

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, January 12, 2016 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, DEM Rep  
Raymond Coia  
Don Gomez  
Tony Affigne  
Jerry Sahagian  
Joy Montanaro  
Paul Beaudette

Staff Present

Grover J. Fugate, Executive Director  
Jeffrey Willis, Deputy Director  
Danni Goulet, Marine Infrastructure Coordinator  
Amy Silva, Sr. Environmental Scientist  
  
Brian Goldman, Esq., Legal Counsel

Excused Absence

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 December 8, 2015 Semimonthly meeting; seconded by Ray Coia. Motion carried on unanimous voice vote.

3. **SUBCOMMITTEE REPORTS**

Vice Chair Lemont read out a program change that was approved by the CRMC Planning and Procedures Subcommittee on October 23, 2015 meeting and are recommended for Council concurrence to begin the rule-making process in accordance with the Administrative Procedures act: Management Procedures Section 5.9 – Presentation of Expert and Lay Testimony – Amend existing Section 5.9 to provide notice to applicants and other parties that the introduction of new evidence, reports, or data at a Council hearing may result in the rescheduling of the hearing.

4. **STAFF REPORTS**

Mr. Fugate reported on the following items:

- Beach SAMP Stakeholder meeting scheduled for February 2, 2016 at URI 6-8 p.m. Notice will be sent around to subcommittee members

6. **Application Requesting Fee Waiver:**

**2015-12-072 WASHINGTON COUNTY COMMUNITY DEVELOPMENT CORPORATION  
– Requesting fee waiver for project to build 24 units of 100% affordable senior housing for low and moderate incomes. Located at plat 13, lot 43; 4130 Old Post Road, Charlestown, RI.**

Attorney Richard Hentz was present to explain to the Council that the project was being presented by an entirely non-profit organization to build senior affordable housing. The Council questioned the Fee Schedule for such a project. Mr. Fugate explained that the project fee would follow that of a subdivision giving a fee of between \$4,000-\$6,000. Vice Chair Lemont expressed his concern of setting a precedent regarding fee waivers. Mr. Fugate explained that if the Town of Charlestown was to be a co-applicant there would not be a fee as municipalities are exempt from paying our application fees. Chair Livingston asked the applicant if it was possible for them to have the Town as co-applicant. Vice Chair Lemont motioned that if the applicant gets agreement from the town of Charlestown to sign on as co-applicant that the Mr. Fugate as the Executive Director can handle the acceptance of the application. The motion was seconded. Mr. Affigne stated that he was not in favor the motion.

The motion did carry with six members in approval, two members against the motion -- Mr. Affigne and Mr. Gagnon, and one abstention by Mr. Coia based on the fact that the fee was not accurately determined.

**7. Applications which have been Out-To-Notice and are before the Full Council for Decision:**

**2015-10-003 TOWN OF NEW SHOREHAM -- Request for a ten year maintenance dredging of approximately 550 CY (each time) sandy materials adjacent to the bait dock. The material will be beneficially reused on the Town beaches. Located at plat 7, lot 000; adjacent to the bait dock in Hold Harbor, New Shoreham, RI.**

Mr. Goulet gave a brief overview of the application to the Council explaining that the dredge materials would be used as replenishment materials for the Town beaches. Mr. Gomez acknowledged the routine request having seen it in previous years and asked why they are not asking for a longer than ten years. Mr. Goulet explained that the request coincides with the timeframe on their Army Corps of Engineers permit. Mr. Gomez motioned for application, seconded by Vice Chair Lemont. Motion carried on a unanimous voice vote.

**2015-04-119 CYNTHIA SHERMAN – Request to reconfigure buffer zone from approved 37.5 foot to variable width. Located at plat 31, lot 160A; 15 Honeysuckle Lane, Portsmouth, RI.**

Ms. Silva gave a brief overview to the Council regarding the application explaining the assent history of the property which allowed under three assents the building of three separate additions; with the last addition a little bit bigger than the previous two additions. Ms. Silva explained that with the determined greater than 50% increase in total structural lot coverage a buffer zone of 75' was required. The owner did not want to reduce the size of the addition to reduce the buffer requirement, and thereby asked for a variance which was granted to reduce the buffer by 50% which became 37.5'. Ms. Silva explained that with the new application, the applicant was asking to change the agreed upon buffer configuration to a compensatory buffer in which the center portion is narrower than required and the sides wider than required. In reviewing the application and during a site visit, Ms. Silva explained that the traditional agreed upon buffer was never installed and a Cease and Desist Order was issued by CRMC enforcement staff. Ms. Silva

explained that it is Staff opinion that the application does not meet the variance criteria and is asking that the 37.5 foot buffer originally approved be restored. Mr. Fugate confirmed that the variance was given to the original buffer requirement and that this is a further variance to that original requirement of 75'.

Mr. Gomez stated he felt that the hardship was self-inflicted noting that the as-built structures caused the increase in the size of the footprint.

Mr. DeAngelis also explained the assent history of the property explain that the original assent was issued on February 21, 2014 calling for a 4225 square foot buffer in the typical rectangular shape with a path leading down to the dock. Mr. DeAngelis explained that two weeks prior to the Sherman's assent being issued, a case was handled by the Council on almost the same application was granted by the council for compensatory buffer. Mr. DeAngelis stated that the Sherman's consulted with Mr. Rabideau of Natural Resource Services who had handled the other case of compensatory buffer before the Council. Mr. DeAngelis stated that the Sherman's did not object to having a buffer but they would like to reconfigure their buffer to provide a larger area for recreation in the middle of the yard and put the majority of the buffer on the sides of the yard which would even increase the size. Mr. DeAngelis stated that he had inquired with the CRMC Staff and claimed that in March of 2015 he had received a "lukewarm" favorable reaction to a compensatory buffer. Mr. DeAngelis stated that in August he had been informed that an enforcement action was taken against the Sherman's for not complying with the buffer requirement of the February 2014 permit. Mr. DeAngelis stated that Mr. Fugate directed his to have his clients install the buffer in the areas that were not affected by the new application. Mr. Fugate clarified that when approached by Mr. DeAngelis, he stated that he would check with CRMC staff. Ms. Silva stated that Mr. DeAngelis did directly reach out to her and that in an email she informed him that she would not support the proposal for a compensatory buffer. Mr. DeAngelis produced an email from Grover Fugate giving an indication that a compensatory buffer may be agreeable due to the approved path.

Scott Rabideau was sworn in, identified himself for the record and was qualified as an expert witness. Mr. Rabideau explained that he represented the Sherman's prior to the involvement of Mr. DeAngelis, stating that he had sought and negotiated the buffer variance of 50% which was issued administratively. Mr. DeAngelis handed out a plan of the buffer which Mr. Goldman marked as Exhibit Sherman 1 full. Mr. Rabideau explained that the square footage of the buffer would be exactly the same but in a variable width which can be tied into the existing vegetation which would actually increase the available buffer.

Mr. Rabideau testified that the compensatory buffer was a better option because with a buffer that is straight across the back of the property, 15' from their deck, the property owners can be tempted to "clip and snip" which over time can move the buffer zone closer to the feature. Mr. Rabideau stated that a larger sideline buffer would provide a barrier from the neighbors, and act as a larger habitat for wildlife. Mr. Rabideau explained the sideline boundaries as some deciduous and some coniferous and that the buffer would extend into that which is already present.

Mr. Rabideau starts explaining the aspects of the application that he had presented to the Council on January 12, 2014 which he claimed the buffer situation was just like the Sherman buffer situation.

Vice Chair Lemont stated that each application is supposed to stand on its own.

Mr. Affigne questioned why Mr. Rabideau was introducing aspects of another application when the information is not in the application package for the Council to review the similarities.

Mr. Affigne motioned to table the Sherman application before them until such time as all the evidence is in front of the Council for their deliberation. Mr. Beaudette seconded the motion.

The motion to table the application passed with Mr. Coia, Mr. Gomez, and Mr. Sahagian voting against the motion.

Mr. Coia explained his vote saying that he did not interpret Mr. Rabideau's testimony as evidence but as rationale and justification to the question proposed.

Mr. DeAngelis asked when the application will be brought back before the Council. Chair Livingston stated that staff would reschedule.

8. **ADJOURN**

Vice Chair Lemont motioned, seconded by Mr. Coia, to adjourn.  
Motion carried on unanimous voice vote. Meeting adjourned at 6:45 p.m.

Respectfully submitted,

Lisa A. Turner  
Recording Secretary