

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, June 25, 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
Jerry Sahagian
Tony Affigne
Guillaume deRamel
Mike Hudner
Raymond Coia

Staff Present

Grover J. Fugate, Executive Director
Jeffrey M. Willis, Deputy Director
David S. Reis, Spv Environmental Scientist
James R. Boyd, Coastal Analyst
Tracy A. Silvia, Sr. Environmental Scientist

1. CALL TO ORDER

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

2. APPROVAL OF THE MINUTES OF THE PREVIOUS MEETING

Vice Chair Lemont, seconded by Mr. Sahagian, for approval of minutes from May 28, 2013 meeting. Motion carried on unanimous voice vote.

3. SUBCOMMITTEE REPORTS

None heard.

4. STAFF REPORTS

Mr. Fugate reported to the Council on:

Regional Planning Body held a joint meeting in which the Directors of CRMC and DEM represent the State of RI. The meeting was two fold, to draft rules for planning effort and also as a Joint Ocean SAMP meeting update.

An Ocean SAMP meeting was held in terms of evaluation process of the program which is required every two years.

A Public Stakeholder meeting will be held on July 10, 2013 for the Shoreline Change SAMP (aka Beach SAMP). This will be the 2nd meeting held with part to discuss changes that have gone through Congress in terms of the national flood insurance program and its impact on property owners.

Budget office coming down to CRMC Wakefield offices on July 16, 2013 to discuss the capital project mainly regarding the rock in Ninigret and showing that the project is underway.

On July 31, 2013 there will be an auction for the offshore wind off RI which will be the first offshore lease sale in US for offshore wind. There are two lease blocks within the AMI area which will be leased; the Ocean SAMP area. DeepWater Wind will be going in as serious contender for that. It will be a multifactor lease auction with nine companies that registered for this -- several being international companies. The auction will be conducted on-line.

Brian Goldman reported to the Council on:

CRMC received a favorable decision from Superior Court in the case of Glassie vs CRMC which involved the High Street ROW in Jamestown. Superior Court affirmed the CRMC decision that it is a Public ROW. The Decision can be appealed in Supreme Court.

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

2013-02-073 DEPARTMENT OF TRANSPORTATION – Replace Bridge No. 777 and repave approaches. The proposal includes widening the bridge and abutment by approximately 14 feet, and provides scour protection and stormwater management. Total scour protection results in 17 cy and 30 cy riprap (10 cy gravel, 23 cy riprap below MHW). Located at Pleasant Valley Parkway and Promenade Street and Dean Street, Providence, RI.

Dave Reis gave brief overview of application stating that bridge 777, Pleasant Valley Parkway, was to be to be demolished and replaced with bridge 14' wider at the west end. Mr. Reis stated that staff had no objections and recommended approval. Vice Chair Lemont motioned approval based upon staff recommendation and staff stipulations. Mr. Coia seconded the motion. Motion carried on unanimous voice vote.

2012-07-019 JOHN P. & ADRIENE GANZ – Construct and maintain a single family residence serviced by public water and sewers. The applicant also proposes to construct a rip-rap revetment. Located at plat L, lot 1-14; 43 Major Arnold Road, Narragansett, RI.

Mr. Sahagian recused himself. Ms. Silvia gave a brief overview of the application to the Council stating that the applicant wished to build a single family dwelling serviced by public utilities on a vacant lot with a cobble boulder beach. Ms. Silvia stated that a Preliminary Determination was issued for the property in 2005 stating that the work proposed was prohibited on Type 1 shoreline. Ms. Silvia stated that CRMC issued a permit for a non-structural shoreline protection wall which was installed in 2007. Ms. Silvia explained the series of events stating that the property's shoreline was considered to be manmade shoreline requiring a Category B review for the riprap revetment. Ms. Silvia stated that after several site visits the location of the revetment was agreed upon and the application went out to public notice which generated the receipt of several objections. Ms. Silvia explained that the project was consistent with the stormwater best management practice (BMP) but required a variance which staff supported. Ms. Silvia clarified that a setback variance and buffer variance was required, that the applicant had secured local variance relief on the very small lot and that staff was deferring to the Council for consistency determination with the variance criteria as well as consideration of the objections.

Chair Whitehouse asked for clarification on the agreed placement of the revetment. Mr. Fugate explained that in trying to balance the project without taking away from property or the actual coastal feature, the agreed upon location seemed to be appropriate putting it further back from the two abutting seawalls and adjoining the walls there.

Joseph DeAngelis and Kristen Sherman were present to represent Adriene Ganz along with CJ Doyle as the project engineer. Ms. Doyle was put under oath and identified herself for the record and was qualified for the record. Mr. Fugate spoke to her qualifications and her previous representations before the Council. Vice Chair Lemont motioned to qualify Ms. Doyle as an expert witness. Mr. Coia seconded the motion. The motion was carried on a unanimous voice vote.

Ms. Doyle was questioned by Mr. DeAngelis regarding her involvement in the application. Ms. Doyle explained the erosion in the area and damage of property due to erosion and since the storm. Ms. Doyle stated that the installation of the riprap material would be beneficial for this property and abutting properties and the

placement was appropriate so as to inhibit the water will from funneling up into higher elevation but not encroaching on the beach area.

Mr. Gagnon asked for clarification on the size of the riprap material? Ms. Doyle explained that the riprap stone would be of similar size to what is there already and that the information was spelled out on drawing (min and max size).

Mr. deRamel asked for clarification on the location of the riprap revetment. Ms. Doyle stated that the original application was for the walls to be in line and that through negotiations with CRMC staff the wall was pushed back to elevation five. Mr. Fugate stated that the staff would object bringing riprap out to match abutting walls. Mr. DeAngelis explained the applicant's permitting process with the local zoning board and the relief needed for the frontyard setback. Ms. Silvia explained CRMC's buffer zone requirements and the variances being requested by the applicant. Mr. Fugate clarified staff reasoning in the proposed location of the revetment reiterating the effort to try to balance the variance requirements along with preserving the coastal feature.

Mr. Gomez asked about alternative methods. Ms. Doyle stated that the applicant did apply for coir logs but the client was unable to move on the permit due to financial reasons.

Objectors:

Jane Austin of Save The Bay was sworn in and identified herself for the record. Ms. Austin commented that Save The Bay was opposed to the application because the variance was not marginal variance on a single standard. Ms. Austin stated that there is a considerable stretch of natural shoreline in the area and STB objects to adding hardened protection to the area. Ms. Austin stated that Save The Bay asked the Council to deny the application.

Judith Castelucci was sworn in and identified herself for the record as living across the street from the subject property for 35 years and stating that she would have liked to purchase the property and keep it natural. Ms. Castelucci explained that the property was taken care of by the neighbors. Ms. Castelucci presented photographs taken by herself in June of 2013. Mr. Goldman marked the photos as Objectors 1 through 5. Ms. Castelucci stated her objections to the proposed project stating that the land has eroded significantly over the years and that the Town has granted variances but has left the decision for construction up to the Council.

Barbara Burak was sworn in and identified herself for the record as living directly to the north of the Ganz's property. Ms. Burek stated that she and other abutters had discussed with the Ganzs about putting the coir logs in, but when it became known that the property would be developed the abutters put the project on hold. Mr. Burek stated that it was her understanding that if the wall was built her property would benefit. Ms. Burek asked about water behind the riprap revetment. Ms. Doyle stated that the property would be graded so that any water would flow over and would not be trapped behind the wall. Ms. Doyle confirmed that behind the wall would be backfilled. Ms. Doyle confirmed that the wall would penetrate the ground and be built upwards from there to elevation 15. Ms. Doyle confirmed that the riprap revetment would be built such that it would blend into the two seawalls on either side which have their returns situated on the Ganz property.

Chair Livingston stated that she found it to be a very difficult decision for CRMC especially with riprap on both sides and the fact that this is the last natural bit of coastline in the area. Chair Livingston stated that she would have to vote to deny.

Mr. Affigne began with his concern that the property owners had not had too much to do with the property over the years making it necessary for the neighbors to protect themselves by building the return on the Ganz property as well as performing the upkeep of the property. Mr. Affigne stated that if more attention to the property had been paid it would not be necessary to jump to hardening at last minute and that he would be inclined to deny the application. Mr. Fugate clarified that the applicant had attempted to come in with riprap

revetment but were told they could not because there was no house on lot and explained the history of application saying that CRMC regulation prevented certain courses of action.

Mr. Gomez stated that he would be inclined to vote to deny application based on staff report that says the proposed project appears to be inconsistent with the RICRMP. Mr. Gomez added that the may have considered it had they proposed soft hardening.

Mr. Hudner expressed his concern regarding the complications of the situation and that the lot is being taken because of the two walls on either side of it. Mr. Hudner also stated that the project does not have strategic significance in the work of the Council and punitive towards the applicant.

Vice Chair Lemont asked if there was a way where the proposed structure could be brought in line with the other two walls. Mr. Fugate explained the staffs reasoning on bringing the toe of the seawall to mean high water.

Mr. Gagnon stated that he had gone onto Google Earth and measured south which had 650' of hearding with a 100' gap and the another 150' of hardening. Mr. Gagnon stated that the closing up of the gap seem as though it should be okay to bring it consistent with shoreline out there now.

Mr. deRamel opened the discussion on allowing the property owners to push the seawall further back to the ocean to allow for more room on the property. Mr. deRamel clarified for the record that he was not in favor or the hardening of the coast line but in this case there is already hardening in the area with the tiny gap that is taking their property.

Mr. Affigne opened discussion on mean low water, lateral public access and protecting the public's right to access the shoreline. Mr. Fugate explained that as the project is presented the intertidal area is being left for access along the shore.

Mr. Reis explained that staff was trying to work with the applicants while still working within the regulations and how to evaluate a project based on regulations. Mr. Reis cited two regulations, Section 300.7.f.1 (standard) 300.2 prohibitions 300.2.c.1, explaining that staff was trying to find the middle of those two regulations.

Mr. Hudner reiterated his feelings on the application stating that the compromise crafted by Mr. Fugate and CRMC staff was appropriate based on the existing conditions of the area and that he was in favor of approving the application as presented.

Mr. Affigne asked legal Counsel to explain a "takings claim" in conjunction with the CRMC program. Mr. Goldman explained the hierarchy of events starting with the statutory provision and constitutional provisions. Mr. Affigne also inquired as to who authorized the 15' of encroachment on property by either sides. Mr. Fugate stated that CRMC would not have authorized the encroachment on abutting property without the consent of the property owner.

Ms. Castellucci informed the Council that the public used the area to access to the shoreline for purposes of fishing and surfing on a regular basis. Ms. Castellucci also stated that the current owners of the property intend on selling the property once the permits were in place.

Mr. DeAngelis addressed the Council stating that the only question was where to put the revetment. Mr. DeAngelis stated that the applicant needed to sell the property to pay for healthcare for her brother and herself.

Mr. Coia motioned approval of application based on hearing the arguments from both sides and that there seemed to be a balance at that point which leaned in favor of approval. Mr. deRamel seconded the motion. Mr. Goldman conducted a roll call vote.

Mr. Hudner Aye

Mr. Gomez	Nay
Mr. Coia	Yes
Mr. deRamel	Yes
Mr. Affigne	Nay
Mr. Gagnon	Yes
Vice Chair Lemont	Yes
Chair Livingston	Nay

Mr. Goldman stated that there were five affirmatives and three nays. Motion carried.

Brief recess held.

2012-08-107 ANDREW & MELISSA DeLORETO -- Construct and maintain a residential boating facility. The facility will consist of a 3' x17' ramp to a 4' x 160' fixed timber pier. The facility will extend to 43' beyond Mean Low Water (MLW). The facility will be used as a "touch and go" facility as the water depth at the terminus the dock is less than 18" MLW. A variance to the water depth standard (18" MLW) is required, approximately 8" proposed (reference RICRMP 300.4.E.3.(a), Table 3. Located at plat 3, lot 32; 111 Shady Harbor Drive, Charlestown, RI.

Mr. Reis gave a brief overview of the application to Council explaining his concerns for habitat in that area and stating that a length variance would be required in small cove for very small depth of water. Mr. Reis explained in detail to the Council how valuable the small cove was from a habitat perspective. Mr. Reis stated that the facility will be used for touch and go purposes only, a variance was required for 160' long pier in small cove to reach 8" of water and the applicant would have access to an association dock to access their mooring. Mr. Reis explained that CRMC staff was not in favor of the application but deferred to the Council for variance determination. Mr. Reis clarified that the dock would extend no further than the two docks on the east (parallel to abutting dock).

Attorney Don Packer was present to represent applicants, Andrew and Melissa DeLoreto, along with Scott Rabideau, NRS present as a coastal biologist expert.

Mr. Rabideau was sworn in and identified himself for the record. Mr. Rabideau testified about the freshwater inputs using an aerial map (Exhibit #4) (colored) stating that the dock would be located over the smaller of the two inputs which drained onto a much smaller wetland with very little associated marsh dominated by Phragmites. Mr. Rabideau explained having the dock span the streambed and not interrupting the flow will have less impact to the habitat values of the wetland. Mr. Rabideau stated that docks in the area are sitting on the mud flats and that the proposed facility, a fixed pier, will always have 8" of water. Mr. Rabideau explained mitigation measures taken for dock such as separation distance and light penetration. Mr. Rabideau explained the alternative they proposed which was discounted. Mr. Rabideau agreed that the installation of the walkover structure would have no effect on the influx of freshwater from that stream into the cove and the ecosystem.

Mr. Gomez inquired into the freezing aspect of the cove. Mr. Reis stated that the areas further back in the cove did freeze but that the ice depth was not enough to ice jack piles.

Chair Livingston asked if CRMC approved floating docks that are there. Mr. Reis explained that many of the facilities in Quonnie pond pre-existed the dock program and were grandfathered in.

Mr. Reis stated that the application had been reviewed through the Preliminary review process and that the concerns in previous report had been pretty straightforward from beginning with staff objection to project. Mr. Reis stated that the usability could be less based on significant tidal change. Mr. Reis explained that there is an existing homeowner's dock association facility for their use. Mr. Reis cited RICRMP Section 300.4 b 2 b and stated that staff recommended that it is not consistent with variance criteria.

Mr. Rabideau stated that there were hurdles to overcome and that the applicant worked with staff. Mr. Rabideau also pointed out the number of docks in area and density of the development of the area.

Mr. Packer pointed out that there was not a negative staff recommendation but that there were some negative comments and some positive comments.

Mr. Gagnon asked for clarification on the dock spanning the small stream. Mr. Rabideau explained that the piles go off the top of the bank without disturbance and dock spans the stream for twenty feet.

Property owner, Mr. DeLoreto, was sworn in and identified himself for the record and addressed the Council stating that he and his family had lived in the area since 2010 where they demolished a structure on the lot and rebuilt a dwelling. Mr. DeLoreto stated that they live there full time and love it. Mr. DeLoreto stated that he was familiar with the tides and water depths. He stated that he was a member of the association and familiar with the community dock. Mr. DeLoreto showed a picture of a New Moon tide which was an Extreme low tide. Mr. Packer moved to make photos full exhibits with the applicant authenticating the photos.

Mr. DeLoreto confirmed that he had a mooring to keep his boat as the proposed facility will be a touch and go facility to get to mooring and to get to property, to be able to pick up people. Mr. DeLoreto testified to 80% of time there will be 18" of water and it will provide the opportunity to get out to boat safely. Mr. DeLoreto explained the procedure and availability to use the community dock stating that there is a waiting list based on time lived in community. Mr. DeLoreto also explained that the water depth at low tide at community dock is very low as well.

Mr. Reis clarified that the structure will be evaluated as a dock as it does not fit the requirements of a walkover structure.

No objectors present.

Chair Livingston expressed her opinion that she feels there should be a denial of application as it may disturb the natural ecology of area. Chair Livingston would like to minimize the building there and is discouraged there are so many docks there already and would not want to add to it. Chair Livingston stated that there were other alternatives to get out on the water.

Mr. Hudner stated that the other alternative was not a practicable solution. Mr. Hudner stated that the DeLoretos had a large investment in their property and to the community and that a lot of thought was put into minimized effect on environment.

Mr. Affigne inquired as to the ecological concern on impact on mudflat. Mr. Reis stated that the major concern was increasing levels of development in sensitive cove area. Mr. Affigne stated that a walkover that spans the stream is better than going up and down with kayak and dinghy.

Mr. Sahagian asked why staff deferred to the Council. Mr. Reis stated that the variances needed to be brought before the Council.

Mr. Coia stated that once all discussion was done he would like to motion to approve. Mr. Gomez seconded.

Mr. Affigne asked for further explanation on why a one time disturbance is worse than constant use of streambed.

Chair Livingston stated that so many docks in the area should not be a reason to approve but a reason to deny the application. Agreed by Vice Chair Lemont as dock is of minimal benefit.

Mr. deRamel asked to amend motion to allow only two boats. Mr. Coia and Mr Gomez pull their motion and second.

Mr. deRamel motioned, seconded by Mr. Coia, to limit number of boats to two with the provision that they can only keep the boats there a maximum of 48 hours; (dinghies don't count).. Motion carried with 6 in the affirmative and the Chair and Vice Chair voting to deny.

6. PUBLIC HEARING ON CHANGES TO THE RHODE ISLAND COASTAL RESOURCES MANAGEMENT PROGRAM:

RI Coastal Resources Management Program – Maps of Water Use Categories

Mr. Boyd gave a brief description to Council on water type change stating that staff supported the proposal as noticed with two small segments of type 2 shoreline. Chair Livingston opened the public hearing. Christopher Nerona, Esq with Roger Williams University, addressed the Council briefly. Chair Livingston closed the public hearing. Vice Chair Lemont motioned approval. Mr. Coia seconded the motion. Motion carried on unanimous voice vote.

RI Coastal Resources Management Program – Salt Pond Region Special Area Management Plan: Add new Section 980 - Experimental Coastal Erosion Control

Mr. Fugate briefed the Council on the proposed program change stating that it is due to the Matunuck erosion situation that the Council is considering experimental shoreline erosion control methods in very limited areas. Mr. Fugate stated that comments were received from Save The Bay and the Conservation Law Foundation Mr Fugate stated the changes were intended to allow for the experimental use of shoreline protection facilities with specific prohibitions of revetments.

Mr. Boyd addressed the Council explaining the comments received from the Town of South Kingstown and the Town of New Shoreham.

Mr. Affigne questioned notification process. Mr. Boyd stated that to be consistent with the program, the notification process would be to abutting property owners. Mr. Affigne expressed interest in notifying further beyond than immediate abutters.

Mr. Fugate clarified that all application coming in subject to the erosion control rules would be going before the Council.

Mr. Gomez stated that as the projects were dealing with new regulations the Council should be heavily involved.

Public Comment:

Jane Austin from Save The Bay addressed the Council expressing that all temporary methods remain temporary in nature; only supposed to be a short term, localized erosion management with very active monitoring which should be fully evaluated over time and in all weather. Ms. Austin stated that a performance bond should be required.

Ella Whaley the South Kingstown Town Council President was present to comment along with several members of Town. Ms. Whaley read her formal comments to Council and summarized by adding a comment of substance that the Town Beach should be included in headland area. Ms. Whaley asked for an opportunity to discuss why the South Kingstown Town Beach was not included in experimental opportunities. Mr. Fugate gave CRMC perspective on South Kingstown Town Beach by showing photos of potential measures such as

Geo mattresses or trap bags which may be hazardous on town beach. Mr. Fugate stated that the Town's best option would be to reprofile the beach.

Steve Alfred, South Kingstown Town Manager addressed the Council stating that the Town could create opportunities through research and should not be excluded. Mr. Alfred stated that beach reprofiling had been done over the last six years. Mr. Alfred asked that the Town be able to explore further opportunities.

Chair Livingston and Vice Chair Lemont state that it would be best to continue the discussion to a time when it can be given its due diligence.

Discussion on scheduling of the next meeting.

9. ADJOURN

Vice Chair Lemont motioned to adjourn, seconded by Mr. deRamel. Motion carried on unanimous voice vote. Meeting adjourned at 9:25 p.m.

Respectfully submitted,

Lisa A. Turner
Recording Secretary