

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, May 28, 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

Staff Present

Jeffrey Willis, Deputy Director
Kenneth Anderson, Spv Civil Engineer

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. Gomez, for approval of minutes from May 14, 2013 meeting. Motion carried on unanimous voice vote.

3. SUBCOMMITTEE REPORTS

Vice Chair Lemont read out program changes from the May 21st Policy and Planning Subcommittee's directive to add to the RICRMC Management Procedures a Section 15 Access to Public Records. Council required codifying its public records policy system consistently with the RI Access to Public Records Act. Vice Chair stated that the Section 15 addition was being referred to Council for concurrence and so that it can go out to public notice. Chair Livingston stated that this will start the 30 day rule making process.

4. STAFF REPORTS

Mr. Willis sitting in for Grover as he is at an OSAMP Stakeholders' meeting.

5. EDUCATION SERIES

Wenley Ferguson - Restoration Coordinator, Save The Bay: Assessing the effects of sea level rise on salt marsh ecosystems

6. FULL COUNCIL REVIEW OF OCEAN SAMP SUBCOMMITTEE'S RECOMMENDATION TO DENY MOTIONS TO INTERVENE:

2012-09-65 DEEPWATER WIND OF RHODE ISLAND, LLC

Chair Livingston explained that the review of OSAMP Subcommittee Recommendation to deny motions to intervene was before the Council again due to incorrect notice. Mr. Goldman clarifies the situation on intervener status and explained that all members present at the last meeting were polled on the reading of the record. Mr. Goldman explained that only new evidence may be offered at the Full Council level and that each party would be given five minutes to address the Council and to introduce new evidence if any.

Attorney Terry Tierney addressed the Council and explained that he represented a number of proposed interveners – Rosemary Ives, John Ives, John Lyons, Kate Homans, Michael Beauregard, American Alliance of Fishermen and their Communities, and the Delias. Mr. Goldman stated that Mr. Elmer was present regarding the conditional Motion to Intervene from Conservation Law Foundation. Mr. Tierney started by expressing his concern on the record that the proceedings were unfair and in violation of due process. Mr. Tierney renewed his objections that were already raised regarding his belief that the application was incomplete when submitted but that the application was accepted and processed and put out to notice without the submittal of an application fee. Mr. Tierney expressed concern that the OSAMP Subcommittee acted on the incomplete application when they denied the motions to intervene. Mr. Tierney expresses his extreme concern regarding having to appear before the Council on an application that had already been voted on to deny intervention and called upon me to justify the intervention request with no action to overturn or revoke the previous action. Mr. Tierney explained that the notices received by his clients and himself had a scheduled date of May 28th but that the Council had reviewed the case on May 14th.

Vice Chair Lemont made a motion to reconsider the motion taken at May 14th meeting seconded by Mr. Gomez. . Chair Livingston expressed sincere apologies on behalf of the Council for the clerical error. Motion carried.

Mr. Goldman explained that the Council was now in a position to reconsider their previous decision to deny motions to intervene

Mr. Tierney stated that the reconsideration status does not clear up the due process violation that has occurred which was a violation of the Administrative Procedures Act and that it seemed as though the Council was just going through the motions. Mr. Tierney expressed his concerns that five members of the Full Council had voted on the subcommittee level to deny intervener status with Vice Chair Lemont moving to deny intervention as it may slow down the process (Mr. Tierney read from the record). Mr. Tierney stated that his clients will experience severe diminution of property value along with interference of use and enjoyment of their property. Mr. Tierney quoted Mr. Gomez from the transcript of 05-04-2013 regarding the flicker affect questions conclusion drawn by applicant about flicker health and safety impact regarding to flicker. Interveners say it is a problem – evidence that ought to be listened to. Mr. Tierney stated that reports issued by the State of Rhode Island state that property values were impacted within close proximity to a turbine. Mr. Tierney asked that all interveners be considered separately as not all have similar interests. Mr. Tierney also expressed that giving 5 minutes does not comport with due process for presenting new evidence. Chair Livingston stated that the Subcommittee listened to the arguments raised this evening and also considerable evidence was heard on the subcommittee level. Mr. Tierney objected on the record to being given only five minutes to introduce the new evidence that he had to present.

Mr. Goldman asked to make a few procedural points – one of which was that the fee had been paid in full in the Council offices. Mr. Goldman explained using the Management Procedures the definition of new evidence at the Full Council level advising the Council that if Mr. Tierney had wanted to present new evidence, it needed to be offered seven days in advance of the meeting.

Mr. Tierney expressed his disapproval of the fee that was paid in full which was less than the original fee that was quoted in the application and alleged back room negotiations with CRMC staff.

Chair Livingston stated that as far as she was concerned the fee was correct and properly submitted.

Ms. Robin Main asked that her objection to the comments made regarding the fee be put on the record and explained that the fee was paid in full and that paperwork was submitted as to how they came to the estimated fee.

Ms. Main asked that her previous comments be incorporated into the record from both the previous meeting, the subcommittee meeting and briefs submitted. Ms. Main emphasized her position that the information provided to the Council on behalf of Mr. Tierney's clients was public comment which will be given extensively during application's hearing process. Ms. Main asks that the Council deny the motions to intervene and allow the application to move forward.

Jerry Elmer, staff attorney for the Conservation Law Foundation stated that they had a conditional motion pending before the Council. Mr. Elmer stated that the CLF was in favor of the subcommittee's recommendation to deny intervenor status and urge the Council to uphold the recommendation. Mr. Elmer stated that the CLF as well as all involved would like to see a fair hearing process and those objectors do not need to have lawyers to give public comment or to participate. Mr. Elmer stated that the CLF's second reason for asking the Council to uphold the Subcommittee's recommendation to deny intervenor status is that all SAMP issues have been decided and there should not be a venue to reopen issues such as Commercial reasonableness. Mr. Elmer ended by stating that although CLF would like for the intervenor status to be denied, if it is granted, CLF would like to have intervenor status as well.

Vice Chair Lemont motioned, seconded by Mr. Gomez, for the Council to adopt the OSAMP Subcommittee recommendation of April 5, 2013 to deny motion to intervene. Chair Livingston stated that she believed the proposed intervenors did not have particularized interests. Mr. Gomez clarified that his comments on the Subcommittee level was for land-based wind turbines and that he did not feel that the turbine field would not be close enough to cause flicker. Mr. Gomez also clarified that the verbage from the State regarding property values was that it "may affect property values."

With no other comments by Council the Chair asked for a vote. Motion carried on a unanimous voice vote with an abstention from Mr. Sahagian.

Mr. Affigne expressed concern regarding the words of the Council members used as evidence against them and asked for intervention from the Chair if it happens again.

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

2013-03-046 CITY OF PAWTUCKET – Improvements to public boat launch facility consisting of new ramp, floating boat dockage and timber boardwalk per plans submitted to CRMC. Located at plat 23A, lot 673; plat 35A, lot 361; "Festival Pier" Tim Healey Way, Pawtucket, RI.

Mr. Willis gave a brief overview of the application to the Council stating that the City is asking to perform improvements to a public boat launching ramp in Type 4 waters and that CRMC permitting staff had no objections to the proposed activity. Representing the City was Andrew Silvia, Chief Project Development with the City of Pawtucket Department of Public Works and Sean Martin, Civil Engineer with Fuss and O'Neil. Both were sworn in and identified themselves for the record. Mr. Sahagian asked if there were any objectors to the project. Hearing none, Mr. Sahagian motioned for approval of application based on staff recommendation. Motion seconded by Vice Chair Lemont. Mr. Affigne inquired as to improvements in the parking area. Mr. Martin stated that the previous approval gives improved accessibility and parking along with a large plaza area and landscape improvements which is part of a remediation project that the City undertook. With no other comments received, Chair Livingston asked for a vote. Motion carried on a unanimous voice vote.

2013-02-060 DEPARTMENT OF ENVIRONMENTAL MANAGEMENT – The demolition of the existing boat ramp, construction of a new doublewide ramp with associated floats. The project will include dredging to support the new ramp layout and depths with the material being used on a nearby State beach that needs sand at the time of the project. Located at plat I-G, lot 96; State Boat Ramp, Great Island Road, Narragansett.

Mr. Willis gave a brief overview of the application to the Council stating that permitting staff recommended approval of the project. James McGinn, DEM, Andres Aveledo, DEM were present to answer questions. Mr. deRamel motioned, seconded by Mr. Sahagian, for approval of application. Chair Livingston asked for project timeframe. Mr. McGinn and Mr. Aveledo were both sworn in and identified themselves for the record. Mr. McGinn stated that the project would not be done this summer as the public bidding process still needed to be completed but that if they got underway after the 2013 season they would be ready for the 2014 boating season. With no other comments received, Chair Livingston asked for a vote. Motion carried on a unanimous voice vote with Mr. Gagnon abstaining from the vote.

8. APPLICATION REQUIRING SPECIAL EXCEPTION BEFORE THE FULL COUNCIL FOR DECISION:

2013-03-216 DEPARTMENT OF ENVIRONMENTAL MANAGEMENT -- Construct and maintain a public boating access ramp. Work includes improvements to access road by widening to 24', placement of riprap on the side slopes, and an innovative living shoreline technique will be used on the north cove consisting of salt marsh plantings through a biodegradable erosion control blanket protected by a biodegradable coir log set at mean sea level. Approximately 6,000 square feet of salt marsh will be restored/created by this project. Project will require the dredging of 500 cubic yards of material. All suitable material will be used for roadway construction. The dredging will require a Special Exception (reference RICRMP Section 130) to a Prohibited Activity. Located at plat 8, lot 3, Gull Cove Fishing Area, Portsmouth, RI.

Mr. Willis gave a brief overview of the project and stated that permitting staff had no objection to project. Chair Livingston opened the public hearing for the special exception. Mr. Affigne asked about erosion of the road. Mr. McGinn confirmed that the road was in very poor condition and that they will be improving the road. Mr. McGinn confirmed that the north side of the road will be a living shoreline and the south side will be riprap. Chair Livingston closed the public hearing. Vice Chair Lemont motioned for approval of the special exception, seconded by Mr. deRamel. Mr. Goldman took a roll call vote on approval of the special exception:

Mr. Sahagian	Yes
Mr. Gomez	Yes
Vice Chair Lemont	Yes
Mr. deRamel	Yes
Mr. Affigne	Yes
Mr. Gagnon	Abstained
Chair Livingston	Yes

Mr. Goldman confirmed that there were six votes in the affirmative with one abstention and the special exception was adopted.

Mr. Sahagian motioned, seconded by Vice Chair Lemont, to approve application with special exception. The motion was carried unanimously with one abstention by Mr. Gagnon.

9. **ADJOURN**

Vice Chair Lemont motioned to adjourn, seconded by Mr. Sahagian. Motion carried on unanimous voice vote. Meeting adjourned at 7:22 p.m.

Respectfully submitted,

Lisa A. Turner
Recording Secretary