

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, February 24, 2015 at 6:00 p.m. in Conference Room A of the Administration Building, One Capitol Hill, Providence, RI.

Members Present

Anne Maxwell Livingston, Chair  
Paul Lemont, Vice Chair  
Don Gomez  
Ron Gagnon  
Raymond Coia  
Mike Hudner  
Joy Montanaro  
Paul Beaudette

Staff Present

Grover J. Fugate, Executive Director  
Jeff Willis, Deputy Director  
David Reis, Spv Environmental Scientist  
David Beutel, Aquaculture Coordinator  
Brian Goldman, Esq

Members Excused

Tony Affigne  
Jerry Sahagian

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**

Chair Livingston called for approval of the minutes from the previous meeting. Vice Chair Lemont motioned for approval of minutes from February 10, 2015; seconded by Mr. Hudner. Motion carried on unanimous voice vote.

3. **STAFF REPORTS**

**Mr. Fugate** reported to the Council on the following items:

- Applications received from owners of Matunuck Beach properties in response to enforcement matter. Review of application showed that their proposal was not a good option and CRMC staff offered alternative suggestions.
- March 10, 2015 there will be a meeting from 8:30 to 4:00 p.m. in the Narragansett Bay Commission Boardroom to meet with the Deepwater Wind CVA.
- April 8, 2015 there will be an Alton Jones retreat for Council and staff to discuss programmatic issues.
- March 3, 2015 at 6:00 p.m. there will be a Beach SAMP meeting at the Narragansett Bay Campus.

**Mr. Goldman** reported to the Council on the following items:

- Mr. Beutel has followed up on the Block Island aquaculture farm that was the subject of the photos presented at the previous meeting.

4. **SUBCOMMITTEE REPORTS**

None

5. **COASTAL EDUCATION SERIES** -- Theresa Crean – Beach SAMP – Shoreline Change SAMP

Ms. Crean gave an excellent presentation to update the Council on the progress of the Shoreline Change Special Area Management Plan (aka Beach SAMP)

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

**2014-06-115 WELLINGTON HOTEL OWNERS ASSOCIATION – 8’ wooden fence.  
Located at plat 35, lot 204; 551 Thames Street, Newport, RI.**

Mr. Reis gave a brief overview of the application acknowledging that it was the amount of objections to the file that brought about the level of review.

Mr. Reis stated that staff had determined that the fence was considered inconsistent with RICRMP as its height prevented the public the right to public access of shoreline the shoreline in the loss of the view and that one of the Council’s goals is to protect the public’s access to the shoreline. Mr. Reis stated that the staff felt that the applicant was inconsistent with the Council program and offered an alternative to the owner suggesting a fence that provided visibility. With that said, Mr. Reis stated that the staff deferred to the Council.

Attorney Stacey Nakasian was present for the applicant. Also present was Kathy Anderson, Business Manager.

Ms. Nakasian presented that there were no specific regulatory standards preventing the Wellington Hotel Owner’s Association from being able to have the fence that was built and that the Council should not deny the application where no legal standards are available.

Chair Livingston asked why that particular fence and not a chain link fence that can be seen through. A color picture was distributed to the members of the Council by Ms. Nakasian who explained that the fence was built due to a lengthy legal dispute with the abutting neighbors to demarcate the boundary line between the two properties. Ms. Nakasian stated that the fence conforms to local code and that there is public access on the strip along the harbor and that the neighbors are upset because their view was taken away but the City provided plenty of public access to the water. Vice Chair Lemont pointed out that the totality of the authority of the CRMC included the enforcement of the right to public access. Ms. Nakasian answered that views are available and also that anytime a fence is built there is a risk of loss of view.

Chair Livingston asked again for the reason this particular fence was chosen and not a chain link fence. Ms. Nakasian stated that for aesthetic reason the fence was designed with spacing between each slat and lattice on top. The owners felt that a chain link fence was inappropriate in this area.

Kathy Anderson was sworn in and identified herself for the record as the manager of the Wellington Resort. Ms. Anderson was cross examined by Ms. Nakasian. Photos were submitted as exhibits Applicant's 1 and 2 (both full) and authenticated by Ms. Anderson.

Attorney Timothy Moore was sworn in and identified himself for the record as an attorney who had been representing the owners for many years on this project. Mr. Moore explained the series of events that led to the building of the fence and the law suit that was involved. Mr. Moore stated that CRMC had approved a building for the area in which the fence had been built and that if the owner had built the building there would be no view. Mr. Moore explained that the Wellington Hotel Owners Association property had been used as a shortcut by pedestrians on private property which created an adverse situation for the owner; exhibit #3 and #4 plans of CRMC approved buildings marked as full.

Short break

Mr. Beaudette asked the applicant why CRMC approval was not sought prior to building the fence. Ms. Nakasian stated that an architect and a builder were involved to handle the project and the client did not know that the permits had not been secured. Discussion on height of fence which seemed to be higher than the reported 8'.

Mr. Reis stated that during the course of review of the application he had contacted Kathy Anderson and that she never mentioned two other approvals for building.

**Objectors:** All were sworn in and identified themselves for the record.

Andrew Ross, neighbor on Harrington Court, objected to obstruction of view and cut off of emergency access.

Kathleen Casey, representing members of Harrington Wharf Condo Association and a direct next door neighbor on Harrington Street, stated that their main objection was the obstruction of the view and the lessened use of the public access way as it is no longer visible. Ms. Casey stated that prior to the building of the fence jersey barriers were present. Ms. Nakasian countered that the jersey barriers were the instigation of the lawsuit.

Lisa Dennis of 9 Goodwin Street, Newport gave testimony that the area is not only residential but mixed use and that the Town gives proper notice of any construction being done in the area. Ms. Dennis expressed great concern at not being given a voice on type and height of fence.

Discussion on the City of Newport public notice process and permitting process.

Vice Chair Lemont stated that although the applicant took it upon themselves to build the fence without permits, CRMC does not regulate views, therefore, he motioned to approve the as built fence. Motion was seconded by Mr. Coia who stated that CRMC has to review what is before them based on their regulations as written or not written.

Chair Livingston stated that she was going to vote against the motion as it is her belief that the CRMC has an obligation to try to respond to view situations and that she was offended by the fact that the fence was built prior to obtaining permits.

Mr. Beaudette stated that he also was offended by the owner's lack of knowledge of CRMC regulations and what permits were needed. Mr. Beaudette expressed his concern about setting a precedent in both cases – giving as-built approval and approving a permit that would take away a much loved view – and that he would vote to deny.

Mr. Hudner expressed his concern at getting the application after being built as it eliminated the possibility of suggesting possible alternatives to serve all interests. Mr. Hudner made a suggestion to send the application back to review level to discuss a solution that is fairly balanced for both sides. Mr. Hudner also suggested a specific timeline.

Mr. Fugate stated that the approach to compromise would be best as if the application were to be denied the applicant would be put in the position of an administrative finality situation.

Ms. Montanaro stated that she agreed that the public had the right to visually look through that area and see the water and hope that an agreement could be made for another type of fence not necessarily chain link.

Mr. Gomez stated that he did not like the way the fence does not afford a view; did not like the process by which the application got to the Council level, and did not want to start a precedent.

Chair Livingston asked Vice Chair Lemont if he would revoke his motion so that it could go back for further review and possible amendment of the application. Vice Chair Lemont did not want to pull his motion as he felt the issue was not within CRMC's purview to decide on a view issue.

Chair Livingston asked if Mr. Coia was willing to withdrawing his second.

Mr. Coia agreed to withdraw his second solely after the conclusion of all the comments and discussion so that the applicant is afforded the opportunity to work with staff.

Chair Livingston stated that the application would be put on hold and asked for a resolution within 30 days.

**2014-05-072 WHILDEN UNLIMITED – Aquaculture -- a 4.2 acre oyster aquaculture farm. The new notice includes a small modification of location and increase in acreage from 3 acres to 4.2 acres. Bottom cage culture continues as the proposed farming method. Located in West Passage of Narragansett Bay in North Kingstown, RI.**

Mr. Beutel gave a brief overview of the application stating that the lease was located on the East side of Fox Island and that site assessment showed low densities of quahogs or vegetation. Mr. Beutel stated that objections were received from RI Salt Water Anglers Association, RIDEM and RIMFC. Mr. Beutel stated that there were letter of support from commercial fisherman that work that area and from the US Coast Guard Head of the Port. Mr. Beutel stated from his experience in this area that he saw no user conflicts. Mr. Beutel asked for RIDEM and US Coast to resolve their issues and stated that no successful resolution was reached. Mr. Beutel stated that within the shellfish management plan that has been CRMC endorsed, looking at the user maps for Narragansett Bay, Fox Island does not show up as a recreational fin fishing area and there is no documentation of support that that is an area that is used. Mr. Beutel stated that the location is

acceptable for aquaculture and that oysters will grow well there. Mr. Beutel stated that CRMC staff recommended approval of operation and location.

Mr. Gomez asked about the marker lights. Mr. Beutel stated that they were solar powered and would light up closer to the channel but not closest to the Island.

Mr. Whilden was sworn in and identified himself for the record stating that he had been a fisherman all his life and that with the changes in the fishing industry, he felt aquaculture was his next venture. Mr. Whilden stated that he kept his boats at the Town dock in Wickford.

No objectors were present.

Vice Chair Lemont motioned for approval of the application, seconded by Mr. Coia.

Mr. Gagnon stated that Chief Hall's of RIDEM had not changed his position that was presented in CRMC staff report.

The motion carried with one vote in opposition – Mr. Gagnon.

9. **ADJOURN**

Vice Chair Lemont motioned, seconded by Mr. Hudner, to adjourn. Motion carried on unanimous voice vote. Meeting adjourned at 8:50 p.m.

Respectfully submitted,

Lisa A. Turner  
Recording Secretary