

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, January 8, 2013 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
Raymond Coia
David Abedon
Ronald Gagnon
Donald Gomez
Michael Hudner
Jerry Sahagian

Staff Present

Grover J. Fugate, Executive Director
Jeffrey M. Willis, Deputy Director
David S. Reis, Spv Environmental Scientist

Brian A. Goldman, Esq.

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 December 11, 2012 Semimonthly meeting. Motion carried on unanimous voice vote.

3. SUBCOMMITTEE REPORTS

Vice Chair Lemont read program changes into the record for Council concurrence to begin rule making for changes to Ocean SAMP Section 800 Chapter 6 Renewable Energy and Other Offshore Development and the RI Coastal Resources Management Program Section 145; Climate Change and Sea Level Rise.

4. STAFF REPORTS

Mr. Fugate reported to the Council on the following items:

A meeting was held on January 7, 2013 on the Shellfish Management Plan for the State of Rhode Island sponsored by RIDEM and RICRMC and facilitated by URI.

A reminder to the Council that on January 15th from 12:30 to 6:30 pm, the Bureau of Ocean Energy Management will be in Rhode Island to hold a public workshop on off shore lease methods for wind energy projects off Rhode Island waters in federal waters.

Meetings and permitting activities are still going on in the aftermath of Hurricane Sandy – particularly reconstruction efforts in the South County area. Meetings are being held involving FEMA, RIEMA, CRMC and State Building Commissioner's office on dune construction with the major issue being by FEMA and the FFW involving the piping plovers.

Recognition of CRMC staff member Thomas A. Medeiros who will be retiring after working for CRMC for 25 years in the capacity of Principal Civil Engineer. Chair Livingston stated that a letter would be sent to Tom on behalf of the Council thanking him for his service.

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

2012-10-038 MARINA REALTY INC. -- Expanding the existing Marina Perimeter Limit (MPL) 50' north to allow a reconfiguration of the existing docks to accommodate larger vessels. There will be no increase in the number of vessels. There will be new dredging within the revised MPL to a depth of -6 feet mean low water with one foot over depth. There is approximately 3,000 CY of dredging with disposal in the CAD cells. The project will include replacement floats and new pilings associated with the reconfiguration. Located at plat 365, lot 172 and 173; 9 Shattock Avenue, Warwick, RI.

Attorney Edward Lawson present on behalf of owner John Dickerson. Mr. Goulet briefed the Council on the project stating that the owner was requesting to modify their Marina Perimeter Limit to they can reconfigure the marina to accommodate larger vessels. Mr. Goulet stated that there would be associated dredging to allow expansion and dock relocation. Mr. Goulet stated that an objection was received but that most of the comments were unfounded. Mr. Goulet confirmed that the ACOE permit has been issued. Mr. Sahagian asked if the applicant understood CRMC staff stipulations and with an affirmative response, motioned approval of the application with the 12 staff stipulations. Motion seconded by Vice Chair Lemont. Motion carried on unanimous voice vote.

6. APPLICATIONS WHICH HAVE HAD A PUBLIC HEARING AND ARE BEFORE THE FULL COUNCIL FOR FINAL DECISION:

1989-02-032 DOWNING SALT POND PARTNERS, LP – Executive Director’s Report and Final Decision -- Extension of assent and compliance with previously issued CRMC approval. Located at plat W, Lots 82, 85, 86A, 87, 88, 173-174, 175; Karen Ann Drive, Narragansett, RI.

William Landry, Esq. representing Downing Salt Pond Partners. Jack Killoy representing Narragansett Indian Tribe Historic Preservation office. Gregory Schultz, Special Assistant Attorney General for the Historical Preservation and Heritage Commission and the environmental advocate.

Mr. Goldman explained to the Council that the Subcommittee Recommendation needed to be adopted and that the main contention was Finding of Fact No. 37 which had been the topic of discussion at several meeting between parties and CRMC attended by himself and Mr. Fugate. Mr. Goldman stated that the discussions were about the limiting of the archaeological Phase III be limited to one hectare area and that if this was adopted by the Council, what would the course of action be if significant archaeological discoveries were found outside of that hectare. Mr. Goldman stated that No 37 states that all work should be halted on lots where significant archaeological discoveries were made until adequate plans to address the discovery were agreed upon by the applicant and CRMC. Mr. Goldman stated that if there was an impasse the matter would be referred back to the Full Council. Mr. Fugate stated that FOF #37 would be modified to incorporate Attachment A which would determine what a significant discovery would be.

Mr. Landry stated that the Subcommittee had done a very thorough and diligent job in hearing the matter. Mr. Landry confirmed that the scope of Phase III data recovery was affirmed by all parties but that the agreement on what was to be done with archaeological artifacts found outside of the 2.4 acre Phase III area. Mr. Landry stated that it was his understanding the none of the parties were comfortable with stopping the project for consultation with the Executive Director of CRMC after a significant find for resolution. Mr. Landry stated that the determination of the significance of the archaeological artifact is what the question is – who is to determine significance? Mr. Landry stated that during the meetings, a protocol was written that all parties are in somewhat agreement with which included having a qualified archaeologist on the site while construction was in progress. Mr. Landry stated that Downing Corporation

had submitted the name of the archaeologist they chose and that his credentials had been provided to the RI Historic Preservation and Heritage Commission who is also familiar with the archaeologist. Mr. Landry stated that the Attorney General's office through Mr. Schultz was asking that the parties behave responsibly and not objecting to the submittal of the archaeologist chosen by the applicant. Mr. Landry explained the protocol stating that if any dispute comes up amongst parties, the matter would be brought back before the Council. Mr. Landry stated that if human remains were unearthed, there would be a full work stoppage, the RIHPHC and the Narragansett Tribe would be brought in for determination of human remains. Mr. Landry explained the Historic Cemeteries Act. Mr. Landry stated that the Tribe's request had come to him earlier that day that they wanted a tribal representative present on the site 24/7 until completion of project. Mr. Landry stated that the property owner objected to this request. Mr. Landry stated that another issue to be agreed upon was obligations under prior permits – such as the type of artifact analysis that needed to follow reports. Mr. Landry stated that the property owner agreed that there were outstanding reports and that they would be submitted prior to any further construction. Mr. Landry stated that they would be in agreement of adopted the subcommittee recommendation with the modification of FOF #37 to add Attachment A and to require return to Council in the event of any impasse.

Mr. Schultz, representing the Attorney General's office, stated that he agreed with Mr. Landry's view of events but that the determination of the qualifications of the archaeologist is still in question and that resources would have to be provided for adequate curatorial facilities for specimens and records. Mr. Schultz stated that perhaps one more step would be required after the approval of the Subcommittee recommendation to determine what resources would be required for the archaeological aspect of the project. Mr. Schultz was happy with the affirmation of the property owner to provide previously required reports.

Mr. Kilroy thanked Mr. Fugate for facilitating the discussions and that the Tribe was in partial agreement with Attachment A as it provides a mechanism to investigate those areas that would be impacted by construction and that there would be an archaeologist on site. Mr. Kilroy expressed concern on behalf of the Tribe stating that there remained an outstanding need for an ACOE permit which would require a whole different set of archaeological mandates. Mr. Kilroy expressed the Tribes concern that the archaeologist chosen would have the qualifications necessary to be able to identify ancient burial sites or indication of a burial site and that the Tribe would like to be present to make sure something was not overlooked and no burial sites were desecrated unintentionally. Mr. Fugate stated that CRMC permits state that all other local, state and federal permits be in place and authorized before construction an start, and that the issuance of an ACOE permit would be necessary – Mr. Goldman confirmed. Chair Livingston began discussion on postponing CRMC Decision on ACOE permit issued. Mr. Kilroy reiterated that it was very important to the Tribe that the archaeologist qualifications be agreed to and assurances made. Mr. Kilroy stated that it is not acceptable to the Tribe that they not be allowed to be on-site during construction.

Mr. Coia expressed the intent of the Subcommittee in regards to the Subcommittee recommendations and looked to the Council for approval.

Vice Chair Lemont expressed his desire for approval of the Subcommittee recommendation with the agreement that the Executive Director arbitrate further issues and the fall back of the Council on impasse.

Mr. Coia made a motion for adoption of the Subcommittee Recommendation with the inclusion of Attachment A in FOF #37 and subject to the receipt of ACOE approval. Mr. Sahagian seconded the motion. Mr. Landry stated that the ACOE permit issue was briefed and determined long ago that the ACOE permit comes after the CRMC permit has been issued. Mr. Coia clarified his motion to say that the ACOE permit which was once in place, would be renewed. In order to have further discussion between Council and applicant, Mr. Sahagian withdrew his second to the motion.

Chair Livingston suggested adding “and tribal officer” to Attachment A of FOF#37 to alleviate Tribal concerns on qualifications of the archaeologist but Mr. Kilroy expressed that it was very important to the Tribe that the site is protected and that the tribe be afforded the opportunity to be on site during construction. Mr. Landry stated that the applicant was completely against having the tribe on the site.

Mr. Sahagian seconded the motion on the floor by Mr. Coia to adopt the Subcommittee Recommendation with modifications to Paragraph 37. Chair Livingston expressed her concern regarding the approval of the Extension having outstanding issues needing agreement amongst all parties. Vice Chair Lemont moved the question which cuts off the debate and forces a vote.

Motion carried with Chair Livingston and Mr. Gagnon opposed. Mr. Goldman confirmed a six to two vote in favor of motion.

Chair Livingston called a five minute break.

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

2011-09-158 RHODE ISLAND NURSERIES -- Application consists of the construction of a residential subdivision consisting of fourteen (14) house lots. Houses will be serviced by municipal water and individual onsite wastewater treatment systems (OWTS). Located at plat 59, lot 5; Vanderbuilt Lane, Portsmouth, RI.

Mr. Vernon Gorton present for Rhode Island Nurseries. Mr. Anderson gave a brief overview of the application to the Council stating that the applicant was requesting to build a 14-lot subdivision on a 21-acre portion of the RI Nursery property. Mr. Anderson stated that it was consistent with the coastal program, provides a 200-foot buffer zone for eight waterfront lots and a 225-foot setback for the structures. Mr. Anderson stated that the project was compliant with the stormwater management requirements and that the staff had no objections and recommended approval. Mr. Anderson stated that two objections had been received on the project and that staff had attempted to address the objections. Mr. Anderson made one correction to the staff recommended stipulations regarding HPHC concerns. Chair Livingston asked about the ROW to the water extending Vanderbilt Drive. Mr. Anderson stated that the ROW was not required by CRMC regulations but that it was the prerogative of the Council and could be stipulated.

Mr. Vernon Gorton identified himself for the record as representing RI Nurseries and introduced Mr. Bruce Vanicek, President of RI Nurseries and Mr. Paul Hogan, RI Nurseries real estate consultant and Mr. John Braga Engineer. Mr. Gorton gave a little background of RI Nurseries for the Council stating that they were one of the largest landholders of open space and agricultural land on Aquidneck Island. Mr. Gorton stated that the parcel of land to be subdivided was not desirable nursery land but of considerable value for a residential subdivision being waterfront property. Mr. Gorton stated that RI Nurseries agreed to adhere to all current regulations and had conducted an archaeological investigation which uncovered some minor cultural materials in an area that was intended to be undisturbed. Mr. Gorton spoke to the objections received stating that one objector was not present and their objection related to the location and nature of the traffic on one of the access roads to the site. Mr. Gorton stated that the objector of the location and traffic issue just purchased their property in 2012 and the project had been in the works since 2001 but they would try to accommodate the Perlmutter by moving the road a bit to the extent that they can. Mr. Gorton explained the nature of the second objection by the Tarsagians relating to runoff from RI Nursery land which eventually finds its way to his property which has a stormwater situation.

Mr. Gorton submits a compilation of two plans to show the entire subdivision on one map. Mr. Goldman marks as exhibit RI Nurseries 1 (full). Location of property was clarified using the map. Mr. Braga was sworn in and identified himself for the record as a registered engineer in the state of Rhode Island. Mr. Braga was qualified and accepted as an expert witness in the field of professional engineering and land surveying. Mr. Braga stated that he had read the concerns stated in the letter of objection from the Tarsagians and explained his ideas for mitigation of the issues of concern by improvement of the drainage system increasing the size of the pipe to a 24" pipe and redirecting the runoff away from Glen Ridge Farms property into a series of stormwater basins more to the northeast. Mr. Braga stated that any water running would be blocked by the pitched access road which would serve as a barrier for stormwater all of which complies with the RI stormwater manual. Mr. Braga stated that the stormwater system was designed to the standard of a 10-year design. Mr. Braga stated that the system was discussed with both RIDEM and RICRMC staff. Mr. Braga stated that the applicant would lose a building lot if it was necessary to move the road forward. Mr. Braga stated that pervious pavement was not practical on a slope of greater than 5% as stated in the Stormwater Manual. Mr. Gorton ended his questioning reserving the right to comment after the objectors spoke.

Discussions on procedure as the objectors were not represented by legal counsel.

It was determined that Richard Pastore was previously qualified as an expert witness with the Council and Mr. Pastore agreed to answer questions. Mr. Pastore was sworn in and identified himself for the record. Mr. Pastore disputed Mr. Braga's design and requested putting a berm with a 5' wide swale and a 2.5' upward berm as a blockage of the water on the south side of the 20' wide road leading to the ROW. Mr. Pastore talked of the flooding of the objector's property causing flooding of grassy area which has animals grazing on property that gets washed out. Mr. Gorton stated that Mr. Pastore's report requested a 10' wide berm which Mr. Braga addressed by moving the road 10 feet. Mr. Gorton stated that they would lose a developable lot if a 10' wide berm was required. Mr. Pastore clarified a 5' wide berm, 2.5' high at a 45 degree angle which could be vegetated. Mr. Gorton expressed that the added berm on top of the added stormwater precautions was not necessary. Mr. Gagnon asked if a regular 6" berm could be added to the roadway. Mr. Pastore countered with a Cape Cod berm. Mr. Gorton disputed the berm saying that it was unknown how much water would be headed towards the berm and the stormwater system.

Ms. Ann Fiori and Mr. Kevin Tarsagian were sworn in and identified themselves for the record. Ms. Fiori briefed the Council on the background leading to the objections to the project stating that they had worked with NRCS to design and implement a very costly system to address the water problem until RI Nurseries reworked a small ravine and rerouted the water to a pond causing their new stormwater system to be ineffective. Ms. Fiori confirmed that she thought a berm would alleviate some of their water problems. Mr. Gorton questioned Ms. Fiori. Ms. Fiori answered questions confirming that they had water problems before RI Nurseries did anything and then after the new system was put in problems still remained.

Chair Livingston stated that she would recommend making the berm a stipulation of the Assent. Discussion on where the berm would have to be built. Chair Livingston asked for a motion to send the plans back to staff to determine whether the berm would work and how far it should go. Vice Chair Lemont made the motion and asked for an estimated cost of the berm as well. Mr. Sahagian suggests that if all parties work things out and the objection is withdrawn, that the Council give the Executive Director the authority to approve the project. Mr. Goldman clarified that, in this case, the only reason the application is before the Council is because of the objection, and that if the objection is withdrawn, the application would go through normal category A processing. Ms. Fiori asks if they can be part of the process in discussion of the berm placement for stormwater alleviation on her property. Chair Livingston asked Mr. Fugate to intervene with staff and the objector's behalf to make sure all parties are heard. Vice Chair Lemont clarified his motion stating that the intent was for CRMC staff to visit the property and view the problem as delineated by the abutting property owner to determine how long the berm should be and

whether it's needed; then, to determine the cost of the berm. Vice Chair stated that Mr. Fugate would be able to make the final approval but that if agreements could not be made, the application would come back before the Council. Mr. Gorton agrees to the motion if there is an alternative weighed in that the berm may not be needed. Mr. Sahagian seconded the motion. Motion carried on a unanimous voice vote.

8. CATEGORY "A" LIST/ ENFORCEMENT REPORT

None were held. Chair Livingston stated that the Category A report would be a quarterly agenda item from then on.

8. ADJOURN

Vice Chair Lemont motioned, seconded by Mr. Hudner, for the meeting to adjourn. Meeting adjourned at 8:30 p.m.

Respectfully submitted,
Lisa A. Turner, Recording Secretary