

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, August 25, 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
Ron Gagnon
Raymond Coia
Tony Affigne
Jerry Sahagian
Paul Beaudette

Staff Present

Grover J. Fugate, Executive Director
Jeffrey Willis, Deputy Director
Richard Lucia, Spv Civil Engineer
Amy Silva, Sr. Civil Engineer
Dave Beutel, Aquaculture Coordinator
Janet Freedman, Coastal Geologist

Members Excused

Joy Montanaro
Don Gomez
Mike Hudner

Brian Goldman, Legal Counsel

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 June 9, 2015 Semimonthly meeting; seconded by Mr. Coia. Motion carried on unanimous voice vote.

3. **SUBCOMMITTEE REPORTS**

None

4. **STAFF REPORTS**

Mr. Fugate informed the Council on the following:

- Meeting of the Fishermen's Advisory Board on August 24, 2015 where there was a discussion with Deepwater regarding interactions with the fishing industry.
- Meeting with Matunuck property owners and the Town of South Kingstown on August 25, 2015 in which there was discussion on the applicants' proposals for experimental erosion control. A presentation was made on a system that CRMC has been researching called the Trap Bag System. The property owners set up a meeting on August 27, 2018 to discuss it this particular system.
- We just received and have signed an agreement for HUD funding to do some modeling work on the Pawtuxet River.
- Additional 40K in funding from HUD for Beach SAMP activities to ultimately produce a map that would rank the shoreline in terms of its susceptibility to storm damage.

Chair Livingston polled the audience for applicants present.

5. **Update on Assent No. B2012-09-065 Deepwater Wind, Block Island, LLC:**

Ted Hofbauer of ABS -- CVA for the Deepwater Wind project was present to give the Council a status report on the progress for the summer 2015 installation phase. Mr. Hofbauer explained that his company was hired to oversee and verify that the project was being built in accordance with plans set forth and approved. Mr. Hofbauer explained that the installation phase included the installing of foundations and transition pieces. Mr. Hofbauer explained that worked started on July 19, 2015 with the following occurring:

- Jacket #1 was installed but damage was sustained to one of the legs during the installation and it had to be removed, taken to Quonset and readied for sea trip to NJ for assessment of damage and correction.
- Jacket #2 was lowered to bottom in its place where it will be located. The initial piles have been set in place (stabbed into seabed) but not driven due to problems with the first hammer to be used. A replacement hammer has been found by Weeks/Manson, the installation contractor, and they are preparing to move forward to hammer piles for #2
- Jacket #3 foundation set in location with all of the piles stabbed into sea bed but still need to be driven.
- Jackets #4 and #5 have not been started as of yet and there are modifications being made to address access from a safety standpoint during the rigging.

Mr. Hofbauer expressed concern regarding the project's safety management system that was put forth and supplied by Weeks/Manson. Mr. Hofbauer reported on areas that have proven to be challenging: work/worker safety such as dropped objects into the water, and crane operations; and a few Coast Guard regulations need to be addressed regarding the barge.

Rain Byars, also working for ABS -- the CVA, was present to talk about her concerns at the site. Ms. Byar's first concern was that there was not safety representative on board the barges and that the barge superintendent has conflicting responsibilities acting as both superintendent and safety representative.

Mr. Hofbauer stated that it appeared that the personnel working on the project were not qualified to work offshore and inexperienced for working in the wind off Block Island. Mr. Hofbauer explained that the equipment such as the cranes and lifts have exhibited repeated reliability issues.

Mr. Hofbauer stated that DWW is taking appropriate actions to ensure worker safety going so far as to stopping work to make sure the safety plan could be executed. Mr. Hofbauer stated that if there is not a representative from ABS or DWW on the site, the quality of the installation process lowers on behalf of Weeks/Manson.

Mr. Hofbauer stated that there were numerous turnovers in Weeks/Mason personnel at a very high level to try to bring in people who are more experienced in doing offshore work and working in this environment.

Mr. Hofbauer stated that damage has been done in varying degrees to three jackets primarily related to crane operations.

Mr. Hofbauer stated that one recommendation they would make is to establish a formal policy of review with a Safety Committee and establish a formal root cause analysis for near misses to be able to put an engineered solution in place.

Mr. Hofbauer stated that their recommendation is to have a full-time safety representative on the site and that everyone takes a step back, a stand-down, so that everyone has an understanding of the safety issues. Mr. Hofbauer reiterated that it is important that the people doing the work be able to express their concerns and have the concerns be addressed – Safety Committee. Mr. Hofbauer strongly reiterates the need for Weeks/Manson to understand Deepwater Wind’s position on the importance of personnel safety.

Two aspects of project Mr. Hofbauer suggested action on were review of cranes for reliability and verification of safety management system.

Mr. Hofbauer stated that all in all, the project is moving forward and everyone has learned a great deal. DWW has done a great job with working with Weeks Manson. Mr. Hofbauer believes the project can move forward and can continue to move forward. No reason to stop operations at this point.

Present for Deepwater Wind were Jeff Grybowski, CEO of DWW and Mr. van Beek, President of DWW and in charge of the construction project.

Mr. van Beek stated that he has 30 years of experience in working offshore and that safety is one of prime areas of attention. Mr. van Beek is happy with the level of cooperation between all parties and feels that over time personnel will gain more experience in this kind of work and will be given the time to improve. Mr. van Beek stated that they try to use local contractors for these projects to learn and gain experience. Mr. van Beek stated that they are working with Weeks/Manson to have a safety person on each shift and each barge to do a job safety analysis before each operation starts. Mr. van Beek stated it would be implemented within 14 days.

Mr. Affigne questioned whether CRMC could intervene to make safety analysis gets enacted. Mr. Goldman stated that CRMC has approved the Construction and Operation Plan, the Facility Design Report and the Fabrication and Installation Report and that if there is a deviation of report, it is a violation of assent. The CVA is used for reviewing these report standards.

Mr. Affigne encouraged the companies to follow through on their own plan of safety management.

Mr. Hofbauer stated that they are looking forward to working with Weeks/Manson on the safety management.

Mr. Grybowski stated that he will follow up with the business managers on safety issues. Mr. Grybowski also explained that there are already of 50,000 man hours on the job to date with only one reportable incident – a hand pinched between two pieces of metal – which is considered an exemplary safety record for reportable incidents. Mr. Grybowski stated that the fabrication of foundations went superbly. Mr. Grybowski also added that with the addition to ABS number of inspectors, there were, other than Weeks, insurance representatives where sign offs are needed adding another sets of eyes on the project. In addition to the Council, there are other agencies to report safety to, such as the Coast Guard and OSHA (?).

Vice Chair Lemont motioned for more frequent updates on the DWW progress.

Chair Livingston agreed but stated that the 2015 project should be completed within a month and that there was another update schedule for September.

Recess

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

2014-06-127 JOSEPH ZENGA – Freshwater Wetland Application -- Construct and maintain a commercial building and 40 unit multifamily housing with parking, roadway and associated utilities. Located at plat 5, lot 149, 158, and 219; Intersection of Main Street and Greenwich Boulevard, East Greenwich, RI.

Vice Chair Lemont suggested hearing this application first. Attorney Mary Shekarchi was present for the applicant along with Scott Rabideau and Joe Casali. Mr. Lucia briefed the Council on the application stating that the applicant worked diligently with CRMC and DEM staff on the application. Mr. Lucia stated that there are no staff objections to the application. Vice Chair Lemont motioned, seconded by Mr. Coia and Mr. Affigne, to approve the application with staff recommended stipulations. Motion carried on a unanimous voice vote.

2013-07-094 MAUTUCKET BY THE SEA – Authorize as-built limited marina and establish a Marina Perimeter Limit. Also perform habitat restoration (fish passage). Located at plat 90-1, lot 151; Mallard Drive, South Kingstown, RI.

Ken Bowman, improvement association member was present as well as his attorney, Donald Packer, Esq. and his engineer Warren Hall, PE.

Mr. Willis gave a brief overview of the application stating that the application was for an as-built limited marina for an eight boat capacity to establish a marina perimeter limit and for habitat restoration. Mr. Willis stated that in working with staff over the course of time the dredging component of the applicant became habitat restoration. Mr. Willis stated that staff recommended approval of the application with the approval of the fish passage restoration and and stipulation of 8 boat limit and recording of assent in the land evidence records.

Mr. Sahagian asked the applicant is they agreed with staff recommendations. Mr. Packer confirmed the applicant's agreement.

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

Motion carried on unanimous voice vote.

2003-06-098 CHRISTOPHER WARFEL/SUN FARM OYSTERS – Relocate upweller configuration from the original locations on the aquaculture lease site to the deeper parts of the lease site, also reducing the number of upwellers from 3 to 2; to add an 8'x16' sorting platform to the site; and add an 8'x16' work platform for bag storage and defouling. Located in Trims Pond, New Shoreham, RI

Mr. Beutel briefed the Council stating that the application is before the Council in modification form as a result of pictures presented to the Council by the Town of Charlestown during the hearing of another case; and also the request of the Council that Mr. Beutel look into the condition of the Block Island lease. Mr. Beutel stated that based on his interaction with the lease holder, they felt that a modification

would be an appropriate response to bring about compliance at the lease. Mr. Beutel explained that there were unpermitted floating platforms on site, exposed floating aquaculture and gear that washed up on shore. Mr. Beutel received photos from the Harbormaster of the Town of New Shoreham showing nonconformance and stated that there was an ongoing history of such. Mr. Beutel stated that moving the floating structures would facilitate a more efficient business for Mr. Warfel, however the floating bag system needed to be addressed and he recommended that the Council require a new model of anchoring the floating bag systems with more frequent anchors for better control. Mr. Beutel asked that no additional structures be allowed until the harbormaster has deemed that all structures currently on the lease are seaworthy and safe. Mr. Beutel recommended that the Council increase the performance bond value and define the number of days required for removing derelict gear from the marsh.

Mr. Affigne asked what the delay was in the lease holder correcting the unsightly and unapproved practices and installations without CRMC needed to give another time extension. Mr. Beutel explained his recommendation stating that once photographic evidence is received of nonconformance, Mr. Warfel has 10 days to fix the lease.

Vice Chair Lemont asked for clarification of Mr. Beutel's recommendation -- keep the lease going or close it down? Mr. Affigne added that the site could be cleared and made available to an operator that would conform.

Chris Warfel was sworn in and identified himself for the record.

Chair Livingston asked Mr. Warfel to explain his position. Mr. Warfel stated that he felt that he has been in compliance. Mr. Warfel stated that he had removed/relocated equipment within the 10 day timeframe after notification and submitted photos for the record. Mr. Warfel explained that the site is challenging that he has worked on for eight years, trying different things to make the site viable.

Vice Chair Lemont asked Mr. Warfel to explain the unauthorized floating structures on the site? Mr. Warfel explained that one of the structures is for a research project he is doing in coordination with the US Department of Agriculture which has been prolonged due to a loss of information in their computer system. In answer to Vice Chair Lemont's question, Mr. Warfel stated that he thought he was within the confines of the CRMC Assent to perform research. Mr. Warfel stated that the research project which has been going for two years is very important to his lease. Mr. Beutel confirmed for Vice Chair Lemont that only three upwellers were permitted in the assent.

Mr. Sahagian asked for confirmation on what was before the Council. Mr. Fugate explained that Mr. Beutel was making recommendation to the Council for bringing the site back into conformance and making it a viable lease through a modification of his existing aquaculture permit. Vice Chair Lemont expressed his concern with allowing a modification until site is brought into compliance.

Mr. Affigne questioned Mr. Warfel on timeframe to bring lease into compliance. Mr. Warfel went into the history of his lease stating that although it is a challenging lease area, his lease is the reason why local oysters can be bought on Block Island in the summer. Mr. Warfel also stated again that he did maintain the lease and it was done within 10 days of the notification.

Mr. Goldman verified the photos on the record with Mr. Warfel and explained the content of his photos. Mr. Goldman marked the photos as Warfel exhibit 9 and 10. Mr. Warfel also explained that the photos showed gear that had been destroyed by the ice of the past winter in which he needed to dispose of the bottom culture gear.

Mr. Warfel stated that he agrees with recommendations from Mr. Beutel and agrees to the increase in the performance bond.

Mr. Beutel referred the Council members to their agenda packet, pages 67-76, showing time dated photographs for different perspective of the lease that were taken less than a month ago. The pictures showed bags all over the place. Mr. Warfel disputed the photographs and stated that he could have been vandalized as his type of gear would not travel that far in the direction indicated.

Stephen Land, Block Island Harbor master, was sworn in and identified himself for the record. Mr. Land proceeded to explain to the Council that Mr. Warfel's aquaculture lease has been a chronic problem for the entire 8 years he has been employed by the harbormaster's office, two years as assistant harbormaster and six years as harbormaster. Mr. Land stated that he is in favor of aquaculture and works hand in hand with aquaculturists to keep the water clean. Mr. Land expressed his opinion that the methods used by Mr. Warfel are not seaworthy and that extra anchoring will not work. Mr. Land stated that Mr. Warfel uses zip ties to tie his bags to the line which is not a viable tying method. Mr. Land acknowledged that Block Island is not an easy place to run a farm due to the heavy winds and suggested that leases that are housed below the water surface are easier. Mr. Land also stated that he does not believe that vandalism is an issue.

Vice Chair Lemont asked Mr. Land in his capacity as Harbormaster to give his recommendation for Mr. Warfel's farm? Mr. Land explained that Mr. Warfel is a member of the New Shoreham Town Council and that he works under him so he was hesitant to offer an opinion. Mr. Land stated that he would confer with Mr. Beutel to figure out a plan. Mr. Land expressed frustration that Mr. Warfel has not complied with CRMC requests for permit conformance and that the upwellers in question have not functioned in a very long time. In response to Vice Chair Lemont's question on boat traffic, Mr. Land stated that there is no boat traffic in this area except for paddle board and kayak.

Chair Livingston asked for a motion for Mr. Beutel, Mr. Land and Mr. Warfel to get together to give it one more try to have Mr. Warfel get into compliance using Mr. Beutel's recommendations as a starting point. Mr. Coia stated for the record that he would support that.

Mr. Beaudette asked about claim that there would be an obstruction if Mr. Warfel's system was moved. Mr. Land stated that he felt it is a valid point.

Vice Chair Lemont stated that he would not want to see the Council put someone out of business therefore he made a motion that Mr. Beutel Mr. Land and Mr. Warfel sit down within 10 days to resolve this and then Mr. Warfel will be given a 10 day period for the site to come back into compliance. Vice Chair Lemont added that if Mr. Warfel did not comply then Mr. Fugate would be given the authority to close down the operation. Mr. Beaudette seconded the motion. Mr. Coia stated that he would like it to come back before the Council rather than have Mr. Fugate close it down. Mr. Beutel stated that according to the Aquaculture regulations Mr. Fugate already had the authority to close down an aquaculture project using his discretion.

Mr. Affigne asked why an enforcement process was not followed on this site. Mr. Beutel stated because in working with Mr. Warfel they agreed that he would submit a modification.

Mr. Fugate is comfortable with the motion.

Mr. Sahagian moved the question.

Motion carried on a voice vote with one abstention from Mr. Affigne.

2008-11-062 MARK BARD -- Pursuant of the Rhode Island Superior Court decision, the applicant is submitting the current application for a State of Rhode Island Assent to construct and maintain: a new 3 bedroom 24' x 62' dwelling (1,488 sq. ft.), with a 10' x 62' second floor cantilevered deck. Dwelling will be serviced by town water and a denitrifying OWTS (septic system). The project requires a 35' (70%) buffer zone variance, the required buffer zone is 50', proposed is 15'. Additionally, a 39.7' (53%) setback variance is required, the required setback is 75', proposed is 35.3'. Located at plat 12, lot 87; Clarkes Village Road, Jamestown, RI.

Mr. Goldman briefed the Council regarding the record stating that CRMC had previously denied the application. Mr. Goldman explained that the Bards took appeal in Superior Court both the Town Zoning relief and CRMC denial. Mr. Goldman stated that the Court consolidated cases and with the reversal of the Town zoning decision, The Court remanded the application back to CRMC with substantial change in circumstances. At the request of Ms. Noonan, Mr. Goldman made the Judgement as Bard exhibit #1.

Mr. Lucia briefed the Council on the most recent submittal stating that revised plans were submitted with a larger buffer zone and setback. Mr. Lucia stated that during the public notice period several objections were received by CRMC. Staff report recommended larger buffer of 25' and removal of cantilevered deck. A new plan was submitted on August 18th with removal of the cantilevered deck replaced by a pervious patio and an increased 25' buffer. Mr. Lucia stated that CRMC staff no longer objected to the project with stipulations.

Mr. Fugate stated that after seeing staff recommendation in the staff report, the applicant revised their project and submitted plans more compliant with staff recommendation. After staff reviewed the revised plans, they added an addendum report to the Council records.

Mr. Sahagian asked by the staff report to the Council stated "no objections" but not "approval." Mr. Fugate stated that when staff sees there is evidence of objections in the file, they will say there are no objections to the variances. If the Council approves the variance, it is compliant.

Attorney Elizabeth Noonan was present to represent Mark Bard. Ms. Noonan stated that she had been involved in appeals for both CRMC and Town. Ms. Noonan stated that Mr. Bard was willing to accept each recommendation and condition of staff addendum report and that there were witnesses to discuss any other issue. Testimony of David Carchedi, PhD and Scott Rabideau, Environmental Scientist.

Dr. Carchedi's resume was submitted for exhibit. Marked as Exhibit Bard #2. Dr. Carchedi was sworn in and identified himself for the record. Mr. Coia moved to accept Dr. Carchedi as an expert witness for geotechnical engineering as he had previously testified before the Council as an expert in his field. Dr. Carchedi confirmed that he had been asked to look at geotechnical aspects of the project, take borings of the subsurface conditions below grade and analyze stability of coastal embankment with the house in the location. Dr. Carchedi's report was dated April 2015.

Dr. Carchedi explained his findings in the Slope stability assessment stating that the slope is stable with the load from the house with a 1.8 factor of safety in which the industry standard is 1.5. We found in this case the factor of safety was well beyond standard in the industry. Dr. Carchedi stated with confidence that if the house was built on the site according to the plans, there would be no problems with stability.

Mr. Beaudette asked if slope erosion in analysis had been done? Ms. Noonan stated that slope stability was part of the previous testimony.

Scott Rabideau was sworn in and identified himself for the record. Mr. Rabideau was previously qualified as coastal wetlands biologist. Vice Chair Lemont motioned and Mr. Coia seconded to approve Mr. Rabideau as an expert witness in the field of coastal wetland biology. Motion carried.

Testimony of Mr. Rabideau:

Mr. Rabideau explained his submittal to the CRMC prepared in 2014 regarding variance criteria, buffer zone criteria and elements of parts II and III of the CRMP. Mr. Rabideau stated that the project conforms to the CRMP as there is no impact to Type 1 waters and there is not impact to the coastal feature. Mr. Rabideau described the nonstructural shoreline protection that had been performed on site to firm up the coastal bluff using coir logs and plantings. Mr. Rabideau stated that it did fairly well after tropical storm Sandy. Mr. Rabideau stated that he had monitored the bluff for three years and that at the point maintenance was required for the bottom of the bluff. Mr. Rabideau stated that the request is the minimum variance needed to get reasonable use of residential dwelling. Mr. Rabideau stated that buffer zone markers would be installed for demarcation and that more than likely plantings would be done. Mr. Rabideau stated that the more buffer zone you have the more ability the ground has to discourage erosive forces and that the bluff is very thick and dense. Mr. Rabideau also explained that the rain gardens will help with groundwater.

Ms. CJ Doyle PE was sworn in and identified herself for the record. Ms. Doyle was qualified as professional engineer through a unanimously approved motion by Mr. Sahagian and seconded by Mr. Coia

Ms. Doyle testified to the drainage issues on the lot and described the property and project drainage; stated that rain gardens, catch basin and berm will help with drainage. Ms. Doyle stated that Clarkes Village Road was highly eroded as she entered the site but the newly maintained catch basin and berm held water well for dissipation.

Dr. Rosen who testified at the last hearing was previously qualified. Dr. Rosen was sworn in and identified himself for the record as Peter Rosen, PhD, Coastal Geologist. Dr. Rosen testified that he was familiar with the new plan and explained his site observations stating that the bluff was fully vegetated and that the coir structures were largely successful although maintenance was needed on the lowest coirs. Dr. Rosen stated that the rain gardens, berm with log on top, functioning catch basin and naturalizing the vegetation on land above the slope will serve to slow down and dissipate runoff.

Objectors:

Neil Blitz was sworn in and identified himself for the record. Mr. Blitz testified to presence of land fill, high velocity waves, and failing of lower half of nonstructural erosion control. Mr. Blitz asked the Council to make a site visit.

Bob Dutson was sworn in and identified himself for the record stating he was a professional engineer. Mr. Dutson testified to the presence of land fill, continued erosion of coir logs and request of Council site visit.

Shewarega Aynalem was sworn in and identified himself for the record stating that he was professional engineer and a resident of the area since 2000. Mr. Aynalem testified to the fact that there had been no change in circumstances based on the back of the lot.

Charles Schmidt was sworn in and identified himself for the record as a recent occupant and neighbor. Mr. Schmidt stated that the borings had been done in winter months and that the borings were measured from the road 15' to 17' in. Mr. Schmidt testified to presence of land fill and questioned whether the rain gardens will be effective when they are at a higher elevation than the house.

Frank Tarrantino was sworn in and identified himself for the record. Mr. Tarantino submitted eight photos that were taken along the shoreline between stairs and coir logs. Mr. Tarantino testified to the presence of land fill, drainage pipe coming out of the slope and the disruption of the coir logs. Mr. Tarantino talked about climate change and ocean rise of 10' in 50 years.

Varoujian Karentz was sworn in and identified himself for the record. Mr. Karentz testified to the road name needing to be corrected to reflect Clark Village Lane. Mr. Karentz also testified to land fill presence on embankment and further into property. Mr. Karentz talked about his experience with CRMC for his stone gabions and the requirement that he remove all manmade material. Mr. Karentz testified to the change in the coastal beach and loss of land over the years.

Joe Martino was sworn in and identified himself for the record as a neighbor. Mr. Martino had been there 36 years and testified that he had seen the bank collapse several times. Mr. Martino testified that there was presence of land fill in the bank. Mr. Martino suggested that Mr. Bard build a smaller home.

Robert Cochonis was sworn in and identified himself for the record. Mr. Cochonis talked about the history of the lot and its previous owners who could not get permits. Mr. Cochonis asked the Council to stick to regulations of a 50' buffer.

Russell Paskoski was sworn in and identified himself for the record. Mr. Paskoski testified that he swims there every day and that more and more rebar is uncovered every day. Mr. Paskoski talked about climate change and sea level rise.

Ms. Noonan spoke again of the condition changes and that the house designed further away from the coastal feature. Ms. Noonan explained that the test borings were located where they were because they would be in the middle of where the house is supposed to be. Ms. Noonan did not agree that there was fill on the property which is stated in the staff report. Ms. Noonan stated that the neighbors enjoyed using the property and wanted to keep their views. Ms. Noonan pointed out that Mr. Bard agreed to do everything that staff had requested and that based on the findings of their experts and of CRMC staff reports, a request for relief be granted for the development of the lot.

Mr. Affigne asked if he could visit the site as the maps that he was being asked to rely on were older maps with a MHW dating back to 2004.

Vice Chair Lemont stated that he respected Mr. Affigne's desire to visit the site and suggested the application be continued to another meeting. Mr. Goldman stated that the evidentiary portion of the meeting was closed.

Chair Livingston continued application to next hearing.

7. **ADJOURN**

Mr. Beaudette motioned, seconded by Mr. Coia, to adjourn.
Motion carried on unanimous voice vote. Meeting adjourned at 9:45 p.m.

Respectfully submitted,

Lisa A. Turner
Recording Secretary