

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, August 28, 2012 at 6:00 p.m. in Conference Room A, Administration Building, One Capitol Hill, Providence, RI.

Members Present

Anne Maxwell Livingston, Chair
Paul Lemont, Vice Chair
David Abedon
Ronald Gagnon
Donald Gomez
Michael Hudner
Guillaume deRamel
Jerry Sahagian

Staff Present

Grover J. Fugate, Executive Director
Jeffrey M. Willis, Deputy Director
Kenneth W. Anderson, Spv Civil Engineer
Brian Harrington, Enforcement

Brian Goldman, Esq.

Members Excused

Tony Affigne
Raymond Coia

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

Vice Chair Lemont motioned, seconded by Mr. Hudner, approval of the minutes from the July 31, 2012 Semimonthly meeting. Motion carried on unanimous voice vote.

3. SUBCOMMITTEE REPORTS

The Downing Corporation/Salt Pond Partners Subcommittee Report was read out by Mr. Goldman as Mr. Coia was unable to attend. Mr. Goldman stated that the report content was agreed upon by Mr. Coia and Vice Chair Lemont and that the application will be scheduled for a subsequent meeting.

4. STAFF REPORTS

Mr. Fugate reported out on several items:

- Shoreline Change SAMP funding is being sought and that applications have been sent for several grants that are opened through NOAA; letter of intent has been submitted for a NOAA climate change grant for \$300,000 for two years; also a NOAA Section 309 project of special merit grant for \$200,000. Chairman Livingston stated that CRMC was hoping to raise 1.4 million for the three year Beach SAMP project which we are doing in conjunction with URI. Mr. Fugate stated that CRMC already has some of the assets needed for the project such as the scan sonar which will also be used for shoreface mapping for South Shore. Mr. Fugate stated that the project is getting very positive responses and that the coastal erosion conference was a big success.
- Roger Williams Law School typically holds a legal two day seminar in November showcasing the laws response to changing ocean conditions – the date is November 14 and 15. A notice was sent to Council members for their attendance and we have asked for complimentary slots for council members.

- Save the Bay and Roger Williams Law is having a legal forum on Climate Change on October 4 and as more developments occur information will be sent to Council members.

5. REQUEST TO WAIVE LOCAL PERMIT PREREQUISITE PURSUANT TO MANAGEMENT PROCEDURES 4.2(7)

Town of Narragansett/Deep Water Wind – Request from the Town of Narragansett to have the CRMC waive/modify its requirement for obtaining municipal approval(s) as a prerequisite under Management Procedure Section 4.2(7) in re: Deep Water Wind for the Block Island Wind Farm.

Mr. Fugate stated that a letter from the Town of Narragansett was received requesting us to modify our requirement for obtaining municipal approval as a prerequisite before we process the application. Chair Livingston stated that she was in favor of approval of the request. Mr. Sahagian motioned to approve request. Vice Chair Lemont seconded the motion. Motion carried on unanimous voice vote.

6. DETERMINATION OF COMPLIANCE WITH ASSENT/ENFORCEMENT ACTION:

2012-03-080 and 12-0058 -- GENE PROPERTIES d/b/a Sandy Shores Motel

Staff enforcement member, Brian Harrington, briefed the Council on the enforcement situation stating that the applicant applied to put two temporary 32 x 22 feet platforms to replace what had been there previously. Mr. Harrington stated that after site visit, it was determined that the structures were not temporary. Mr. Harrington stated that a Cease and Desist Order was issued on June 18, 2012 for nonconformance of assent. Mr. Harrington stated that enforcement staff was looking for a restoration order and full restoration of the beach. Mr. Fugate explained that the temporary structure would have required minimal earthwork and would not have heavy foundation work. Mr. Fugate stated that the decks were permitted as seasonal and were to be taken out at end of season. Mr. Fugate stated that what was built had a substantial steel structure. Mr. Fugate informed the Council that as a replacement of a seasonal structure, engineered plans were not asked for nor stipulated. Mr. Fugate stated that the Council's primary concern was the structure and the verification of the approved location of structure and also the need for assurance that it will come out at the end of the season. Mr. Fugate expressed his concern that the excessive foundation will lose its footing during an extreme storm system. Mr. Fugate stated that an escrow account would be established for removal of the structure if it is not removed at end of season. Photographs were discussed and determination of temporary structure was discussed. Mr. Fugate stated that when local officials became involved, the building official asked for engineered plans and determined that a foundation system was needed that would withstand a hurricane. Mr. Fugate stated that the foundation blocks would need to be taken out seasonally. Vice Chair Lemont asked about the permanence of the blocks. Mr. Fugate stated that the intent was for the removal of the decking structure by November 15th. Mr. Goldman clarified that temporary permits were at the discretion of the Executive Director for date of removal.

Joseph DeAngelis, attorney for the applicant, explained that a full restaurant was in that location previously and provided a picture to the Council. Mr. DeAngelis assured the Council that the owner Eugene Arganis, owner of the Eugene Properties had not done any work on the site since the cease and desist order was issued. Mr. DeAngelis stated that after the CRMC issued their permit, Mr. Arganis went before Local Zoning and because of the provisions of the CRMC Assent, one being length of duration of the temporary structure, local zoning stated that the structure had to withstand

120 mph winds. Mr. DeAngelis stated that the Town required engineered plans showing a structure that could meet local zoning requirements. Mr. Arganis stated that Helix screws were going to be used but that they met resistance in the middle and at the end of the revetment; so they used concrete blocks to secure the structure. Mr. DeAngelis compared this structure to the structure at the Ocean House. Mr. Fugate stated that comparison could not be made because the conditions due to location were different. There was discussion on the escrow account amount which Mr. Arganis had estimated at \$3,200 for removal of the structure seasonally. Mr. Fugate stated that a second estimate would be asked for before agreement on \$3,200.00. Mr. DeAngelis explained that the helix screws would remain on the beach permanently. Mr. Fugate stated that CRMC was asking for seasonal removal of the entire structure – helix screws and all. Chair Livingston expressed concern that the screws would remain on the beach and her concern about the dimensions of the structure. Mr. Harrington stated that the structure was measured and was not any further seaward than original structure. Discussion on the canopy that would be built to attach to the deck structures. Mr. Hudner asked about mitigation for environmental impact of concrete blocks. Mr. Fugate stated that the concern was that during a coastal storm the blocks could cause severe damage to surrounding structures and that storm event could occur before they can remove the foundation blocks. Mr. Arganis explained the process by which the structure would be removed stating that the company would lift the structure up in six foot sections. Mr. Arganis stated that the screws would remain and be capped off and blanketed so there would be no health hazard. Mr. Fugate stated that he wanted to make sure the structure comes out at end of season; anchoring surface can be lost in storms and can become dangerous. Mr. Arganis stated that the structure can be removed in 3.5 hours and that it was his economic advantage to save the canopy which cost \$42,000. Vice Chair Lemont asked for further discussion stating that he had been around longer and seen too many instances of things that have been done and then ask for forgiveness later. Vice Chair Lemont read C&D statement which stated that the cement blocks were not in conformance with seasonal nature – not what assent was given for. Vice Chair Lemont stated that he was opposed to the project. Mr. DeAngelis stated that the CRMC Assent had not representations with regard for earthwork and that none was required of applicant. Mr. Abedon suggested that if the project was scaled back a bit, screws could be used and the project would be in compliance. Mr. deRamel was sympathetic of the double jeopardy conundrum Mr. Arganis found himself in and hoped a solution could be found to satisfy both the CRMC and the Town. Mr. Fugate stated that applicants go back and forth from local to CRMC all the time to satisfy both state and local regulations. Vice Chair Lemont asked if Mr. Arganis could go back and redesign the structure to be more compliant with our regulations. Mr. Arganis stated that he tried but his engineer stated that the steel structure was required. Mr. Fugate stated that the steel foundation was not as much of a concern as the use of helicals or some other anchoring system. Vice Chair Lemont stated that he would be willing to see what other options were available. Vice Chair Lemont also expressed his concern for setting a precedent and made a motion that the owner be sent back for 30 days to confer with engineers and with CRMC staff to see if issue can be resolved. Vice Chair Lemont stated that if an agreement can be made by CRMC staff and Mr. Fugate agrees, than it can be approved administratively. Mr. deRamel seconded the motion. Vice Chair Lemont stated he would even suggest 45 days. Motion carried on unanimous voice vote.

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

2012-03-094 TIVERTON YACHT CLUB – Revise the existing Marina Perimeter Line in order to incorporate the three existing floats. There will not be an increase in the number of previously

permitted boat slips (21) (CRMC Assent 88-1-62). Located at plat 73, lot 30; 58 Riverside Drive, Tiverton, RI.

Mr. Anderson gave brief overview of the application stating that the applicant asked to revise a marina perimeter limit at existing assented marina to include floats that preexisted but were not part of original marina perimeter limit. Mr. Anderson stated that the request would not increase boat count and was not considered an expansion. Mr. Anderson stated that there was a parking requirement and that the marina had complied by providing offsite parking with a shuttle. Mr. Anderson stated that CRMC permitting staff has accepted that as compliance with parking standard and that there were no staff objections to the application. Mr. Anderson stated that the marina was requesting the MPL expansion for the safety of clients as the float was accessed off property and the expansion and repositioning of the float would bring them in closer to marine float tree.

Mr. Gomez stated that the Council had discussed this issue extensively with the issuance of permit and there was no previous objection. Mr. Gomez also commended staff on a helpful and informative application summary.

James Hilton was sworn in, identified himself for the record and stated that they were requesting to join three existing floats that were part of original float count (offset to the north) and they want to tie existing dinghy floats into floats. Mr. Hilton agreed to staff stipulations which state no more than 20 boats. Mr. Anderson clarified that the staff stipulation stated that boat count would remain unchanged at the time but that there is a procedure to expand and the staff stipulation wouldn't be a prohibition to pursue expansion; stipulation does not forfeit the right to expand. Wayne Karzenski was sworn in and identified himself as the former Commodore of yacht club. Mr. Karzenski spoke about parking situation saying there were 5 spots on the site and 20 spots off site for whoever wanted to use them. Mr. Karzenski assured the Council that parking was not an issue. Mr. Karzenski stated that the Town did not have a requirement for parking at the marina. Chair Livingston stated that CRMC did not get involved in issues on the local level. Mr. David Campbell was sworn in and identified himself as a neighbor of the marina and that he lived at 76 Riverside Drive, on the North side of the yacht club. Mr. Campbell stated that parking was a very big concern for the neighborhood and that the Town had also identified parking as a significant issue. Chair Livingston asked Mr. Campbell to explain the local issue to see if it impacted CRMC regulations in any way. Mr. Campbell stated that the parking spaces that Mr. Karzenski spoke about never existed and that the original plan for the marina did not reflect parking. Mr. Campbell explained that the club house for the yacht club was located in a residential zone and the marina was located across the street in a commercial zone. Mr. Campbell stated that the club house was grandfathered and would never be required to provide parking. Mr. Campbell went on to discuss the history of the parking situation and informed the Council that he had pursued the parking situation in the court system all the way to Supreme Court as yacht club members used his property for parking. Chair Livingston explained to Mr. Campbell that it was determined in the granting of the original permit that there was sufficient parking according to our regulations. Vice Chair Lemont reminded all parties that the applicant was requesting to changing marina perimeter limit and that parking requirements were not an issue for this type of application. Mr. Campbell stated that the applicant was noncompliant. Mr. Sahagian asked Mr. Goldman if application was properly before the Council. Mr. Goldman stated that the Council originally found remote parking adequate. Mr. Campbell referred Mr. Goldman to the RI Supreme court decision. Mr. Goldman stated that he would look at the Supreme Court case again but that parking was a local issue. Chair Livingston asked for a motion on the MPL. Mr. Hudner motioned for approval of application. Vice Chair Lemont seconded the motion. Motion carried on a unanimous voice vote.

2012-05-030 JERROD CAPASSO – Construct and maintain a residential boating facility consisting of a 4’ by 90’ fixed timber pier that leads to a ramp that leads to a 7.5’ x 20’ (150 s.f.) terminal float with two tie-off piles. The proposed facility is to extend 100’ seaward of the cited Mean Low Water mark, and the applicant seeks a 50’ variance to RICRMP length standard 300.4.E.3.1. Located at plat R-2, lot 338; 9 Mollusk Drive, Narragansett, RI.

Mr. Anderson gave brief overview of the application stating that the dock required a variance to extend past 50’ beyond Mean Low Water and that the granting of the variance exceeded the administrative authority of the Executive Director. Mr. Anderson stated that there was not staff objection to the application. Mr. Sahagian motioned approval of the application with staff stipulations. Mr. Sahagian insured that Mr. Capasso was in agreement with staff stipulations. Mr. Hudner seconded the motion. Motion carried on a unanimous voice vote.

7. CATEGORY “A” LIST/ ENFORCEMENT REPORT

None were held.

8. ADJOURN

Vice Chair Lemont motioned, seconded by Mr. Hudner for the meeting to be adjourned at 7:30 p.m.

Respectfully submitted,
Lisa A. Turner, Recording Secretary