

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, March 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  
Tony Affigne  
Joy Montanaro  
Jerry Sahagian  
Paul Beaudette

Staff Present

Jeffrey M. Willis, Deputy Director  
James R. Boyd, Coastal Policy Analyst  
Tracy A. Silvia, Sr. Environmental Scientist  
  
John Longo, Legal Counsel

Members Excused

Mike Hudner

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 the approval of the minutes from the March 10, 2015 meeting; seconded by Mr. Coia. The motion was carried on unanimous voice vote. Paul Beaudette abstained due to being absent from the March 10, 2015 meeting.

3. **STAFF REPORTS**

Jeff Willis reported to the Council on the following:

- CRMC Council Retreat at URI Alton Jones Campus scheduled for Wednesday, April 8, 2015 from 8:30 to 4:00 p.m. – a reminder will be sent with directions.
- CRMC Semimonthly Meeting scheduled for Tuesday, April 28, 2015 will be in Newport at the Pell Elementary School – an email reminder will be sent with directions
- Grover Fugate is attending the Geological Society Northeastern Conference in which one session will honor Jon Boothroyd, RI's State Geologist and Mr. Fugate will give a presentation on the Beach SAMP at that session
- Ocean SAMP requirement on Deepwater Construction – A Fisheries Liaison is required to be on site – a recommendation is being forwarded as a result of 7 interviews held.

4. **SUBCOMMITTEE REPORTS**

None

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

**2014-10-125 JILL AND JEAN WESTCOTT -- Construct and maintain a residential boating facility consisting of a fixed timber pier with davits, ramp and 10 x 15' (150sf) terminal float extending 75' seaward of the cited MLW mark, requiring a 25' length variance to RICRMP Section 300.4. Located at plat 182, lot 15; 153 Poppasquash Road, Bristol, RI**

Ms. Silvia gave a brief overview of the application stating that the boating facility would be located in Bristol Harbor which is considered Type 4 waters. Ms. Silvia stated that one comment was received during the Public Notice period which was from the Town of Bristol addressing shellfishing access, public lateral access and mooring impacts. Ms. Silvia informed the Council that the proposal required a 25' setback and also included two small boat lifts. Ms. Silvia stated that after speaking with the Town of Bristol regarding their comments, they were still objecting to the 25' variance making the dock longer than 50' beyond MLW. Ms. Silvia stated that the length variance was being requested to reach 2.5' of water. Ms. Silvia stated that staff had no objection to the application as it meets the technical requirements and could have been granted administratively if no objection was received.

Chair Livingston asked about the other docks in the area. Ms. Silvia stated that there were two docks in area and that this facility was not longer than the neighboring facilities. Ms. Silvia clarified that when the Town submitted their letter, they were responding to three different CRMC dock submittals within their town in the same letter but not all in the same area.

Mr. Sahagian suggested hearing from the Town of Bristol first as the application meets all of CRMC regulations and there are not objections from staff. Chair Livingston asked to hear from the applicant.

Bruce Cox, Esq. of Sleprow, Sleprow and Associates was present for the applicants as well as Ron Blanchard of Site Engineering.

Mr. Cox addressed the Council and explained that the applicant needed the additional 25' to be able to gain the water depth required for their vessels.

Mr. Blanchard was sworn in and identified himself for the record. Mr. Blanchard stated that he prepared the plans for the project and that this particular facility is 20' shorter than the other two docks on either side of the proposed dock location.

Vice Chair Lemont inquired about the mooring field. Mr. Blanchard explained that the proposed facility would be outside of the mooring field. Discussion on location of the dock using aerial photographs.

Mr. Beaudette asked about public access and how dock would increase the access. Mr. Blanchard stated that there would be plenty of room beneath the dock for lateral access, approximately 6.5' at the Mean High water mark. Mr. Blanchard stated that he was weighing the property owners use and rights to the water as well as justifying public lateral access.

Objectors sworn in and identified themselves for the record.

Jim Dollins, Vice Chair of the Bristol Harbor Commission addressed the Council on behalf of the commission stating that they did not feel that the dock required an extra 25' to have adequate water. Mr. Dollins stated that this area is very fertile and very often fished year round. Mr. Dollins

asked if the floats could be removed during the off season to provide access to shellfishermen. Mr. Cox stated that the owner's intention is to hoist it with chain falls on each post and secure it at an elevated level which is commonly done. Mr. Dollins stated that fishermen are apprehensive about going beneath a dock that is hoisted by chains.

Mr. Sahagian requested that the objections be kept to a very narrow scope of Section 300.4 and the 25' length variance.

Dan Eagan, also sworn in and identified himself for the record, stated that he had met with the commercial fishermen in the town and the complaint is not the 50' it is the extra 25' with the L extension. Mr. Eagan stated that the shellfishermen scuba divers and hand rakers are concerned that their access to the shellfish beds will be reduced. Mr. Eagan talked about a transplant area that is located near the proposed dock location. Mr. Eagan stated that the commercial fishermen have concerns that they are losing area to fish and shellfish that the water depth is not as the applicant is representing it. Mr. Eagan asked if the owner could relocate the dock more north on their property.

Mr. Beaudette asked for clarification on the transplant area. Mr. Eagan stated that it was voluntarily done by the shellfishermen along with RIDEM that quahogs are dug from the closed/restricted area and transplanted in the water from the neighbors dock south.

Mr. Sahagian stated that based on staff report and meeting the criteria of Section 300.4 and 1.8, motioned to approve the application. Vice Chair Lemont seconded the motion.

Chair Livingston stated that she would vote to approve the application because she felt that it is a very small amount of space although she does not agree with the hanging of a floating dock and suggests hauling the dock.

Mr. Gomez stated that as the facility would be located in Type 4 (multi use waters), a precedent has been set and it is away from the mooring field so he would vote in favor of the application.

Mr. Beaudette stated that if the motion passes he would request that a stipulation be written in the assent regarding impact on the mooring field. Mr. Willis stated that when owner has an agreement with the Town regarding local issues, we go on with our review knowing they have local approval.

The motion passed with 7 ayes, one nay from Mr. Beaudette and one abstention from Mr. Affigne.

Mr. Affigne commented that he is concerned about repeatedly hearing last minute concerns from objectors. Mr. Willis stated that public notices are sent to the local municipalities and that the staff works with the Town on their concerns very early on in the permitting process.

**2014-08-006 ASC REALTY CO., LLC: Remove the existing steel marine railway system being used as boat storage and laydown area adjacent to 500 metric ton (MT) Travel lift; bulkhead and fill this area to provide needed laydown/storage. The bulkhead system shall be a steel H-Pile and concrete lag system anchored in the shallow bedrock. The filled area will be used to locate a permanent boat wash down station. The project will widen the 500 MT travel lift pit from 37 ft – 45 ft and increase the length by about 30 ft by the demolition of the existing north pier leg and the construction of a new pier located 8 ft to the north. The south pier will also be extended 30 ft. The proposal will add a pile supported pier to create a 200**

**MT Marine Travel lift which would share the eastern 100 Ton pier as its western pier. The proposal includes proposed maintenance or over sheeting of 154 ft of existing steel bulkhead with a new driven steel sheetpile bulkhead. This repair will tie into and match the repair previously made immediately to the north. At the northeast area of the site we propose to undertake maintenance to replace the failing wooden bulkhead with concrete lagging wall 15 ft to west in area of current wooden decking. The existing wooden pier will be removed. To facilitate stackable boat storage and also additional laydown/storage a new pile supported concrete pier will be constructed in the area between the 500 MT and 200 MT travel lift piers and the west bulkhead of the marine railway fill area. The existing floats and access ramps in this area will be reconfigured to match the new fixed pier configuration. Public access will be improved/accommodated by installing a new float located in this northeast area. Located at plat 16, lot 235;1 Washington Street, Newport, RI.**

Mr. Willis gave a brief overview of the application to the Council stating that CRMC staff was recommending approval of the application based on Council review of the adequacy of the information as well as the public access plan. Mr. Willis stated that there were no objectors to the application. Mr. Willis confirmed that it is located in Type 5 waters.

Rick St. Jean was sworn in and identified himself for the record. Mr. St. Jean stated that the area was a working shipyard not a marina, that there is a guard shack and limited access to the facility.

Mr. Gomez stated that he felt the CRMC staff had done a great job, asked the applicant if they had read and agreed to the stipulations as presented in the staff report and motioned for the approval of the application. Mr. Coia and Mr. Affigne seconded the motion.

Mr. Gomez also recognized that the application had the ACOE support

Mr. Beaudette asked if it had come before the Council previously. Mr. Willis stated that it had been scheduled but that it had been pulled until an agreement with the City was in hand regarding public access plan agreement.

Motion carried on an unanimous voice vote

#### **6. Continued Application Back before the Council for Decision:**

**2014-06-115 WELLINGTON HOTEL OWNERS ASSOCIATION -- Seeking approval for As Built 8' fence located plat 35, lot 204; 551 Thames Street, Newport, RI.**

Mr. Willis addressed the Council stating that the application was on the Agenda at the requirement of the Council from a previous meeting. Mr. Willis stated that Kathy Anderson of the Wellington Hotel had worked with staff and had agreed to remove the top 2' to bring the fence down to 6'.

Mr. Willis stated that CRMC staff feels it is a reasonable accommodation. Mr. Sahagian stated that he commended the applicant for trying to work out the accommodation with objectors seeing that it may not have been necessary according to his knowledge of CRMC regulations. Mr. Sahagian motioned for approval with modification and stipulations. There was no second of the motion.

Chair Livingston asked the applicant if the proposal was okay with the applicant.

Ms. Anderson was sworn in and identified herself for the record as the manager of the Wellington Hotel Owners Association. Ms. Anderson stated that the applicant would like to keep the fence the way it is but would agree to remove the top 2' of the fence.

Vice Chair Lemont stated that he had refused to withdraw his motion at the previous meeting as he felt that there was nothing in the CRMC regulations that require that the fence be taken down. The applicant had obtained local approval even if it was after the fact.

The motion was seconded by Vice Chair Lemont and then the motion was withdrawn to hear from the objectors.

Objectors all individually sworn in and identified themselves for the record.

Jason Perkins of 10 Goodwin Street, Newport RI stated that the visual access to the harbor which is a stated goal in the City of Newport Comprehensive Plan cannot be met with a 6' fence. Vice Chair Lemont asked about a 4' fence. Mr. Perkins stated that a 6' chain link fence or a wrought iron fence would provide visual access which had never been impeded. Mr. Perkins expressed his concern that the fence was originally constructed without any local or state approvals in the middle of winter when many people were away. Photographs distributed of features in the area such as gas tanks which did not prevent viewing access of the ocean.

Mr. Affigne inquired as to why this application was brought before the Council as CRMC does not regulate fences. Mr. Willis explained that the application was brought before the Council for potential visual impacts from the fence. Chair Livingston stated that there was not an actual regulation in the CRMP but there is language regarding public access and scenic quality.

Vice Chair Lemont expressed his concern that the Council is interfering in someone's right to put up a fence that may block a view when in the same area there a large gas tanks that also block the view.

Mr. Affigne asked how it came to be built if local zoning had regulations. Mr. Willis explained that the fence met the local building height regulations and was built without a permit. Mr. Affigne asked if it is incumbent upon the Council to help enforce the Town's rules. Ms. Nakasian, their attorney, clarified that the City had granted a permit for the fence after the fact. Ms. Anderson stated that the building official wanted to make sure the fence was strong enough but that he had no other concerns.

Mr. Gomez stated that the facts had been discussed ad nauseam at the last meeting and that there was a motion made and seconded.

Mr. Affigne stated that he would abstain as he was absent from the first meeting.

John Longo marked photo from Jason Perkins marked as Objectors Exhibit 1 for the record.

Ben Riggs, objector, stated that the revised application is incomplete and not compliant as the applicant was told to come up with a fence that does not obstruct view of the harbor and the fence most certainly obstructs the view. Mr. Riggs stated that his understanding was such that the applicant had to show compliance with other agencies in order to be compliant with CRMC

regulations as written in the Aquidneck Island SAMP. Mr. Riggs also stated that there were different requirements in this area due to flood zone regulations and the FEMA rules and regulations. Mr. Riggs ended by saying the fence blocks the view of the area that has been there for 12 years, the fence was not legally built (no permits) and does not serve a practical purpose.

Mr. Willis clarified that the Aquidneck Island UCG had been adopted by the Council for major developments along the shoreline of which none have been established in the Newport area. Mr. Willis also clarified that the FEMA regulations were implemented through the local building official office and that CRMC relies on the local building official office to look into those matters.

Mr. Sahagian stated that the CRMC was the last stop in the permitting chain and that all evidence allows the CRMC to approve the 8' version of the fence. Mr. Sahagian motioned to approve the application as originally submitted. Vice Chair Lemont seconded the motion.

Mr. Affigne asked for a motion clarification. Chair Livingston stated that the motion was to approve the as-built fence with the modification of a two foot reduction. Mr. Sahagian corrected the Chair stating that his motion was for the approval of the original 8' fence. Vice Chair Lemont withdrew his second the Mr. Sahagian's motion.

Vice Chair Lemont then motioned to approve the fence with the 2' reduction making it a 6' fence. Mr. Sahagian seconded Vice Chair Lemont's motion but added that he felt they were setting a precedent for getting involved in issues that we do not have jurisdiction over.

Mr. Beaudette expressed his concern that CRMC was not doing its due diligence in being the last permitting body.

Chair Livingston stated that she felt confident that the staff reviewed the application with all regulations in mind.

Mr. Longo explained that legally our approval cannot trump other local and federal requirements so we require that the applicants provide us with these other approvals prior to their submittal to us. Mr. Longo cautioned the Council against getting into engineering fences.

There was discussion about the timeframe in which the Council gets information regarding the objections to applications.

Vice Chair Lemont moved the motion.

Ms. Montanaro expressed her concern that the Council was put in the position of having to review and application after the fact of building – had the application gone through the proper channels, the review process would be very different and perhaps other compromises could have been made between the parties involve.

Chair Livingston asked "All in favor of motion to approve the 6' fence as stipulated by staff" say aye. Motion carried with 7 in the affirmative, Ms. Montanaro was opposed and one abstention from Mr. Affigne.

**7. Public Hearing on Program Changes:**

Summary of Proposed Amendment to Management Procedures – Section 3:

The purpose of the proposed regulation change to Section 3 Subcommittees of the CRMC Management Procedures is to provide for the appointment of Special Area Management Plan (SAMP) Subcommittees to oversee all SAMP activities and review policy or permitting issues that pertain to any of the CRMC Special Area Management Plans, and to appoint ad hoc subcommittees to hear contested cases, as needed.

Mr. Boyd gave a brief overview to the Council stating that the proposed regulation change was to modify how the Council appointed Subcommittees and allows for flexibility to the Council to appoint ad hoc subcommittees. Mr. Boyd stated that one comment was submitted by Save The Bay asking for additional language and that a letter written back to them addressing their concerns was sent. Mr. Affigne questioned the language regarding hearing officers. Mr. Longo explained that even if CRMC does not use the historical regulations, it goes about things in the appropriate manner. Chair Livingston opened the public hearing, and hearing no objections, closed the public hearing.

Mr. Sahagian motioned for the approval of the proposed changes. Mr. Coia seconded the motion. Motion to enable to creation of the Shoreline SAMP Subcommittee carried on a unanimous voice vote.

**8. Category “A” Applications**

None were held

**9. ADJOURN**

Mr. Affigne motioned, seconded by Vice Chair Lemont, to adjourn. Motion carried on unanimous voice vote. Meeting adjourned at 7:34 p.m.

Respectfully submitted,

Lisa A. Turner  
Recording Secretary