

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, May 14, 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
David Abedon
Raymond Coia
Guillaume deRamel
Mike Hudner

Staff Present

Grover Fugate, Executive Director
Jeffrey Willis, Deputy Director
Kenneth Anderson, Spv Civil Engineer
James Boyd, Coastal Policy Analyst

1. **CALL TO ORDER**

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

2. **APPROVAL OF THE MINUTES OF THE PREVIOUS MEETING**

Mr. Coia, seconded by Vice Chair Lemont, for approval of minutes from April 23, 2013 meeting. Motion carried on unanimous voice vote.

Chair Livingston announced that this meeting is the last meeting for Council Member David Abedon. Thanked him for his service.

3. **SUBCOMMITTEE REPORTS**

There were none.

4. **STAFF REPORTS**

Mr. Fugate reported to the Council on:

The Beach SAMP pamphlet produced by URI/Coastal Resources Center and RI Sea Grant to promote public education campaign was passed around to Council members.

A summary report from May 2013 by Save The Bay on coastal erosion and adaptation of RI Coast Line; will send to Council members.

The Shellfish Management Plan, which is a joint effort between CRMC and DEM but facilitated through URI CRC Sea Grant. A meeting will be held on Wednesday, May 15, 2013 from 5 p.m. – 7 p.m. at URI hosted by RI Sea Grant to talk about user conflicts in the coastal ponds particularly agriculture.

CRMC staff will be participating in NOAA round table discussions in Connecticut and Rhode Island on May 20th and 22nd; the topic of discussion will be Climate Change and Adaptation and Sea Level Rise.

A Regional Planning Body meeting on 5/28 from 4-7 at URI in which the body will be presenting draft goals

An update on the filing fee for Deepwater Wind – the fee was received in CRMC offices on 05-13-2013 in the amount of \$598,029.92

Still dealing with significant amount of Sandy related issues still working their way through system. The Emergency permitting process is still open so that people can apply until May 31st. CRMC receives between 1200 and 1300 permits a year, but after PTS Sandy, CRMC issued almost 1500 since October which is having an enormous strain on the agency especially since there are two vacant engineering positions making staff resources very stressed. Mr. Fugate stated that there were over 400 PTS Sandy related Emergency permits were issued in the Westerly area alone. Staff is handling these Emergency permits as well as our normal permitting load. There have been no complaints as of yet but the office is at the point where we may need to stop impromptu office visits from consultants.

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

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

Mr. Goldman explained the procedural matter on the current Deepwater Wind case explaining that on April 5, 2013, the OSAMP Subcommittee affirmed the Council's treatment of the application as a contested case and also unanimously voted to deny intervenor status to everyone who sought to intervene. Mr. Goldman stated that rather than issuing a written recommendation, the transcript would act as recommendation with all reasons set forth as to why Council Denied intervenor status. Mr. Goldman polled the Council members as to the reading of the record. It was confirmed that all members either read the administrative record or were in attendance at the Subcommittee meeting. Mr. Goldman read the list of parties who moved to intervene: Rosemary Ives and John Ives, John Lyons, Katie Homans, Michael Beauregard, Tina Jackson, the Delias and the American Alliance of Fishermen and Their Communities. Chair Livingston stated that the Counsel present for both sides would be given a brief timeframe for argument.

Robin Main, Esq., Counsel for Deepwater Wind of RI, LLC gave a brief presentation. Mr. Main stated that the Conservation Law Foundation also filed to intervene if the other parties were granted intervenor status. Ms. Main stated that the Subcommittee's recommendation to deny Motions to Intervene was correct based on the Coastal Resources Management Procedures Section 1.52 (quoted by Ms. Main). Ms. Main stated the decision was appropriate as intervenor status would elevate intervenors to the status of a party which is very different than public comment. Ms. Main stated that for one to intervene there must be present a particularized interest which is unique to them and would distinguish them from the general public. Ms. Main stated that motion to intervene issues must be specific and cannot be held off until issues come up. Ms. Main closed her argument with a request that the full Council uphold the recommendation of the OSAMP subcommittee to deny the motion to intervene.

Mr. Goldman clarified that the CRMC Management Procedures regarding party status are modeled after the Superior Court Rules of Civil Procedure, Rule 24, and case law that comes with the Rules of Civil Procedure.

Vice Chair Lemont motioned that the Full Council adopt the recommendation of the OSAMP Subcommittee of April 5, 2013. Both Mr. Hudner and Mr. Coia seconded the motion. No discussion.

Chair Livingston stated that Mr. Tierney was not present to speak but that the file records indicated that he was noticed. Motion carried. Mr. Sahagian abstained from the vote. Mr. Goldman stated that based on that motion, CRMC will issue a written decision for an appeal if someone wishes to appeal.

6. APPLICATION WHICH HAD HAD PUBLIC HEARINGS AND IS BEFORE THE FULL COUNCIL FOR FINAL DECISION:

2010-05-070 CITY OF NEWPORT/ANN STREET PIER – Construct and maintain a public “Touch and Go” boating facility consisting of 393 linear feet of concrete floating docks and associated pilings. Located at Thames Street, Newport, RI.

Mr. Goldman polled the Council members as to the reading of the administrative record for voting eligibility which was confirmed in the affirmative by all members. Mr. Goldman also stated that former Council member Bruce Dawson was present as member of the Subcommittee to express his views on subcommittee recommendation Finding of Fact #56 maximum timeframe for Touch and Go facility.

Mr. DeAngelis presented for the City of Newport along with Joe Nicholson, Esq. Mr. DeAngelis expressed appreciation to subcommittee members for sitting and deliberating. Mr. DeAngelis summarized that the application was one of the most significant public access applications CRMC ever considered; that the Subcommittee reduced the extension to 333’ which is still a significant structure; and that the City will restrict access to boats 40’ and less with a beam width of 15’ or less. Mr. DeAngelis spoke about the two objectors, north and south of pier, reminding the Council that neither objector owned any of the headland in the basin area as the headland is owned 50% and 50% between the City of Newport and Astoria Realty Trust who are not present and did not file a formal objection to application. Mr. DeAngelis stated that the crux of the matter came down to safe navigable waters by which safety was confirmed by Mr. Bourne, a professional engineer, Mr. Mills, the City Harbormaster, Mr. Downey, a 42 year Coast Guard member, and by Mr. Anderson, CRMC staff member who concurred with testimony of those experts. Mr. DeAngelis acknowledged the calculations done by Mr. Mills regarding the fairway differences. Mr. DeAngelis stated that the application seeks no variance and meets all the standards of RICRMP Section 300.3. Mr. DeAngelis stated that the Basin belongs to State of Rhode Island and public access is at stake. Mr. DeAngelis stated that the conditions set forth in the Subcommittee recommendation are acceptable to the City of Newport and asked that the Full Council approved the application.

Sean Coffey, Esq. addressed the Council as legal representative for 41 north (formerly Christies) and 802 Partners. Mr. Coffey thanked the Council for providing time to press objections to application and thanked the subcommittee for their deliberation even if there is a disagreement with the decision. Mr. Coffey summarized for the Council the application events saying that the meetings were preceded by legal motions on behalf of objections, one of which was a failure to apply proper regulations such as using Section 300.3 as opposed to Section 300.4. Mr. Coffey contended that the facility should be characterized as a recreational boating marina which should be subject to Section 300.4 of RICRMP. Mr. Coffey stated that there was a question of Administrative finality in this case as it has been before the Council previously and denied. Mr. Coffey stated that 802 Partners was the beneficiary to Christie’s party to Littoral claims to those waters directly to the north of the pier. Mr. Coffey closed by stating that the evidence does not support the need for a 350’ extension for recreational boats and that the application is devoid of any plan of management practices. Mr. Coffey stated that what was needed in heart of the City is a dinghy facility and the new facility would be an increase in a financial burden by the armory and

the City. Mr. Coffey stated that the extension of the facility will make the use of the south side of 41 north docks undesirable and unsafe. Mr. Coffey stated that navigation and safety problems will plague pier if allowed to be extended and backed this up by showing plan which showed the challenging maneuverability of some of the boats, that the fairway was mischaracterized as larger than it really is (43'), and that the width of the boats was not taken into account. Mr. Coffey requested on behalf of his clients that the Council issue a denial of the application as done on previous applications.

Turner Scott, Esq. addressed the Council as legal representative for Newport Onshore Marina located to the south of Ann Street Pier. Mr. Scott pointed out from his client's points of view – that the City would be charging the same amount of money to use marina as their neighbors without being taxed. Mr. Scott disagreed with the point that project is public access and stated that he thinks it is proprietary. Mr. Scott stated that the City of Newport Harbor management plan was clear and expressed the need to have a dinghy dock. Mr. Scott expressed disappointment at the staff using the word tolerable as an acceptable application review. Mr. Scott stated that he agreed with all that Mr. Coffey said.

Former Council member and Subcommittee member Bruce Dawson spoke to the Council and stated that there was only one item that he and Mr. deRamel did not agree on which was the length of time the boat could dock at facility and explained his reasoning on the two day (48 hours) limit which was mainly traffic. Mr. Dawson stated that if there was a 48 hour limit, all the boats would not be leaving in one day or come in on one day in the same time frame causing congestion. Mr. Dawson explained if the option was a 48 hour window, they could leave in 24 hours if they wanted making the fairway less congested.

Subcommittee Chair deRamel addressed the Council stating that the subcommittee spent a lot of time reviewing the application and thanked Mr. Dawson for his time. Mr. deRamel stated that there was an important distinction between Sections 300.3 and 300.4 and that at the end of the day the facility is considered to be a Touch and Go facility which he believed was a necessity in the City of Newport. Subcommittee Chair deRamel stated that the facility needed to be a viable facility without being subsidized by the City as they also charge for moorings. Subcommittee Chair deRamel explained his reasoning on the 24 hour docking timeframe stating that his concern is that the facility will become a weekend docking facility when the City really wants to make sure it is a public touch and go facility and that 24 hours is a generous amount of time for a Touch and Go facility. Subcommittee Chair deRamel motioned to approve the Subcommittee recommendation with the 24 hour docking limitation. Mr. Sahagian seconded the motion.

Mr. Affigne suggested an amended motion which would adopt the subcommittee recommendation but with the 48-hour time limit. Mr. Gagnon seconded the amended motion.

Mr. deRamel stated that the timeframe was discussed during the workshop reiterating that his concern is to maintain the Touch and Go facility without sabotaging the economic viability of the project.

Mr. Affigne pinpointed three issues – safety, timeframe and economic. Discussion on economic points for facility which will bring in the same amount of money whether docking for 24 hours or 48 hours.

Mr. Gagnon suggested giving the approval for 48 hours and allowing the City the flexibility to decide the timeframe as long as it does not extend over 48 hours.

Mr. Sahagian asked for clarification on timeframe regarding Section 300.3. Mr. Goldman stated that 48 hours would still constitute a Touch and Go facility. Mr. Fugate stated that Touch and Go facilities allow up to 48 hours. Mr. Sahagian asked for comment from Subcommittee Chair deRamel on 48 hour change. Mr. deRamel stated he thought it was fair. Mr. Affigne asked to move the question on the amendment with a second from Mr. deRamel.

Chair Livingston asked for a vote on the amendment of the original motion. Motion to amend original motion carried on unanimous voice vote.

Mr. Goldman confirmed that a motion to approve with a 48 hour window was made and seconded.

There was questions and discussion at this time amongst Council regarding dinghy space and the City of Newport providing it.

Mr. Gomez and Chair Livingston both expressed their support for the reduction in the length of the extension.

Motion on the floor carried on a unanimous voice vote.

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

RICRMP – Redbook Section 210.2 Barrier Islands and Spits
Revision of Section 210.2.D.9

RICRMP – Redbook Section 145 Climate Change and Sea Level Rise
Revise Section 145 in its entirety:

Chair Livingston opened the public hearing on both changes. Mr. Boyd briefed the Council on the change to RICRMPC Section 210.2 Barrier Islands and Spits stating that no public comments were received during the comment period and that the intent of the change was the clarify the prohibition that it applies to infrastructure and allow for stormwater drainage improvements along roadways that exist on barriers.

Mr. Boyd briefed the Council on the change to RICRMP Section 145 Climate Change and Sea Level Rise stating that no public comments were received on proposed change during the comment period and that the intent is to update the findings and policies of the Council to Section 145 reflecting the scientific understanding and the new knowledge that has come to light in the last five years. Chair Livingston closed the public hearing.

There was no discussion

Mr. Coia motioned, seconded by Mr. Hudner, the approval of the changes as proposed. Motion carried on a unanimous voice vote.

Mr. Coia addressed the Council expressing his appreciation to Mr. Abedon for his years of service and dedication to the citizens of the state as well as protection of the shoreline and for the professionalism granted to the Council members and applicants. Mr. Coia wished Mr. Abedon well.

Mr. Abedon stated that it has been his great pleasure to serve on the Council.

8. ADJOURN

Mr. Coia motioned to adjourn, seconded by Vice Chair Lemont. Motion carried on unanimous voice vote. Meeting adjourned at 7:21 p.m.

Respectfully submitted,

Lisa A. Turner
Recording Secretary