

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, June 24, 2014 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
Raymond Coia
Don Gomez
Tony Affigne
Mike Hudner
Joy Montanaro
Jerry Sahagian

Staff Present

Grover J. Fugate, Executive Director
David S. Reis, Spv. Environmental Scientist
Danni Goulet, Marine Infrastructure Coordinator

Brian Goldman

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

Vice Chair Lemont motioned, seconded by Mr. Gomez, for the approval of the minutes from the last meeting. Motion carried on a unanimous voice vote.

3. SUBCOMMITTEE REPORTS

Vice Chair Lemont read out program changes for public notice:

- CRMC Management Procedures Section 5.9
- RICRMP Section 110.

4. STAFF REPORTS

Mr. Fugate reported:

- CRMC will be receiving approximately 11 million dollars in funding for various CRMC projects, such as Breachway improvement, Beach SAMP funding, Charlestown beach restoration work, Narrow River restoration work.
- He attended the Coastal Zone Conference and made presentation on the OSAMP with much interest shown pertaining to marine spatial planning, climate change, and resiliency planning; all of which Rhode Island is in the forefront.

5. Applications requiring a Public hearing on Special Exception before the Full Council:

2013-09-104 HERITAGE FOUNDATION OF RHODE ISLAND -- Reconstruct existing dock and stone groin; to add a ramp, 320 s.f. terminal float and dolphin pile group. The facility will extend ~60' seaward of the cited Mean Low Water mark. The proposed design requires Special

Exception relief to RICRMP Sections 300.4.D8 and 300.4.E3e. Located at plat 165, lots 7, 8; plat 166, lot 6; Blithewold, Ferry Road, Bristol, RI.

Ms. Silvia gave a brief overview of the application stating the pre-existing facility was grandfathered in and that with regulatory changes the size of the floating dock required a Special Exception. Ms. Silvia stated that staff had no objections to the project but recommended deferral to the Council regarding the Special Exception criteria.

Attorney Bruce Cox and Doug Gray, Vice Chair of the Board of Directors of Heritage Foundation were present. Mr. Cox stated that the subject property, Blithewold Mansion, located in Bristol remained very active with the public and has been for 30 years. Mr. Cox stated that the dock restructuring was needed to gain the water depth for the public to be able to tie up their boats and enjoy the facility. Mr. Cox stated that the project meets all standards in Section 130 with no environmental conflicts and no objections from abutters.

Chair Livingston opened the public hearing for comment, and with no comments heard, the public hearing was closed. Vice Chair Lemont motioned, seconded by Mr. Coia, for the approval of the Special Exception. There was a Roll call vote with a unanimous approval.

Mr. Gomez made the motion that the facility be classified for a classification of limited recreational boating facility as requested by staff. The motion was seconded by Mr. Hudner. Mr. Hudner commented that the facility was an enormous success and a great contribution to the cultural and community life of the Town of Bristol and the State of Rhode Island.

Motion carried on a unanimous voice vote.

6. Superior Court Remand Order:

2011-09-005 TOWN OF SOUTH KINGSTOWN

- **To construct and maintain a sheet pile wall along Matunuck Beach Road within the Town-controlled right of way to protect the road against future undermining from ongoing coastal erosion. The proposal includes a sidewalk on top of the wall for public access within the existing right of way.**
- **Pursuant to the Superior Court Remand Order, said hearing will be limited to evidence regarding whether the applicant has taken all reasonable steps to minimize environmental impacts and/or use conflicts.**

Mr. Goldman explained the Court Remand stating that the Court's decision looked at whether or not there was sufficient evidence in the record and sufficient conclusions on the record by the Council members as to whether or not this project by the Town qualified for a special exception. Mr. Goldman explained that the two issues that were in dispute is whether or not the Town had demonstrated no reasonable alternative means, other than the proposed wall, to serve the compelling public purpose of maintaining the infrastructure of the road which the Court upheld. Mr. Goldman explained that the Court reversed the finding of the CRMC that the Town had taken all reasonable steps to minimize environmental impacts and use conflicts arising from the construction of the proposed wall. Mr. Goldman explained that the Court remanded the matter back to the Council for

the limited purpose of clarifying and completing the decision as to whether or not it met the Section 130.A.2 provision. Mr. Goldman also explained that since the original decision on this matter, there were new Council members and, after quoting RI Case Law, stated that the hearing would need to be heard de novo and that after reading the record, the Council is not bound by the previous determination.

Chair Livingston check for Attorneys present and objectors present. Andrew Teitz, Esq. was present as representation for the Town of South Kingstown and William Landry, Esq was present as representation for Hang Ten Realty.

Mr. Fugate stated that there was not a new staff report but that he would like to make a few comments after the Town's and Hang Ten's presentation.

Mr. Teitz stated in response to Mr. Goldman's comments, that the on behalf of the Town of South Kingstown, he did seek to have a conference with Judge Nugent but he declined to hear them without filing a formal petition for hearing. Mr. Teitz also asked to Note for the record the he was in respectful disagreement about the de novo hearing and cited the Burrilville case, foot note 9 stating that law is different for zoning boards. Mr. Teitz stated that he would reserve the right to raise it on appeal.

Mr. Teitz also stated that he had not been given the opportunity to read Mr. Landry's letter on witnesses and asked to be able to read it at that time. Mr. Teitz is shown letter from Mr. Landry.

Richard St. Jean was sworn in and identified himself for the record as the first witness. The Council agreed to accept Mr. St. Jean as an expert witness. Mr. St. Jean used a board to show location of proposed seawall where concrete wall is already located and to explain that seaward of the new wall will be armor stone – big rocks set 75' back from shoreline which was previously maintained by Mary Carpenter's beach but not for several years.

Mr. St. Jean explained how the plan was to remove the sand on beach prior to constructing armored wall and maintaining stones and then put the sand back over the armored stone which would restore the area back to what is there today. Mr. St. Jean stated that there would be a possibility that the sand would be washed away and eroded over time. Mr. St. Jean explained that the Town is now proposing a yearly maintenance of sand in which the amount would be determined by a survey which would transect every 25' after sand is put back. Mr. St. Jean stated that in his expert opinion, yearly replenishment would minimize the effects of the environmental impacts on the beach.

Mr. Landry questioned Mr. St. Jean. Mr. St. Jean confirmed that the design of the wall had not changed since 2012. Mr. Teitz objected to line of questioning on the protection of the Ocean Mist building from wave action off the armored wall. Discussion on use conflicts. Mr. Teitz argued for the protection of public use conflicts not private business use conflicts.

Mr. St. Jean, in answer to Mr. Landry's question on protection of the Ocean Mist, stated that the purpose of the sheetpile wall was to protect the road and utilities in storm events, and that the stone wall would break wave action prior to getting to the sheetpile wall. Mr. Landry and Mr. St. Jean discussed the Type 1 water prohibition of hard structures on a shore line and the Special Exception that was required.

Mr. St Jean confirmed that there was a series of stones that remain on the beach and were there historically as the remainder of the Mary Carpenter's Beach revetment which could be considered as existing shoreline protection. Mr. St. Jean explained that at the time of the original application, the Town did not own the piece of land with the stone revetment and submitting an application to maintain the revetment was not an option.

Mr. St. Jean confirmed that the Town of South Kingstown representatives had met informally with the CRMC staff to discuss the beach renourishment program

Mr. Affigne questioned Mr. St. Jean about the aerial photo that was submitted stating that the actual profile of the eroded stone slopes downward to a point of 8' below the front deck of the Ocean Mist and that it was not depicted correctly on the aerial. Mr. St. Jean explained the project and how the beach profile will be achieved after construction of the sheetpile wall.

Mr. Sahagian asked Mr. St. Jean if the maintenance of the historic revetment would be a viable solution instead of the sheetpile wall. Mr. St. Jean stated that as the wall would not be able to be extended as it is prohibited by CRMC regulation, there would be continued scouring under the Ocean Mist building. Mr. St. Jean stated that if the wall was extended, the beach would be lost as well as public access along the beach. There was discussion at this point on the maintenance history of the historic revetment and Mr. St. Jean concurred that it is easier to get a maintenance application than have a special exception application approved.

Mr. Fugate informed the Council that the CRMC staff did have a meeting with the Town on the potential maintenance of that historic wall which would mean the wall is maintained to existing dimensions and beyond that would trigger the requirement for special exception. Mr. St. Jean confirmed that the maintenance of the historic revetment would not protect the surrounding area from a 100-year storm event and eventually the beach would erode away.

Mr. Teitz called Stephen Alfred who was sworn in, identified himself for the record as the Town Manager and gave a brief overview of his interaction with the Town of South Kingstown. Mr. Alfred confirmed that the Town of South Kingstown purchased the lots where the proposed sheetpile wall would be constructed in 2012 from the Carpenter family. Mr. Alfred stated that the Town would provide public access through this property. Mr. Alfred explained due to no maintenance being done to the stone revetment on the beach over the years, the beach has become more of a cobble beach area. Mr. Alfred also stated that he still agreed with staff report and understands that the wall will not prevent flooding of the road during extreme storm events but it will allow for evacuation of residents and passage of public safety vehicles.

Mr. Alfred confirmed that the 12" water main that goes through the road provides water to 1,600 residents beyond the sheetpile wall and that although there is a 400,000 gallon water tank located in Green Hill, the water main would still have to be protected.

Mr. Alfred confirmed for Chair Livingston that the beach would remain open and free to the public as long as there were no safety hazards. Mr. Alfred also confirmed for Chair Livingston that the Town agreed to annual replenishment of the sand between revetment and sheetpile wall. Mr. Alfred also stated that he believed that all reasonable steps had been taken to minimize public use conflicts with the project.

Mr. Landry questioned Mr. Alfred about the maintenance/restoration of the wall adjacent to Ocean Mist. There was discussion regarding the stone revetment that was maintained and extended by the Trailer park at Mary Carpenter's beach and the history and permitting included. Mr. Landry made reference to the fact that the Town of South Kingstown had not undertaken any construction on the permitted wall (even after Sandy) and the road had not been undermined.

Mr. Affigne and Mr. Alfred discussed the condition of the beach in the area and whether or not the maintenance of the revetment would be a solution. Also, there was discussion on the beach area that was available for the public. The maintenance of the stone revetment would stop at the corner of the Ocean Mist lot and have the same scouring issues as with the sheetpile wall.

Mr. Gomez asked Mr. Alfred about the process used to guarantee funding for yearly replenishment. Mr. Alfred stated that the Town set it up with yearly annual contributions. Mr. Gomez expressed concern that the process did not seem to be a guarantee.

Mr. Landry gave brief presentation stating that although the protection of the road is of great value but also thought should be given to saving the businesses in the area. Mr. Landry also talked about maintaining the existing stone revetment and the permits that have been granted over the years, especially now that the Town owns the land. Mr. Landry pointed out that the Town had not made an effort to start the construction of the sheetpile wall since the permit was issued.

Mr. Landry distributed documents for witness Russell Morgan, PE for GZA engineering firm.

Brief recess.

Mr. Morgan was sworn in, identified himself for the record as a Professional Engineer, heading the Marine Affairs unit with GZA Engineering and his documents were entered/numbered as Exhibits for ID. Mr. Teitz objected to a line of questioning that would introduce other alternatives which had already been determined by the court system that there were none. Chair Livingston agreed. Mr. Morgan was qualified as an expert engineer.

Mr. Morgan stated that he had been working on project since 2012 and was familiar with the Town's plan and seawall having reviewed it as having a destructive impact of beach due to the erosion caused by vertical walls. Mr. Morgan stated that he was in agreement with the CRMC staff findings and talked about the impacts to the Ocean Mist property. Mr. Morgan talked about not allowing the sheetpile wall but shoring up the historic revetment further out on the beach beyond the Ocean Mist. Mr. Morgan confirmed meeting with CRMC staff and regarding the maintenance of the stone revetment and CRMC was receptive to the project with some back and forth discussion. Mr. Morgan talked about the permitting needed from ACOE. Mr. Morgan talked about "returns" on seawalls to minimize impacts and did not see any return in the project proposed by the Town of South Kingstown.

Mr. Teitz questioned Mr. Morgan about his interaction with Hang Ten, LLC and asked if any permits had been submitted by him to CRMC on behalf of Hang Ten, LLC. Mr. Morgan stated that he had not submitted any. Mr. Teitz asked about the structures on the beach in front of the Ocean Mist stating that the work had been done without CRMC permits. Mr. Morgan confirmed that he was not engaged to research the possibility of a return attached to the sheetpile wall built by Town of SK. Mr. Morgan confirmed that a maintenance permit would not be able to be approved for a revetment in front of the Ocean Mist as there is no structure there to maintain.

Mr. Morgan described the photograph exhibit marked as 6-24-B which depicted the condition of the seawall just west of the Ocean Mist for Mr. Landry. Mr. Morgan talked about the size of the existing stones in the revetment weighing 11 tons each.

Chair Livingston asked Mr. Morgan if the scouring in front of the vertical wall would be diminished with the beach replenishment by the Town. Mr. Morgan stated that it would and it would make the sheetpile wall unnecessary. The audience clapped.

Mr. Morgan stated that if you look back in history at this site, you see a very good indicator as to how the stone revetment would perform. The erosion that is occurring now is due to non-maintenance of the stone revetment. Mr. Affigne expressed concern with the erosion control methods put in by Hang Ten, LLC without permits.

CRMC Assent and ACOE permit Exhibits 6-24C; 6-24D was moved to full.

Mr. Landry questioned Kevin Finnegan who was sworn in, identified himself as the owner of the Ocean Mist and Hang Ten and stated that he had been in area his entire life. Mr. Finnegan stated that he had worked with Mr. Carpenter and that the wall was constructed in the early 70s. Mr. Finnegan testified that the stone revetment came as high as the deck of the Ocean Mist and that when the wall was repaired there was less erosion and less wave action. Mr. Finnegan testified that the beach area had rebuilt over the past few months.

Mr. Teitz questioned Mr. Finnegan about his permitting history. Mr. Finnegan stated that the last permit he had received from CRMC was for his home. Mr. Finnegan confirmed his objection to the building of the steel sheetpile wall as it will cause erosion and be detrimental to his property.

Mr. Affigne asked Mr. Finnegan about the illegal structures built under and around his property.

Chair Livingston opened the public hearing for comment explaining that comments needed to be about the very narrow subject of discussion.

Levon Kasparian, Kenneth Critz and Fran O'Brien all commented on their objection to the steel sheetpile wall and asked for the Town of South Kingstown to work with the locals and with CRMC to come up with a better solution.

Chair Livingston closed the public hearing and the attorneys gave closing arguments

Mr. Goldman polled the new members, Joy Montanaro and Jerry Sahagian on the reading of the record. Both confirmed to reading the record.

Mr. Fugate talked to the Council about the reasoning behind the approval of the sheetpile wall stating that even though the wall is prohibited the special exception of overwhelming public good is present to override the environmental concerns. Mr. Fugate confirmed the loss of beach and the erosion that will take place in front and on the sides of the wall. Mr. Fugate stated that as there is already a wall there, it did not seem like it would increase the problem by putting the steel wall where there already is a wall.

Mr. Fugate stated that the reason the Carpenters needed all the maintenance permits was because the revetment was failing during strong weather events and that the type of design that would work would be too large and too expensive to build.

Mr. Gagnon asked if buying the property and proposed annual maintenance of the beach would be considered two new things to improve the environmental protection. Mr. Fugate stated that it would as the sand acts as a sediment source.

Mr. Affigne asked about the stone revetment and if it would be beneficial for two walls.

Mr. Fugate talked about the difference in storm history and Mr. Gomez talked about the change in the events and the frequency with which they seem to be coming.

Mr. Affigne asked that with the Town's purchase of two abutting lots providing public access, would that be the kind of mitigating or ameliorative changes that would allow us to justify the decision to court? Mr. Fugate stated that those two items were the Town's attempt to address the issues brought up by the Court. Mr. Hudner reiterated that the Town was willing to work with Hang Ten on the return as well.

Mr. Affigne motioned, seconded by Mr. Hudner, that based on all evidence presented to them would indicate that all reasonable steps had been taken and find that the changes that have been made in the proposal do satisfy the environmental responsibilities of the CRMC.

Mr. Sahagian expressed concern of another appeal and asked to hold the decision for a month for discussions between applicant and the abutter.

Chair Livingston stated that by Court Order they could not wait and that she believes that the Town had made an effort to minimize the use conflict and had made a huge effort to meet that standard.

Mr. Gomez stated that he would like to have a part of the motion that the Town agrees to perform beach maintenance on a regular basis. Mr. Affigne will make part of motion. Mr. Hudner agreed.

Mr. Coia asked if it was an all or nothing project for the Town that if they did not get the sheetpile wall they would not do anything. Mr. Affigne stated they would have to reapply. Mr. Coia felt there were other alternatives that would make all parties happy.

Mr. Goldman did a Roll call vote with a vote in the affirmative was to adopt the motion.

Mr. Gagnon	yes
Ms. Montanaro	no
Mr. Affigne	yes
Mr. Sahagian	no
Mr. Hudner	yes
Mr. Gomez	yes
Mr. Coia	no
Vice Chair Lemont	no
Chair Livingston	yes.

5 to 4 vote to approve. Motion is approved.

7. Enforcement Report – May 2014

None were held

8. ADJOURN

Vice Chair Lemont motioned, seconded by Mr. Coia, to adjourn. Motion carried on a unanimous voice vote. Meeting adjourned at 9:20 p.m.

Respectfully submitted,
Lisa A. Turner, Recording Secretary