

**In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, December 10, 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  
Ronald Gagnon, RIDEM  
Mike Hudner  
Donald Gomez  
Tony Affigne  
Guillaume deRamel  
Jerry Sahagian  
Joy E. Montanaro

Staff Present

Grover J. Fugate, Executive Director  
Jeffrey M. Willis, Deputy Director  
David Beutel, Aquaculture Coordinator  
  
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**

Ms. Montanaro asked the previous minutes to reflect her attendance; also, the minutes should reflect that Mr. deRamel was excused. Mr. Coia motioned, seconded by Mr. Gomez for the approval of the minutes with changes. Motion carried on unanimous voice vote.

**3. SUBCOMMITTEE REPORTS**

None

**4. STAFF REPORTS**

- Mr. Fugate reported to the Council on the following issues:
- At the monthly Beach SAMP Stakeholder meeting there were presentations by Dr. Rob Fielder regarding the impacts of seawalls and groins in MA; Richard St Jean, PE and Robert Fairbanks, PE regarding the engineering of seawalls, and their expense, maintenance, design and protection qualities; and by RWU Law regarding cases out there pertaining to seawalls.
- On December 20, 2013, the Asst Secretary for NOAA would be visiting Rhode Island and asked for a presentation on the Ocean SAMP and the Beach SAMP.
- On December 17, 2013, Mr. Fugate would be giving a presentation to the North Kingstown Planning Board on the Beach SAMP and Climate Change
- Mr. Fugate brought the Council up to date on the Matunuck issue explaining that the regulation have become effective for experimental shoreline protection.

On behalf of the Council, Chair Livingston expresses here gratitude to Mr. deRamel for his work with the Council and wishes him good luck on his upcoming political pursuit for Secretary of State. Mr. deRamel expressed his appreciation to the Council for their help and support during his time on the Council. Vice Chair Lemont motioned, seconded by Mr. Coia, that the Council provides a letter of endorsement for Mr. deRamel. Motion carried on a unanimous voice vote.

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

**2010-01-053 WALRUS & CARPENTER OYSTERS, LLC -- To modify a State of Rhode Island Assent for aquaculture by: 1. Combine this 1.5 acre aquaculture site with the immediately adjacent 1.5 acre site into one 3 acre site owned by Walrus and Carpenter LLC, which is Mr. Opton-Himmel's company; this would consolidate two leases back into their original configuration; 2. Add hard clams *Mercenaria mercenaria*, bay scallops *Argopecten irradians*, and/or razor clams *Ensis directus*; 3. Add the ability to grow native macro-algae such as but not limited to *Gracilaria tikvahiae* using a staked longline method. Located in Ninigret Pond, Charlestown, RI.**

Mr. Beutel gave a brief overview of the application to the Council stating that Mr. Opton-Himmel was requesting to consolidate two leases into one lease under one name to grow three species of shellfish into the assent, quahogs, bay scallops, razor clams and the addition of one species of seaweed (*Gracilaria*) in the lease. Mr. Beutel stated that he was recommending approval for the lease consolidation, but denial for the addition of razor clams. Mr. Beutel stated that objection was received from DEM and Shell Fish Advisory. Mr. Beutel stated that he disagreed with the objection received by the Town of Charlestown on the growing of seaweed as it is already present in the pond and the growth of the *Gracilaria* is a grant funded project. Mr. Beutel stated that the project would be a benefit to the State to diversify and figure out other species that can be grown in RI waters; therefore, he recommended adding Bay scallops, quahogs and seaweed onto permit.

The applicant was sworn in and identified himself for the record, Jules Opton Himmel. Mr. Opton Himmel agreed to have lease without razor clams but explained that his purpose was to gain the experience and knowledge for that technology is this region for razor clams. Mr. Opton Himmel explained how to tell the difference between farm grown and wild grown aquaculture and explained how scallops grew in the bag. Mr. Opton Himmel explained that the market was less developed for seaweed but that he was interested in trying it and has seen some interest from RI Restaurants.

Vice Chair Lemont motioned, seconded by Mr. Gomez, for the approval of the request as recommended by CRMC Aquaculture coordinator. Motion carried on unanimous voice vote.

**2013-03-220 GEORGE AND ELEANOR CURRY -- To install a shoreline protection facility consisting of approximately 115 linear feet of vinyl sheet pile wall. Located at plat 21, lot 28; 5 Coral Street, Portsmouth, RI.**

Mr. Lucia gave a brief overview of the application to the Council stating that the project was located in Portsmouth on Blue Bill Cove which has a high volume of seawalls located along the shoreline. Mr. Lucia explained that the site had sustained a large amount of erosion and the applicant would like to install a 115 feet long x 5' high vinyl sheet pile wall along the northern property line with added riprap to protect the upland section. Mr. Lucia stated that there were no biological or engineering objections to the project. Mr. Lucia stated that a question of property ownership was brought up but that the applicant/property owner had provided a surveyed plan stamped by a registered land surveyor. Mr. Curry shortened his wall

so that it does not cross the property line based on the submitted plans. Mr. Lucia confirmed that the seawall will connect to the seawall on the southern end of the property but that there will be a gap on the other side. Mr. Lucia explained the material of the vinyl sheet and the process for building the wall explaining that they interlock with each other and are driven deep into the sand and are braced with a tieback cable and cement block. Mr. Lucia explained that at the end that doesn't tie into a wall the applicant chose to have a return and gradually go back into the upland section with the riprap as the applicant does not want to cross the property to meet with the other seawall. Mr. Lucia stated that the cove has a very low water wave environment and that the erosion rate would not be too high.

Mr. and Mrs. Curry were sworn in and identified themselves for the record as George and Eleanor Curry. Mr. Curry stated that erosion was particularly on the southeastern part of the property and that during the last storm, 6-8 feet of land was lost. Mr. Curry stated that they wanted to protect their property from any more erosion.

Chandler and Marilyn Lyell, abutters and objectors, were sworn, identified themselves for the record, and handed out a package of photographs and their objection. Mr. Goldman explained CRMC procedure regarding submittal of information at a meeting. Mr. Curry stated that he had spoken with CRMC staff regarding bringing photos to meeting. Mr. Lucia stated that he had spoken to Mr. Lyell and that he suggested that they provide a surveyed land plan but it was never submitted. Chair Livingston stated that the Council would hear the objection. Mr. Lyell provided historical aerial photographs of property.

Mr. Goldman explained that the applicant had provided the land survey to prove their ownership of the property and if the Lyell's were disputing the survey, a professional land surveyor should be contracted as Mr. Lyell was not qualified to dispute a survey. Mr. Goldman explained that the CRMC cannot determine property lines and that it can only be done in the Superior Court.

Mr. Lyell stated that he thought he had a mutually agreeable solution to dilemma. It was determined that the applicants did not have a copy of the objector's letter or photos. Chair Livingston agreed to make letter part of the record. Mr. Sahagian suggested that the objector try to show non-compliance with Section 300.7 to be fair to the applicant.

Mr. Lyell gave testimony regarding the land ownership and stated that his solution was to plant a hedge on lot the line but had not presented this to Curry's yet. Chair Livingston stated that it is not for CRMC to determine that and needed to be agreed upon by parties and then presented to CRMC for review.

Vice Chair Lemont suggested that the case be remanded back as CRMC cannot mediate a land dispute. Chair Livingston agreed to remand back to staff for 30 days until the lot line is determined through land surveys. Mr. Fugate suggested that if an opposing survey was not submitted within 30 days and based on the Council's consideration at this meeting, the executive director can approve the permit administratively.

Mr. Affigne was not comfortable with remanding and then having an administrative approval and feels that it is unfair to the applicant to delay the hearing because of a land dispute

Mr. Lucia stated that the application had been at CRMC for approximately seven months and he has recommended to the objector that a survey be submitted

Mr. deRamel expressed concern that the application has been with CRMC for a while and the objector had been given a substantial amount of time to submit a survey. Mr. deRamel motioned for approval of application. Motion was seconded by Ms. Montanaro and Mr. Sahagian.

Mr. Affigne suggested shortening the wall and the return.

Mr. Fugate confirmed through Mr. Lucia that the toe of the slope would be on the applicant's property. CRMC staff would stipulate location of the toe of the slope, staff would go and stake the toe and the slope will stay on applicant's property.

Mr. Affigne agreed that as long as the wall stayed on the applicant's property he saw no reason to block the approval.

Mr. deRamel amended his motion using clarification from Mr. Affigne. Ms. Montanaro and Mr. Sahagian agreed and seconded motion.

Motion carried on unanimous voice vote.

**Applications which have had a Public Hearing and are before the Full Council for Final Decision:**

**1987-11-039 HARBOUR REALTY -- Modification of marina assent for the following: approval of "as built" 12' x 20' fixed pier; approval of "as built" series of floats around fixed pier and extending into the northern basin area; elimination of interior public dinghy float in corral area; final location of pump-out sewer line; reconfiguration of interior float layout; slight revision to marina location; allow the marina docks to be closed to the public between 8:00 p.m. and 8:00 a.m. from June 1 through the end of September. Located at plat 32, lot 155, 268; Waites Wharf, Newport, RI.**

Mr. Goldman gave an overview and history lesson of the application before the Council stating that the application was remanded back to subcommittee in 2003 for specific issues: the removal of the dinghy dock inside the marina as a dinghy dock was built on West Extension Street in Newport; and the dockmaster office location. Mr. Goldman stated that those two issues went back before the Subcommittee where Vice Chair Lemont and former Council Member Neill Gray sat and heard in several meetings. Mr. Goldman further explained that Vice Chair Lemont and Mr. Gray agreed that the dinghy dock exchange was satisfactory provided enforcement situations be addressed.

Mr. Goldman then explained that Harbor Realty was granted a Finding of No Significant Impact for the dockmaster shed in 1998 using a plan that showed some encroachment onto Waite's Wharf ROW. Mr. Goldman explained that the question was whether or not it was fair and equitable for CRMC to require the removal of the dockmaster shack. Mr. Goldman explained that Mr. Gray wanted the shack to be removed and Vice Chair Lemont wanted to allow the shack to remain in place until such time as it needed to be maintained and then it be moved out of the ROW. Friends of the Waterfront agreed with Vice Chair Lemont's position.

Chair Livingston asked why so long to get to Council level. Mr. Goldman explained that there were discussions on the local level and a change in the Council as Mr. Gray had been removed.

Mr. Goldman handled some administrative items stating that the correct Subcommittee Transcript was August 25, 2004 and had been e-mailed to Council Members earlier; and, the CRMC enforcement went to property and found it to be in full compliance with CRMC regulations; all conditions, as stated in Transcript, are complied with.

Mr. Goldman explained the public access locations of Waite's Wharf and West Extension Street to Council.

Mr. Gagnon asked about the February 2013 plan. Mr. Goldman explained reason for plan and clarified that it was not necessary for this file review.

The Owner/Applicant, Thomas Abrusseze, was sworn in and identified himself for the record; along with Terry Fracassa, Esq as the legal representation of Harbour Realty.

Mr. Fracassa explained the applicant's position and stated that the ROW remained open to public and that in 1989 a shed existed in same place as dock master shack and that a FONSI was granted in late 1990's to rebuild shack in same location.

Chair Livingston questioned Mr. Fracassa about the public ROW being encroached on. Mr. Goldman confirmed that the ROW was 20' wide and that only 5' in some areas and 8' in other areas were being encroached according to evidence that came in. It was clarified that people can still walk down Waite's wharf, and then walk around the wooden dock and come back up West Extension Street. Mr. Fracassa stated that the ROW was closed from 8pm to 8 am in summer time for safety.

Mr. Goldman clarified Mr. Hudner's question that Friends of the Waterfront had sent a letter agreeing to Vice Chair Lemont's compromise.

Mr. Affigne motioned to approve based on Vice Chair Lemont's recommendation.

Mr. Goldman confirmed the Council members reading of the record through a poll.

Mr. Coia seconded Mr. Affigne's motion.

Motion carried.

Enforcement Report – September and October 2013

Category "A" List

## **10. ADJOURN**

Meeting adjourned at 7:15 p.m.

Respectfully submitted,  
Lisa A. Turner, Recording Secretary