

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, September 24, 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
Donald Gomez
Ronald Gagnon, RIDEM
Tony Affigne
Mike Hudner
Jerry Sahagian
Joy E. Montanaro

Staff Present

Grover J. Fugate, Executive Director
Jeffrey M. Willis, Deputy Director
Richard Lucia, Principal Civil Engineer
Amy Silva, Principal Environmental Scientist
Laura Miguel

Brian Goldman, Legal Counsel

Members Excused:

Raymond Coia
Guillaume deRamel

1. Call to Order

Chair Livingston called the meeting to order at 6:00 p.m.

2. Minutes of the previous meeting – Tuesday, September 10, 2013

Mr. Affigne requested a correction to the minutes to say “Motion to deny petition for declaratory judgment is approved.” Vice Chair Lemont motioned for approval of minutes with correction. Mr. Hudner seconded motion. Motion carried on unanimous voice vote.

3. Subcommittee Reports

None

4. Staff Reports

Mr. Goldman updated the Council on the ongoing litigation with Deepwater Wind stating that there was a court hearing on September 13, 2013 for oral argument and that Judge Silverstein agreed that the objectors had no standing to contest the fee waiver issue and that a bench decision would be issued on Friday, September 27, 2013 on whether Council decision would be upheld on denying intervenor status.

Grover Fugate informed the Council of the following:

He had interviewed for the position of Director of the National Ocean Council, was the top candidate for the position and was offered the job, but had withdrawn his name for further consideration for that position as he felt there was still more work to be done in Rhode Island and would be staying with the Coastal Resources Management Council.

The Beach SAMP or Shoreline change SAMP is underway and limited funding had been received to start it and get it moving forward. Mr. Fugate introduced Dr. Jon Boothroyd, State Geologist and professor emeritus at URI, and Dr. Brian Oakley, Professor at Eastern Connecticut State University, to do a presentation about the preliminary findings for the SAMP. Dr. Oakley gave the presentation to the Council with acknowledgments to Dr. Boothroyd and Scott Rasmussen, Graduate Student, who did

much of the legwork and GIS work. Dr. Oakley's presentation consisted of information on the effects of storm surge along with sea level rise.

Chair Livingston checked for applicant attendance.

3. Administrative Application before the Full Council:

2012-09-080 WILLIAM & MARGARET DUNN – Construction and maintain a new dwelling and OWTS located at plat 29, lot 90; Sunset Lane Portsmouth, RI.

Attorney Joseph DeAngelis was present along with the applicants William and Margaret Dunn. Ms. Silva gave a brief overview of the application stating that the applicants applied to construct a single family dwelling with and OWTS on an undeveloped lot to which they are asking for a buffer variance of 30 feet and for grading, a retaining wall and stormwater management within their 25' construction setback. Ms. Silva stated that abutting the lot is an undeveloped portion of Sunset Lane which functions as a public right-of-way and stated that a portion of the applicant's driveway would fall in Sunset Lane with no objection from the Town. Ms. Silva stated that one objection came in for application and that the applicant had responded adequately to. Ms. Silva stated that staff had no objections to the buffer zone variance.

Mr. Sahagian motioned approval of application with staff stipulations. Vice Chair Lemont seconded the motion for approval.

Mr. Goldman explained that an objection package was received in CRMC offices that day but as the objector was not present and the photographs could not be authenticated, the package could not be admitted as evidence. Mr. Goldman marked the objection for the record. Ms. Silva explained the nature of the objection stating that the objector is questioning the depiction of Sunset Lane and made a reference to the site being the location of the historic Town landing which is no longer in existence. Ms. Silva further explained that after an exhaustive title search, the applicant demonstrated that the Town Landing was never on the property and that Sunset Lane is depicted correctly. Ms. Silva explained that although the Town ROW is 40' wide, it is vegetated showing only 10' is passable but after talking to the Town, they are considering adjusting that. Ms. Silva stated that the Town has no objection to the application or the use of the ROW for the placement of the corner of the driveway.

Motion carried on a unanimous voice vote.

4. Applications which have been Out-To-Notice for 30 Days and are before the Full Council for Decision:

2013-03-063 BLOUNT BOATS, INC. -- Installation of a 150 foot long fabric covered steel framed structure in the Blount Boats yard. The purpose is to provide cover for vessels and workers from inclement weather and also contain by-products from vessel blasting and painting. Located at plat 6, lot 11; 461 Water Street, Warren, RI.

Mr. Lucia gave a brief overview to the Council stating that the project consisted of the installation of a 150' long by 4' high telescoping fabric with steel frame structure for the purpose of repair and maintenance of vessels at the boatyard. Mr. Lucia stated that there was one objection received from a David MacDougall who has submitted a suit to Superior Court appealing the Warren Zoning Board's decision. Mr. Lucia stated that a stay had not been issued by Superior Court and staff had been advised by CRMC Legal Counsel that an assent can be issued with application is reviewed by Council. Mr. Lucia stated that a variance was required to program standards due to public access which was answered by the applicant through the submittal of a public access plan. Mr. Lucia stated that staff had no objections to the granting of the variance. Chair Livingston questioned the safety of structure during storm events. Mr.

Lucia stated that the structure would have to be designed to withstand heavy winds and the bottom sections would be removed if a storm was imminent.

Andrew Teitz, Esq., presented for the applicant, Marcia Blount, stating that the project was beneficial to the community and the waterfront as it would provide employment opportunities in the area, continued operation of an historical boatyard would be good for the areas economy, and to insure the safety of aluminum boats which need to be enclosed during the building process. Mr. Teitz also stated that the project would satisfy EPA regulatory constraints regarding painting and blasting. Mr. Teitz explained that there would be concrete foundation work on an existing slipway and provides improvement in stormwater collection. Mr. Teitz stated that there would be no diminution of public access in the area as there is no public access in them middle of the shipyard and that there would be an issue of security requirements put forth by International Maritime Organization.

Marcia Blount was sworn and identified herself for the record as owner of the boatyard. Ms. Blount talked about the historical aspect of the business proudly describing dependable service and the building of boats with lasting value. Ms. Blount explained that the tent was needed for two reasons: firstly, to provide more floor space and covered space as unpainted aluminum boats must be protected from elements; secondly, an SEP was signed between Blount boatyard and the EPA to use the tent to reduce air emissions from painting and blasting activities. Ms. Blount stated that the tent will have a filtration system mounted on exhaust fans. Mr. Teitz questioned Ms. Blount about public access in the boat yard to which she answered that there was no public access to that area of the shipyard.

Chair Livingston asked for explanation regarding the ROW issue. Mr. Teitz provided a photo which Mr. Goldman marked as Blount #1. Mr. Teitz explained, using the aerial photo, the site and the area of public access.

Mr. Teitz called Mr. Fitzgerald to testify. Mr. Fitzgerald was sworn in and identified himself for the record as Richard Fitzgerald a licensed engineer working for Childs Engineering a water front engineering firm. Mr. Fitzgerald explained the project stating that the structure consisting of three 50' long tent sections would be built over an existing shipway. Mr. Fitzgerald explained that each tent section was a different width and could fold up over one another to be one 50' section. Mr. Fitzgerald explained that during a storm event the three sections would be moved away from the waterline but that it was designed to withstand 100 mph winds. Mr. Fitzgerald stated that they reversed the tent from the original design as the new arrangement would react better in storm situations. Mr. Fitzgerald explained the air filtration system and the water collection system (drain for filtration) which would not extend beyond the coastal edge. Review of plan showing structure.

Vice Chair Lemont inquired about the time frame for removal in the event of a storm. Mr. Fitzgerald stated that it would take a couple of days for the structure to be taken down using the shipyard's crane. Mr. Fitzgerald also explained the filtration systems.

Mr. Teitz introduced Gerard Connors who was sworn in and identified himself for the record as the president of G. W. Connors, Inc., a maritime security management company and an expert in marina security. Mr. Connors stated that he was familiar with the site. Mr. Connors explained that public access was not provided in commercial facilities due to restriction placed by the Maritime Transportation Security Act after 9/11. Mr. Connors explained that the Town beach provided unlimited access to the shoreline but not to boat yard.

Chair Livingston asked for the objector to speak. Mr. Teitz reviewed photos submitted by Ms. MacDougall and had no objection to the cover photo or the series of website pictures of shipyard from some years ago. Mr. Teitz objected to the submittal of the Warren zoning ordinance as the Warren zoning board had made its decision was before Superior Court and it was not relevant to the decision of the

Council. Jane MacDougall identified herself for the record and stated that she was representing herself pro se. Ms. MacDougall explained that the tent presented was not the tent as it was laid out in plans submitted to CRMC and that the dimensions of the tent were larger than the plans in the CRMC file.

Mr. Teitz stated for the record that Robert Healey, Esq who represented Ms. MacDougall on the local level and in Superior Court was present and that he was the attorney of record. Mr. Teitz stated that when the plans were changed they immediately sent a copy to her attorney of record which was a month prior to the CRMC meeting. Mr. Lucia of CRMC staff stated that the change would not affect the program regulations and that he had no problem with it being turned around. Mr. Lucia also stated that the Building official saw same plans staff reviewed dated 02-21-2013 and that Mr. Nash stated plan meets all elements of the zoning ordinance.

Chair Livingston asked Ms. MacDougall the reason for her objection. Ms. MacDougall stated that she was concerned that with the boatyard being overbuilt, there was a possibility of future encroachment on the public access to the water in the area. Mr. Goldman explained zoning board situation and our approval is contingent upon having local approval. Chair Livingston and Ms. MacDougall discussed CRMC's involvement in decision process prior to Court decision. Ms. MacDougall explained that the tent was a different size than original submission; the foundation length is different. Mr. Fitzgerald stated that the tent size was still the same but the foundation was 152 feet long.

Mr. Affigne questioned Mrs. MacDougall to narrow down her objection. Mr. Affigne explained that all the Council was being asked to determine was whether the construction of the tent structure would impact public access.

Vice Chair Lemont motioned to approve application based on testimony heard from Ms. Blount regarding economic benefits, Mr. Fitzgerald as engineer, Mr. Connors regarding public safety and CRMC staff on program adherence. Mr. Gomez seconded. Mr. Affigne added that one of the important concerns was environmental protection and that the construction of said structure would help preserve and protect air and water quality.

Mr. Hudner stated that he did not accept the argument that the use of the present waterfront or access of paying customers on Blount vessel constituted public use.

Mr. Gomez stated that the nature of the business was changing (steel to aluminum) and that with change requires new technology and required adaptation. Mr. Gomez expressed that he was happy that the EPA regulations were diligently being met and adhered to.

Motion carried on unanimous voice vote.

5. Enforcement Matter before the Full Council:

13-0082 SAMUEL PIOTRKOWSKI – Unauthorized construction of seawall and reconstruction of deck in noncompliance of CRMC Emergency Permit 1691 (CRMC File No. 2012-12-102) located at plat 175, lot 16; 31 Atlantic Avenue, Westerly, RI.

Joseph DeAngelis, legal representative, requested that the property owner be able to go back to work with staff and bring back to Council. Chair Livingston agreed and stated it would be continued until the next meeting.

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

RI Coastal Resources Management Program – Ocean Special Area Management Plan (Ocean SAMP) Chapter 8 - Renewable Energy and Other Offshore Development and Chapter 11 – The Policies of the Ocean SAMP. Amend Section 860.2.1.3 as follows:

Mr. Fugate gave a brief overview of program change stating that the application by Deepwater was bound by regulations of which they applied. Mr. Fugate stated that he was concerned by what was happening with federal process and that he wanted to make sure there was a net benefit to marine industry. Mr. Fugate explained that the developers would have to demonstrate the overall gain to the state that would then outweigh the negative impacts that would occur to the marine industry

Chair Livingston opened the public hearing and the following people spoke:

Larry Erhardt and Jim O'Neill expressed concern with the terminology and requested that the word "net" be inserted where appropriate to determine economic benefits. Mr. Erhardt expressed concern over the e-mail from David Kaiser stating that he would be looking for objective determination of all impacts, (net or otherwise). Mr. O'Neill added that NOAA had concerns over specificity and that adding the word net would be logical in specificity.

Robert Shields, resident of Narragansett and retired chemical engineer spoke regarding the wording proposed replacing section 8 and 11 stating that NOAA may have overlooked some things such as the local issues; testimony presented at the local level. Mr. Shields stated that he wholeheartedly endorsed the changes that Mr. Erhardt added.

Jerry Carvalho, Vice President of the RI Fishermen's Alliance, expressed his concern that the new language that NOAA recommended was too vague; it did not define what existing human use is and that the language they are asking to delete is specific and definitive. Mr. Carvalho suggested leaving the old language in and adding their new language along with the word net as well.

Vin Riggs, Newport RI, Degree in English/Writing from BU, stated that he was familiar with everything that Mr. Erhardt and Mr. O'Neill talked about and that he agreed with Mr. Carvalho that the potential for interpretation is too open and that what made the most sense was to not make any changes at all.

Chair Livingston closed the public hearing for Council discussion.

Mr. Fugate stated that the Council could accept the following options: not pass the change and leave language the way it is, and apply to state water projects not federal projects; thus it wouldn't carry the weight of federal consistency and would not apply to deepwater. Another option is to go back to drawing board to work with NOAA to get what everyone wants. Mr. Fugate stated that David Kaiser had issues adding the word net.

Mr. Affigne began discussion on the addition of the word net.

Mr. Sahagian made the suggestion to table the program change for 30 days.

Mr. Lemont suggested the Mr. Fugate sit down with Rep Erhardt, Mr. O'Neill and Mr. Shields and submit language to NOAA. Mr. Fugate agreed to work with them and maybe Conference call with David in the forefront.

Vice Chair Lemont motioned to defer any action and send back to Mr. Fugate. Mr. Sahagian seconded motion. Mr. Gomez suggested 60 days and stated that he would like to see it at Policy and Planning Subcommittee meeting.

Mr. Affigne requested to add another clause to consider all comments in determination of local impact

Mr. Fugate explained difference between State and Federal review process which had a limited timeframe.

Mr. Hudner stated that CRMC staff under Mr. Fugate's leadership had been cutting edge in offshore SAMP area and another aspect of leadership that should be taken; RI should try to push NOAA and feds to see things in changing world.

Vice Chair Lemont moved the question.

Motion carried on unanimous voice vote.

RI Coastal Resources Management Program –Section 300.11 Aquaculture
Amend Section 300.11.B.1 as follows

Chair Livingston opened the Public hearing.

No comments heard

Chair Livingston closed public hearing.

Vice Chair Lemont motioned approval seconded by Mr. Sahagian. Motion carried on unanimous voice vote.

7. Adjourn

Motion to Adjourn by Vice Chair Lemont, seconded by Mr. Sahagian. Motion carried.

Meeting adjourned at 8:34 p.m.

Respectfully submitted,

Lisa A. Turner
Recording Secretary