner with no greater rights than other property owners. Mr. Scott stated that if the Council went forward with their proceedings and made a decision regarding the project, the city would have the opportunity to influence the judicial outcome of the application capability because the first piece of evidence they would submit would be the CRMC permit. Mr. Scott ended by joining Mr. Coffey in asking for a stay until after the Superior Court decision is made regarding the boundaries.

Mr. DeAngelis stated that this particular case would be a significant CRMC case regarding public access. Mr. DeAngelis explains why the City of Newport opposes the Motion to Stay giving the reasoning that the practice for citing littoral lines on plans had changed since the harbor lines had been abolished and can no longer be used. Mr. DeAngelis explains that Mr. Kniskern assured the Council that the research for the application had been a point of study and point of discussion for seven years and that all parties had gotten together at one time to talk about a solution. Mr. DeAngelis stated that the opposition could bring the Motion to Stay to Superior Court. Mr. DeAngelis stated that the reason the City opposes the stay is that the dock is a complimentary project to the completion of the harbor center which will open on May 1 of this year. Mr.

DeAngelis explained that the successful running of the harbor center is dependent upon the successful operation of the Anne Street Pier extension. Mr. DeAngelis stated that he agreed that the Council did not have jurisdictional authority on littoral rights but urged the Council to continue to hear the application while the littoral rights were being determined as it is not in the interest of the City, boaters or citizens of the city by the sea to drag out the application process.

Chair Livingston stated that her inclination was to not delay the matter, to deny the motion to stay because there has already been much delay on this matter. Chair Livingston agreed that it was the Superior Court's jurisdiction to determine littoral boundaries but that she did not feel that CRMC proceedings should stop and suggested that CRMC set up a subcommittee to go forward with the application. Chair Livingston stated that it Superior Court states that CRMC must stop then CRMC will stop proceedings.

Mr. Scott clarified his statement for Mr. Affigne regarding the City of Newport being like any other property owner by saying that the City of Newport is charging fair market rates to make money to operate the armory making them just like any other property owner in the area.

Mr. Hudner expressed his support for the point of view of the Chair. Mr. Affigne made a motion to deny the stay, seconded by Mr. Hudner. Mr. Lemont asked when the subcommittee would be appointed and Chair Livingston stated she would appoint the subcommittee soon. Motion carried on unanimous voice vote. Motion carried to deny the Motion to Stay.

## **6. STATUS OF COMPLIANCE WITH CRMC ASSENT AND/OR ENFORCEMENT ORDER:**

**A2010-05-07 STANLEY WEISS – Determination of compliance of Assent for the elevation of existing dwelling and boathouse; construction additions to existing dwelling; filling and grading; place crushed stone to within 4” of adjacent lawn elevation, then place 4” loam to match adjacent lawn at areas of erosion landward of seawall. Located at plat 117, lot 227; 23 Washington Street, North Kingstown, RI.**

Mr. Goldman explained that due to insufficient noticing, this could not be heard. Mr. Fugate stated that the property owner was still in negotiation with the Rhode Island Historical Preservation Commission

## **7. PUBLIC HEARING ON PROGRAM CHANGES TO THE RI CRMP:**

### **Section 120 – Variances & Section 300.6 -- Treatment of Sewage and Stormwater**

Mr. Boyd explained to the Council that the program changes before them were the exact same program changes that were approved at the Semimonthly Meeting held on December 13, 2011 but that it was discovered that there was an electronic filing error with SOS which meant the changes need to be put back out-to-notice and scheduled back before council tonight for approval. Chair Livingston opened the public hearing and hearing no public comments closed the hearing. Mr. Lemont motioned to approve program changes with a second from Mr. Hudner. Motion carried on unanimous voice vote.

**8. COASTAL EDUCATIONAL SERIES**

**Caitlin Chaffee, CRMC**

**“Coastal & Estuarine Habitat Restoration Program and Trust Fund”**

Ms. Chaffee made a power point presentation explaining to the Council the process by which applications were submitted and chosen for the Habitat Restoration Program and the goals of the Program. Ms. Chaffee also explained the funding aspect of the program

**9. ENFORCEMENT REPORT – January 2012**  
**CATEGORY “A” LIST**

None were held.

**10. ADJOURN**

Mr. Affigne motioned, seconded by Vice Chair Lemont, to adjourn. Motion carried on unanimous voice vote. Meeting adjourned at 7:00 p.m.

Respectfully submitted,

Lisa A. Turner  
Recording Secretary