

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, July 22, 2014 at 6:00 p.m. in Conference Room A, Administration Building, One Capitol Hill, Providence, RI.

Members Present

Paul Lemont, Vice Chair
Ronald Gagnon, RIDEM
Raymond Coia
Don Gomez
Tony Affigne
Mike Hudner
Paul Beaudette

Staff Present

Grover J. Fugate, Executive Director
Jeffrey M. Willis, Deputy Director
Danni Goulet, Infrastructure Coordinator
David Beutel, Aquaculture Coordinator

Brian Goldman, Legal Counsel

Members Excused:

Anne Livingston
Jerry Sahagian
Joy Montanaro

1. CALL TO ORDER

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

2. APPROVAL OF THE MINUTES OF THE PREVIOUS MEETING

Mr. Coia motioned, seconded by Mr. Hudner, for the approval of the minutes from the last meeting. Motion carried on a unanimous voice vote.

3. SUBCOMMITTEE REPORTS

None

4. STAFF REPORTS

Mr. Fugate reported:

- BSAMP Stakeholder meeting will be on Thursday, July 24th beginning at 5:30 p.m. at URI in the Coastal Institute auditorium. The discussion will be on hurricanes and post-storm permitting.
- Reminder to the Council that on August 20th there will be a Council/Staff event at the URI Alton Jones Campus
- Governor Chaffee is going to sign a bill on climate change at 3:00 p.m. on August 1st in Wickford creating the new Executive Climate Change Coordinating Council (ECCCC). The ceremony is open if Council would like to attend.

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

2013-04-090 ROBERT MORVILLO -- Create and maintain a three acre oyster aquaculture farm in the Conimicut Triangle (DEM Shellfish Growing Area GA1-4), using the rack and bag method. Located in Upper Narragansett Bay, Warwick, RI.

Mr. Beutel gave a brief overview of the application for the Council stating that the applicant is proposing a three-acre rack and bag system south of Conimicut Point in Warwick. Mr. Beutel explained that the waters in the area are deemed by RIDEM as conditional Area A; meaning that when there is significant rainfall the area is closed to the harvest of shellfish. Mr. Beutel stated that if there is an aquaculture site in this area, there would be a prohibition from working on the site during the closure period unless DEM enforcement is hired to attend the site. Mr. Beutel stated that the area, when not closed, has been known to be a significant source of wild harvest shellfish. Mr. Beutel stated that the issue with the application is user conflict as the fishing industry has historically worked the area and opposes a private operation in a publicly harvested location. Mr. Beutel stated that objections have come in from Warwick Harbor Commission, RI Shellfisherman's Association, DEM Director, Save the Bay – all for user conflict. Mr. Beutel stated that based on CRMC regulations and user conflict, CRMC staff recommended denial of the application.

Mr. Morvillo, who was not represented by counsel, was sworn in and identified himself for the record. Mr. Morvillo described his proposal for the area, explained the wild aquaculture cycles, and talked about his plan for increasing the harvest of shellfish in the area. Mr. Morvillo spoke about the industry not having a commercial hatchery that can produce native brewed stock of shellfish to put back in the water. Mr. Morvillo expressed his interest in working with the shellfishermen so that the industry can advance in the future. Mr. Morvillo stated that his site would also add to the economic value of the area as it would create jobs in the future. Mr. Morvillo stated that his experience in aquaculture was gained through the Roger Williams oyster gardening program and growing the seed in the location of the proposed aquaculture site. Mr. Morvillo intended for his site to be profitable for him and environmentally profitable for the area by cleaning the water and establishing more shellfish.

Objectors:

Mike McGiveney was sworn in and identified himself for the record as the President of the RI Shellfishermen's Association. Mr. McGiveney stated that they were opposed to the proposed lease because of the area and the use conflict with the wild harvesters and the water closure areas that can affect the industry if not followed. Mr. McGiveney stated that there were seeding programs for the bay and that the seeding from the lease was not necessary.

John Harvey was sworn in and identified himself for the record as a member of the board of the Shellfishermen's Association. Mr. Harvey explained that the area was the perfect place for the general public to go and work the waters for shellfish such as the Escape Road at Galilee. Mr. Harvey stated that the current sweeps over the sandbar and brings the seed in from the upper bay. Mr. Harvey did not see that the site would be as productive as it would be situated in another area. Mr. Harvey also spoke about conflict with the public and commercial fishery.

Jeffrey Grant was sworn in and identified himself for the record as the vice president of the RI Shellfishermens Association and a board member of the RI Marine Fisheries Council. Mr. Grant talked about the survey that was done to look for shellfish in the area and that only one quohog was harvested other than many dead steamers. Mr. Harvey stated that he hoped in the future it would be a good steamer

area again. Mr. Harvey stated that the wild shellfish harvesters needed to be able to follow the sets to where they are in the future.

Mr. Beaudette motioned, seconded by Mr. Hudner, to deny the petition. Motion carried on a unanimous voice vote.

2013-04-107 ANTONIO PINHEIRO – Create and maintain an oyster farm using submerged cages off of Heads Beach Jamestown; West Passage of Narragansett Bay, Jamestown, RI

Mr. Beutel gave a brief overview of the application stating that Mr. Pinheiro had originally applied for a commercial viability permit but was met with many objections so he requested to withdraw the application. Mr. Beutel further explained that Mr. Pinheiro reapplied for a preliminary determination for a larger lease so that he could work through the objections once rather than twice. Mr. Beutel stated that the fishing industry did not have issues with the location, the Town did have concerns but he was recommended to go forward with a full lease with the avoidance of eel grass beds. Mr. Beutel stated that the applicant worked to stay out of the eelgrass beds which had moved into most of the area that was applied for. Mr. Pinheiro requested to reduce the size of the lease to a small area towards the shore that did not have any eel grass nor many shellfish. Mr. Beutel stated that the new area did not raise objections from the shellfishing industry – Shellfish Advisory Panel or the Marine Fisheries Panel. Mr. Beutel then explained the Town objections the biggest being user conflict. Mr. Beutel stated that the new location is very shallow and close to shore with a long fetch from the northwest, west and southwest. Mr. Beutel stated that CRMC staff recommended denial of the application based on the location, as he does not know of any aquaculture gear that could withstand the environmental conditions at that location.

Benedetto Cerilli, Jr., Esq was present to represent Mr. Pinheiro who was also present. Mr. Pinheiro was sworn in and identified himself for the record. Mr. Pinheiro testified through direct examination from Mr. Cerilli that he had been working with CRMC since 2012, that he had changed his application from to a larger lease and that in doing so, encountered finding eel grass in the location and also objections from the neighboring property owners. Mr. Pinheiro testified that he downsized his proposal to avoid the eel grass beds. Mr. Pinheiro explained that he chose the location for his lease site based on the existence of freshwater influx and lack of eel grass. Mr. Pinheiro testified that he has lived in the area for 22 years and is at the water area at least once a day. Mr. Pinheiro also testified that he picked the location because of the proximity to his home. Mr. Pinheiro distributed pictures to the Council of the area that were taken in from March until just recently. Mr. Cerilli and Mr. Pinheiro authenticated the pictures for the record and described each one as pictures of the proposed lease area. Photos marked as Pinheiro Exhibits 1 through 14 full. Mr. Pinheiro testified through the use of the photos, the conditions in the area, the equipment that he would use in the fetch of the water, and also that the jetties in the area would provide protection for his lease area and reduce the fetch. Mr. Pinheiro testified that people moor their boats in this area when there are heavy weather conditions coming. Mr. Pinheiro testified that he would be putting his boat in at Dutch Harbor for working the lease.

Peter Ruggiero, Esq. was present as the Town solicitor for the Town of Jamestown who was objecting to the application. Mr. Edward Mello, Police Chief of the Town of Jamestown, was sworn in and identified himself for the record. Mr. Mello underwent direct examination by Mr. Ruggiero. Mr. Mello testified that he served as Executive Director of the Jamestown Harbor Commission, that he was familiar with the site, its conditions and uses. Mr. Mello testified that the particular beach area is used by local area residents for kayaking, swimming, walking and using the ramp to put their dinghies in the water. Mr. Mello testified that the Town Harbor Management Ordinance has a mooring field parallel to the beach with 6 to 8 boats to the west of the proposed area.

Mr. Ruggiero called Lisa Bryer who was sworn in and identified herself for the record as the Town of Jamestown Town Planner. Ms. Bryer testified that she had reviewed the application. Ms. Bryer stated that the Town of Jamestown supports aquaculture in Jamestown and distributed the Comprehensive Plan and the Town zoning ordinance to the members of the Council. Ms. Bryer explained the Town's policies on aquaculture and fishery equipment storage and transfer which is all landside activities. Ms. Bryer answered Council questions stating that one of their objections involved use of the Town Beach for aquaculture activities and the other objection was user conflicts with the beach area.

Objectors:

Gary Girard was sworn in and identified himself for the record stating that he has been a user of the beach area for 67 years. Mr. Girard presented a petition signed by 127 users of the beach to show conflict of use. Mr. Goldman made petition part of the record.

Kristin Zhivago was sworn in and identified herself for the record stating that she was a direct abutter to the beach area overlooking the buoys. Ms. Zhivago testified that the wave action in front of the beach is significant. Ms. Zhivago stated that the buoys do move during significant wave action. Ms. Zhivago was assured that her letter of objection and her pictures were part of the record. Ms. Zhivago emphasized that she is not against the idea of aquaculture but that the proposed area is not the place for it. Ms. Zhivago answered council questions regarding the strong fetch in the area and recreational use of the area. Ms. Zhivago

Charlotte Zarlengo was sworn in and identified herself for the record stating that she was a long time resident of Jamestown and an abutter to the proposed location. Ms. Zarlengo stated that the Jamestown Shores Association used the area for recreational purposes. Mr. Zarlengo stated that Mr. Pinheiro launches his boat daily from the ROW. Ms. Zarlengo expressed her objection to the use of a recreational area for commercial purposes. Ms. Zarlengo urged the denial of the application based on the location.

Mike Egan was sworn in and identified himself for the record as a long time resident of Jamestown and longtime user of Jamestown Shores Beach. Mr. Egan stated that he was a commercial fisherman and could testify to the strong fetch in the area. Mr. Egan also testified to the recreational uses of the beach on a daily basis during all seasons of the year.

Mr. Cerelli made a closing statement reiterating that the Town objections had been clarified and no longer existed with Mr. Pinheiro using another area to put his boat in the water. Mr. Cerelli stated that the majority of the severe storms were in the winter time with few people using the beach at that time. Mr. Cerelli stated that the area of the beach that is most heavily used is where the sand is and that the project location is not heavily used due to the muddy conditions. Mr. Cerelli ended by adding that the mooring field is not near Mr. Pinheiro's proposed location.

Mr. Ruggiero made his closing statement asking that the Council consider the recommendation of CRMC staff and DEM. Mr. Ruggiero expressed concern over the conflicting testimony and evidence from lay individuals that live in the area.

Mr. Affigne motioned, seconded by Mr. Hudner, to deny the application.

Mr. Affigne stated that his motion was based on the use conflict that exists in the area and the assertion of excessive fetch by both DEM and residents of the area.

Motion to deny carried on a unanimous voice vote.

6. APPLICATION REQUIRING A PUBLIC HEARING ON SPECIAL EXCEPTION BEFORE THE COUNCIL:

2014-05-071 TOWN OF PORTSMOUTH/A&R MARINE CORP -- Construct and maintain a new 16' wide by 96' long timber ferry pier with a 30' long transfer bridge along with associated timber positioning dolphins for the Prudence & Bay Islands Transport on the Town owned lot (Plat 77/Lot 111) at Homestead on Prudence Island. This project is in Type 2 waters and requires a Special Exception.

Danni Goulet gave a brief overview of the application stating that the property was owned by the Town of Portsmouth and that the co-applicant A&R Marine Corp would be operating the ferry service. Mr. Goulet stated that the co-applicant A&R Marine was issued a certificate of public convenience and necessity from the Division of Public Utilities and Carriers for the ferry services to Prudence Island. Mr. Goulet expressed CRMC concern for the mainland landing location which is not in Portsmouth but in Bristol with a lease going into effect on September 15th. Mr. Goulet stated that if the Council finds that the special exception criteria have been met, CRMC staff recommended approval of the special exception and the application.

Terry Tierney, Esq. introduced himself as the attorney representing the Town of Portsmouth and Mike McElroy, Esq. introduced himself as the attorney representing the co-applicant A&R Marine Corp.; also present was A&R Marine's owner and president, Steven Antaya and A&R Marine's Engineer, Craig Samms, PE.

Mr. McElroy began by stating that the lease had been signed between the Town of Bristol and A&R Marine and that he would scan and email it to parties the next day. Mr. McElroy stated that it commenced on December 15th with exclusive right to use the facility starting September 15th, 2015 for five years with a five year option. Mr. McElroy stated that the lease was signed with the Town of Portsmouth as well. Mr. McElroy stated that the lease with the current provider will expire on September 14th, 2015 and there is a short timeframe to get the work done. Mr. McElroy stated that the deed restriction documentation was all in order.

Mr. Samms was sworn in and identified himself for the record. Mr. Samms testified that he was retained by A&R Marine to assist in putting together an assent application for a ferry pier on Prudence Island. Mr. Samms testified that he had worked on the special exception criteria for the application and that it met all the criteria such as providing benefits to the public in the means of transportation on and off the island. Mr. Samms stated that the size of the pier and development of pier was minimized to be the smallest functional pier that could be used safely for ferry service. Mr. Samms also stated that there was no other alternative location for the ferry service pier.

Chair Lemont opened the public hearing for the Special Exception.

Albert Beelitz was sworn in and identified himself for the record stating that he resides on Prudence Island and is an abutter to the property of the new pier. Mr. Beelitz asked if the second dock on the property was unusable and if the engineer had ever inspected it. Mr. Beelitz also asked about a ferry that is docked in Potters Cove and if the dock it is at was examined as an alternative site. Mr. Goulet stated that he was unaware of a vessel docked in Potters Cove but that it is not a ferry transfer and that the dock would need substantial reworking to make it a ferry transfer. Mr. Samms added that they did consider using the other dock but substantial development to handle traffic, parking, and additional utilities would have been needed. Mr. McElroy stated that the Council was hearing the new dock application not discussing alternative sites or the existing dock which they did not have the right to go on.

Judy Staven was sworn in and identified herself for the record and asked questions about the existing dock that is there. It was once again stated that the Council was hearing the application on the new dock.

Mr. Affigne asked what the objections would be to having a new dock and ferry terminal.

Mr. Beelitz stated that there was a lawsuit against the Department of Public Utilities and A&R Marine which is on the court calendar for July 28th, 2014 and that there was a motion to stay all proceedings. Chair Lemont stated that was not under the purview of the CRMC nor was the increase in pricing for the operation.

Michael Sheehan was sworn in and identified himself for the record and asked about a liability situation on the part of the Town of Portsmouth. Chair Lemont stated that it was outside the scope of the Council.

Mr. McElroy stated that he was finished with his presentation and Mr. Tierney did not have any witnesses.

Raymond Masse was sworn in and identified himself for the record stating that he lived on Prudence Island and was a listed abutter. Mr. Masse stated that with the new dock being built he felt it would be better for everyone in the area.

James Oswald, Esq. was sworn in and identified himself for the record stating that he was an attorney with Adler Pollock and Sheehan. Mr. Oswald strongly encouraged the Council to grant the application for the permit in order to guarantee continuation of the ferry service which had been uncertain in the recent past.

Timothy Dodd, Esq. was present as the attorney for the Prudence Island Ferry and stated that they objected to the application. Mr. Dodd stated that he had sent a letter to the Council but that it was never addressed. There was discussion on whether or not Mr. Dodd's letter was part of the record. Mr. Goldman assured that he had received a copy via email. Mr. Dodd submitted a copy to Mr. Goldman who marked it as Prudence Ferry, Inc. Exhibit A. Mr. Dodd expressed concern that his letter was not addressed in the staff report. Mr. Dodd confirmed that there was an appeal taken in Superior Court regarding the PUC decision to grant the provisional certificate to A&R Marine. Mr. Dodd made an offer of proof that the A&R Marine certificate could be overturned by a Superior Court judge and that the issuance of a dock permit is like putting the cart before the horse. Mr. Goldman stated that as a condition of the CRMC Assent, would be that they have all valid local and State approvals that would be required. If the Superior Court invalidated the PUC Certificate, it would then invalidate any CRMC decision. Mr. Dodd expressed concern that the CRMC Staff report referenced that Mr. Medley, Prudence Island Ferry, threatened to discontinue service. Mr. Dodd stated that Mr. Medley had recanted that statement. Mr. Dodd stated that Prudence Island Ferry intends to stay in business. Mr. Dodd suggests that the Council send this application back to staff for further review as the staff report as written is erroneous. Mr. Goldman stated that the point was irrelevant as there was no "stay" in effect. Mr. Tierney countered stated that Mr. Dodd was misrepresenting the staff report and he read from the staff report where Mr. Goulet wrote that the current ferry is still operating.

Mr. Affigne clarified that the Council was very aware of the situation both from the staff report and the PUC decision and discussion. Mr. Affigne stated that the compelling public purpose before the Council is that there is safe and reliable ferry service to be provided. Mr. Affigne asked if they had input regarding environmental impact of the new dock, design of the new dock, or alternative location of the new dock. Mr. Dodd stated he did not but argued that as there is a ferry service already in place, a new service is unnecessary and that negates the compelling public service.

Mr. Beelitz expressed concern regarding the plant and animal life in the area stating that there is a quahog bed off the first bank. Mr. Beelitz stated that parking would be an issue as well as the anchorage area. Mr. Beelitz also stated that there would be a scenic impact

Mr. Goulet responded by saying the proposed building will be in a parking lot which will continue to be a parking lot with another commercial pier there. Mr. Goulet stated that they did not see much of a change in terms of scenic impact.

Mr. McElroy confirmed that although the Town of Portsmouth is a co-applicant and they own the land but A&R Marine will build the dock with full responsibility of upkeep and insurance and all requirements imposed in the lease. Mr. McElroy confirmed that in the lease there was no limit on the number of boats that could be moored other than meeting the requirements of the harbormaster.

There was discussion on the ownership of the dock is the lease was discontinued.

Mr. Hudner motioned, seconded by Mr. Gomez, to approve the Special Exception.

There was again discussion on the deterioration of the current facility and whether it is relevant to the proceedings.

Mr. Goldman did a roll call vote on the approval of the special Exception:

Mr. Hudner	Aye
Mr. Coia	Aye
Mr. Gomez	Aye
Mr. Beaudette	Aye
Mr. Affigne	Aye
Mr. Gagnon	Aye
Chair Lemont	Aye

Unanimous approval of Special Exception.

Mr. Hudner motioned, seconded by Mr. Gomez, for the approval of the application. Motion carried on a unanimous voice vote.

8. **ADJOURN**

Mr. Gomez motioned, seconded by Mr. Hudner, to adjourn. Motion carried on a unanimous voice vote. Meeting adjourned at 9:03 p.m.

Respectfully submitted,
Lisa A. Turner, Recording Secretary