

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, September 11, 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
Raymond Coia
Michael Hudner
Jerry Sahagian

Staff Present

Grover J. Fugate, Executive Director
Jeffrey M. Willis, Deputy Director
Laura Miguel, Enforcement
Brian Harrington, Enforcement
James Boyd, Coastal Policy Analyst

Brian Goldman, Esq.

Members Excused

Tony Affigne
Guillaume deRamel
Donald Gomez

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. Coia, approval of the minutes from the August 28, 2012 Semimonthly meeting. Motion carried on unanimous voice vote.

3. SUBCOMMITTEE REPORTS

None

4. STAFF REPORTS

Mr. Goldman informed the Council that a Motion for Sanctions and Petition for Instructions filed in Superior Court by Champlin's was received on September 7 essentially saying that the Council did not follow the Court remand order. Mr. Goldman stated that Champlin's is asking for sanctions against CRMC and to pay attorney fee's for Champlin's and to give CRMC further instructions from the Court. Mr. Goldman stated that he would file a response to the petition. Mr. Abedon asked when the briefs were due. Mr. Goldman stated that the transcript was received by parties on August 10th, so by his calculations, Champlin's brief is due by Friday September 14th or Monday September 18th. Mr. Goldman stated that in the memo to Superior Court, Champlin's requested the Court stay any further CRMC proceedings until the Court issues an order. Mr. Goldman clarified that they did not toll their time frame and that the briefs are due at the end of the 45 day period from the July 31st meeting.

Mr. Fugate reported out on several items:

The Roger Williams Law Conference called "Shifting Seas" showcasing the laws response to changing ocean conditions, particularly dealing with erosion and the like – the date is November 14 and 15. Council members have received notice and one free position was secured to transfer to the Council members. Mr. Fugate stated that the fee for attending is \$150.00.

The Governor has requested an extension of the notice period for the federal lease for AMI in federal waters. During that time, we were asked to provide input on leasing process and its implications. The Governor requested that Grover Fugate and Marion Gold submit a letter on behalf of the State, asking that RI have more input than currently proposed. There are potentially eight parties bidding.

5. Enforcement Action before the Full Council:

11-0100 & 11-0117 MICHAEL & LEIGH EDDY – Removal of an unpermitted dock and restoration of buffer zone. Located at Map 414, Block 01, Parcel 007; 47 Carousel Drive, East Providence, RI.

Carolyn Mannis, Esq. was present to represent Michael and Leigh Eddy who were also present. Laura Miguel and Brian Harrington, CRMC Enforcement staff members, were sworn in. Mr. Goldman stated that the enforcement administrative record was in the agenda package and that part of the administrative record was the easement that was granted in a previous assent, and also a Consent Agreement that was previously entered into by the Eddys. Ms. Mannis addressed the Council regarding a preliminary matter stating that the site visit made by CRMC staff was in violation of the Eddys' RI and US constitutional rights and may have required a warrant. Ms. Mannis stated that in a conversation with Mr. Goldman, he felt that CRMC staff can make site visits on properties that were previously permitted by CRMC. Ms. Mannis stated that based on her understanding, all of the evidence obtained was in violation of constitutional law and should not be presented to the Council because it is tainted. Mr. Goldman stated that he had emailed Ms. Mannis in response to her concerns saying that when application is made to the CRMC and an Assent is received, there is a specific proviso that all applicant's sign that the CRMC staff shall have access to the applicant's property to make on-site inspection to ensure compliance with the assent. Mr. Goldman informed the Council that a CRMC Assent was issued in 1997 to a previous owner of the property in which a deeded conservation easement which was incorporated into each lot prior to its development and recorded in the land evidence records of the City of East Providence. Mr. Goldman stated that within that easement the property owner granted to CRMC the right to enter into the conservation easement area. Mr. Goldman advised the Council that he believed the matter is properly before them. Ms. Mannis responded saying that even though an easement was agreed to, CRMC should not have gone on the property without a warrant. Mr. Coia inquired as to whether or not the dock was still in existence and in the same condition as day they got violation. Mr. Goldman stated that it was supposed to be a walkover structure and could be seen by google earth photos. Ms. Mannis argued that the first instance of CRMC staff attendance on property was in response to a Consent Order which did not have provisions for future inspections. Mr. Sahagian responded that the original assent would have addressed the CRMC access to the property and Mr. Goldman stated that there were numerous assents that included the property access language. Ms. Mannis still maintains that a warrant was necessary to enter onto the Eddy's property. Chair Livingston stated that the objection was noted but that the Council was going to hear the evidence and determine an outcome according to CRMC regulations. Mr. Goldman stated that a warrant situation was for criminal violations.

Ms. Miguel gave a further briefing to the Council stating that there was an assent in 1999 for 46-unit subdivision including a lot for communal use (conservation easement) and 100 foot buffer throughout the subdivision which was all done before the Eddys bought their property. Ms. Miguel stated that there were two previous violations involving buffer zone violations. Ms. Miguel informed the Council that the second violation one did result in a consent agreement entered into by the Eddys and provided for the restoration of buffer zone. Ms. Miguel stated that a year ago CRMC received a complaint and did conduct inspection. Ms. Miguel stated that CRMC enforcement staff ALWAYS rings the doorbell

and have occasionally accessed the property through neighboring properties that also have assents. Ms. Miguel informed the Council that their inspection was limited to buffer and easement area at all times and that a C&D and notice of admin order was issued. Ms. Miguel stated that the C&D was for violation of the original assent and violation of consent agreement. Ms. Miguel explained that when she and Mr. Harrington visited the site again to see if the buffer had been allowed to regrow, they realized there was not a walkover structure but a dock on the property for which the Eddy's applied for and were denied because of area wetlands and conservation easement and access. Ms. Miguel stated that when the subdivision was created, the intent was for the communal lot to be used for water access and a possible communal dock. Ms. Miguel explained that the Eddy's dock app was going before the council with a recommendation for denial but prior to the hearing and about a year later, the Eddys got an assent for a timber walkway ending in 4x4 viewing platform. Ms. Miguel stated that in a subsequent site visit, CRMC staff found that a 40.5 foot fixed pier, 16 ft ramp and terminal float were built. Ms. Miguel stated that on August 23, 2012 an administrative fine hearing was held and the hearing officer referred the matter to the full Council for removal of the dock and for the restoration of the buffer.

Mr. Coia asked for clarification on the Fine assessed and the nature of the C&D's before them. Mr. Goldman stated that the Eddys requested an administrative fine hearing and then a number of continuances were granted for both C&Ds and Administrative Fines.

Ms. Miguel explained the photographs in the Agenda package to the Council which showed the dock which had been built in 2007 in violation of a permit granted for a viewing platform which would not have extended over the water. Mr. Fugate stated that because the Eddys could not have a dock due to the conservation easement, a walkway and viewing platform was approved.

Mr. Coia asks if the property owner denies that there is a dock on the property. Ms. Mannis stated that she did not know whether or not there was a dock on the property and that she was representing the property owner on the "process". Ms. Mannis stated that she did not measure the structure on the property and that she did not know whether it was a dock as she is not an expert but she would attest to the fact that there is a structure on the property.

Ms. Miguel clarified that CRMC knew there was a dock on the property but didn't know what was specifically was authorized by the council. Ms. Miguel stated that the Eddys explained that the buffer zone work was done without their knowledge and that there was some confusion as to location of buffer. Ms. Miguel stated that when a site visit was made to confirm restoration of the buffer CRMC staff spent a lot of time explaining and educating the Eddys on what was and wasn't allowed on the property. Ms. Miguel stated that no one else in the area had a dock nor had they been allowed to have a dock. Ms. Miguel stated that CRMC staff recommended full removal of dock and restoration of buffer, and recommended that the Council issue and order to that effect and that it be restored by October 15th, and if not done give permission to order fines daily up to \$10,000.

Ms. Mannis asked Ms. Miguel who made the complaint on August 16. Ms. Miguel stated that the call was anonymous as all complaint calls are because names create problems. Ms. Mannis submits C&D 11-0100 to the record which is marked as Eddy 1. Ms. Miguel confirmed that the C&D was issued and signed by herself and that they went to the property because there was activity on the property that was unauthorized. Ms. Mannis submits Consent Agreement and it is marked at Eddy 2. Ms. Miguel stated that by referencing assent in the signed Consent Agreement, consent of future inspections was given.

Ms. Mannis continues to build her case and continues her questioning of Ms. Miguel regarding the CRMC documentation, visitations to the property and condition of buffer zone in comparison to buffer zones of both abutting properties. Ms. Mannis questioned Ms. Miguel on google earth photos used in CRMC file and the photos authentication. Ms. Miguel confirmed that the Eddys needed to secure a CRMC assent before performing work on their property unless ordered to restore by the Council.

Chair Livingston stated that staff recommended an order come from the Council that the dock be removed and the buffer be restored. Chair Livingston asked for discussion or questions from Council.

Vice Chair Lemont asks for clarification on the status of the \$2,500 fine per violation and what would happen if the Council were to pass a motion now, what would happen to the fines. Mr. Goldman stated that the Hearing Officer issued those fines and that is separate from this proceeding, so they are final until they are appealed. Mr. Goldman further stated that if the fines are not appealed they are due at the end of that period. Mr. Goldman explained that staff is saying that if the removal and restoration is not done by compliance date, the additional fines per diem should be instated.

Vice Chair Lemont asked whether the Council could require that the property owner pull back the structure to what was assented and not an entire removal. Mr. Fugate explained that the Council can revoke the previous assent and order removal, or remove the dock to what was previously granted. Mr. Willis added that the structure on the upland portion of the property would have to be in accordance with the walkover structure regulations.

Ms. Miguel stated that what was originally approved for the walkway was ten foot sections and what's out there now is 16.5 ft. and that she did not think what is there complies and the structure would have to be reconstructed. Mr. Fugate stated that there were two ramps -- one to the dock and one that would have led to the platform that is a set of stairs.

Vice Chair Lemont asked Ms. Mannis if her client would be willing to bring the situation back to the assent originally granted for the walkway, assuming it can be done. Ms. Mannis stated that she was unclear that the evidence presented demonstrated that the structure there is not in compliance. Ms. Mannis stated that she believed her clients would agree to bringing structure back to what was originally permitted.

Chair Livingston asked if staff recommendation would change if applicant agreed to bring structure back. Mr. Fugate stated that the dock had to be removed regardless. Ms. Miguel stated that if the structure were modified to be consistent with the walkover structure in the original assent by October 15, staff would be satisfied and that would be a resolution to one of the violations.

Vice Chair Lemont stated that staff would be of better mind if you brought it in compliance, meaning someone needs to bring it in with satisfaction of staff and that also means staff would have access to your property. Vice Chair expressed concern over the time it has taken to resolve this matter. Ms. Miguel stated that the has gone on for more than a year and that the dock has been out there for at least 5 years and asked that the Council set a deadline for compliance which is why a fine was assessed. Vice Chair Lemont stated that Ms. Miguel and Mr. Harrington needed to do a compliance visit by October 15th and if progress has not been made, the owners will be assessed the fines per diem.

Mr. Goldman confirmed the documents in the record.

Mr. Fugate asked for confirmation on the timeframe for the planting need to be accomplished. Chair Livingston stated that staff recommendation was by October 15th for both activities and asks for a motion to order actions in staff recommendation as modified by Council. Mr. Hudner motioned, seconded by Vice Chair Lemont, for approval to order actions as recommended by staff and modified by Council. Mr. Coia expressed concern over the length of time it took to resolve the violation. Mr. Fugate explained that some property owners have violations on their property and prolong the enforcement process so that they are able to keep the unauthorized project for a longer time period.

Mr. Hudner asked what the next course of action would be if applicant stays in non-compliance. Mr. Goldman stated that he would file an action in superior court for enforcement of council order.

With no further discussion, Chair Livingston calls for a vote. Motion carried on a unanimous voice vote.

6. Presentation by Kevin Cute on Aquatic Species Management Plan update

7. Public Hearing on Changes to the Rhode Island Coastal Resources Management Program:

RI Coastal Resources Management Program - Redbook

Revise Section 100 Water Type Matrices/Table 1 – add new activity in the matrix and new footnote in Table 1

***Purpose:** To add "limited recreational boating facilities" to the water type matrices and footnote 11 regarding boat launching ramps in Type 2 waters to reflect existing policy in Sections 210.2.C and 300.4.D.6.*

Mr. Boyd briefed the Council on the simple program change that would commensurate with the approval made for Section 300.4. No comments were made. Mr. Hudner motioned to approve program change. Mr. Coia seconded motion. Motion carried on a unanimous voice vote.

Section 210.2 – Barrier Islands and Spits – modify Sections 210.2.C.5 and 210.2.D, add new Section 210.2.E, and reformat (no change to content) existing Table 4

***Purpose:** To modify prohibitions regarding vehicles and walkover structures on barriers, add standards for "limited parking areas," and reformat Table 4 - list of CRMC-designated barriers.*

Mr. Boyd informed the Council that after the public notice was sent many comments were received stating concerns about this change related to the limited parking areas, and at conclusion of meeting with Salt Ponds Coalition, agreed to postpone the public hearing on these amendments, revise them and possibly send them back to Policy and Planning Subcommittee then back through the process of Public Notice and Public hearing.

Section 300.4 – Recreational Boating Facilities – modify Section 300.4.A, add new definition 300.4.A.4, modify Table 1, and modify Sections 300.4.B.2, 300.4.C, 300.4.D, 300.4.E.3 and 300.4.E.3.1

***Purpose:** To provide for a new category of recreational boating facility within Section 300.4 to be known as "limited recreational boating facilities" on parcels zoned as open space or institutional by a local municipality.*

Mr. Boyd gave brief overview of the changes to the Council explaining that they are proposing a limited recreational boating facility that would meet the standards of a residential boating facility but would only be allowable for parcels that are zoned open space or institutional so that Universities or boys/girls clubs could have use of a dock on property designated as open space. This new facility would be limited to four boats or less. Mr. Boyd stated that no comments were received for this change. Chair Livingston opened the Public Hearing and asked for comments. Scott Rabideau was sworn in and identified himself for the record. Mr. Rabideau asked for one small edit to language of Section 300.4. C.2.a giving the Executive Director the authority to handle them administratively for Cat A or Cat B. Mr. Boyd stated that he thought it would be best viewed before the Council, but deferred to the Council. Vice Chair Lemont stated that there were many things that the Council prefers to allow admin approval that shouldn't come here but do and that the more applications that can be approved administratively the better it is for everyone. Vice Chair Lemont motioned to approve as modified. Mr. Hudner seconded the motion. Motion passed 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 8:12 p.m.

Respectfully submitted,
Lisa A. Turner, Recording Secretary