

In The Matter Of:
Coastal Resources Management Council
Perry Raso

Hearing
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November 17, 2020

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
COASTAL RESOURCES MANAGEMENT COUNCIL
SUBCOMMITTEE HEARING

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IN RE:

CRMC File No. 2017-12-086

In the matter of Perry Raso

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Date: November 17, 2020
Time: 1:00 p.m.
Place: Via Zoom
Rhode Island

MEMBERS PRESENT

Jennifer Cervenka, Chair
Raymond C. Coia, Vice Chair
Donald T. Gomez
Patricia Reynolds
Anthony DeSisto, Esquire, Legal Counsel

STAFF PRESENT

Jeff Willis, Executive Director
Lisa Turner, Secretary
Ryan Moore, Moderator
James Boyd, Deputy Director

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APPEARANCES

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1 access points referenced in this document?

2 A. The public access points are shown as yellow triangles,
3 and there are unverified public access points that were
4 in the GIS data that is shown as red circles.

5 Q. For the record, where are the public access points on
6 Segar Cove?

7 A. The public access points on Segar Cove are on the western
8 shoreline, so the southwestern shoreline of Segar Cove.

9 Q. Okay. There's also a -- you've mapped out Mr. Raso's
10 current aquaculture operation; is that correct?

11 A. That is the -- yes, yes. That is based off the RIDEM
12 current mapping, yes.

13 Q. That's not from the GPS coordinates that you took when
14 you were out there?

15 A. That's correct. That's from the GIS data layers that
16 were available in the spring when we rechecked all this.

17 Q. When you say RIDEM, you are referring to the Department
18 of Environmental Management, correct?

19 A. I am, yes.

20 Q. The numbers that appear in Segar Cove, what are those? I
21 see several numbers. What are those number reflective
22 of?

23 A. Yes, so in Segar Cove it says 53.5 acres. That's the
24 measured side of Segar Cove. And when we measured that,

1 we drew a line from the tip of Gardner's Island and the
2 tip of Ram Point to measure that area in GPIS, and we
3 also computed the percentage of Potter Pond as
4 16.3 percent. Potter Pond is listed in a variety of
5 publications, and we verified that it's about 329 acres
6 in size.

7 Q. How large did you say Segar Cove is?

8 A. 53 and a half acres. I think it's just over a thousand
9 feet wide at the point where Mr. Raso is proposing his
10 lease. I just measured that earlier today.

11 Q. Are you aware based on the materials that you have
12 reviewed of how many deep water coves are on Potter Pond?

13 A. I am, yes. I believe there are two.

14 Q. If you could point out where the two are just for the
15 record --

16 A. Yes, so Segar Cove is here. I'm sorry, that's the
17 northern basin or Skier's Cove, and Segar Cove is right
18 here.

19 Q. Okay. So there is a notation below the green areas. Can
20 you explain to the Subcommittee, I know it speaks for
21 itself, but can you tell us how you came up with that?

22 A. Yes. On the Rhode Island GIS data portal there's a layer
23 called submerged aquatic vegetation with a date of 2013.

24 Q. Okay. I want to draw your attention now to figure --

1 which is not a preeminent use among other uses of the
2 public facility. Right?

3 THE WITNESS: I'm not sure to be honest with
4 you. The percentage, the breakdown percentage of people
5 that are just out there, you know, boating around versus
6 those who are tubing or waterskiing. I know there are
7 some exhibits --

8 MR. MURRAY: But it has a much bigger footprint
9 than typical navigation, someone going fishing or --

10 THE WITNESS: Towed sports does, yes.

11 MR. MURRAY: Okay. I guess the last question I
12 would ask is, a lot of your calculations were based on
13 GIS?

14 THE WITNESS: That's correct.

15 MR. MURRAY: I make the point that that's not a
16 survey. It's reasonably accurate, ballpark accurate, but
17 not survey accurate, right?

18 THE WITNESS: Yes.

19 MR. MURRAY: Thanks. I appreciate it.

20 THE WITNESS: You're welcome.

21 MR. GOMEZ: Madam Chair?

22 CHAIRWOMAN CERVENKA: Go ahead.

23 MR. GOMEZ: I have one question if that's okay.
24 It seems that a lot of your testimony is based on the

1 200-yard ordinance -- 200-foot ordinance, I believe. My
2 question is, really, did you interpret the proposed
3 oyster farm or the proposed aquacultural farm as a hot
4 point that would initiate the 200 feet from the limit of
5 the farm? Or is that -- to me, you made an
6 interpretation and I'm not sure that's exactly what the
7 ordinance specifies. And I thought also that the
8 200 feet came from the shoreline out along the pond also,
9 and I do think that the staff report shows it that way
10 without going back to it. But I remember that the
11 200-foot in the staff report did not include the oyster
12 farm. It went through the oyster farm to some extent, so
13 it did -- the oyster farm was 200 feet, a portion of it.
14 But the 200 feet didn't start at the end of the oyster
15 farm to the water side. It started from the shoreline
16 coming out.

17 So there's a conflict in I guess the two
18 interpretations. You initiating the 200 feet from the
19 outside of the oyster farm, the water side, and the staff
20 report seems to have initiated it from the shoreline out
21 which still means that the farm encompasses some area
22 outside of the 200-foot limit.

23 So maybe you had a comment on that?

24 THE WITNESS: Yes, sure, a couple comments. I

1 think -- I didn't go back and look at the staff report,
2 but I think there are two different buffers that we've
3 been discussing here. There's the 200 feet from -- so
4 the towed water sports buffer, there's the towed water
5 sports buffer which is Section 4-8-1 of the South
6 Kingstown ordinance, and that is a 200-foot buffer. No
7 skier or his or her boat shall approach any stationary or
8 moving object closer than 200 feet. So that would be a
9 stationary object. You're right. We use the edge of the
10 lease as the stationary object. We can't know exactly
11 where the various cages or the buoys would be. So a buoy
12 that's anchored to the bottom would be a stationary
13 object in the water under that regulation.

14 The next piece you're referring to the 200 feet from
15 shore, and that is for Section 4-8-6, and that pertains
16 to personal watercraft where it says "No person shall
17 operate a personal watercraft within 200 feet of
18 swimmers, divers, shore or moored vessels."

19 So in our figures, the orange area was the personal
20 watercraft so that was based off of shore or moored
21 vessels in our two figures. And the towed vessels was
22 the red area of the buffer that was based off of
23 stationary objects, docks, and then also the stationary
24 object represented by the lease.

1 Your opinion on whether or not there's a significant
2 impact on other water dependent uses, is it tied to Segar
3 Cove specifically, or are you saying that it's with
4 respect to the entire Potter Pond?

5 THE WITNESS: Segar Cove, that 53 acres, and
6 then the 30.3 acres of watershed that goes down to 20.
7 So I would say that 33 percent reduction is a significant
8 impact.

9 CHAIRWOMAN CERVENKA: Okay. And then what
10 remains, I guess, is that reduced sheet plus the -- I
11 can't really see it, but I'll say like 67.8 acres is the
12 normal [ZOOM INTERRUPTION] at Skier's Cove?

13 THE WITNESS: Correct. The other two areas,
14 right. But the Segar Cove number size would be down, so
15 the overall size would go down as well.

16 CHAIRWOMAN CERVENKA: So that's about 80 acres
17 of area that would -- if a proposed lease were approved,
18 and it did reach the watershed, the total acreage for
19 water skiing would be about -- do I have it right -- or
20 it would be maybe 87 or close to 90 depending what
21 configuration you used and whether or not you had the
22 anchored boats. I know there were different figures
23 offered.

24 THE WITNESS: Yes. So it would actually be a

1 don't have much time, but let's say until 5:55 and then
2 we'll deal with some administrative and then wrap.

3 MS. NOONAN: Thank you, Madam Chair.

4 CROSS-EXAMINATION BY MS. NOONAN

5 Q. I guess I'll say good evening, Mr. Whitney. How are you?

6 A. I'm good, thank you.

7 Q. I can say I've done a lot of work with ESS, and I respect
8 the work that they do, but I don't think we've had the
9 pleasure of working together yet.

10 A. I don't think we have. I heard your name, but we have
11 not had the pleasure.

12 Q. Thanks. Obviously you were retained by Mr. Capizzo to do
13 a peer review of the proposed farm in Segar Cove,
14 correct?

15 A. That's correct, yes.

16 Q. And you were retained in the first quarter of 2018?

17 A. I believe that's correct, yes, yes.

18 Q. Okay. How many aquaculture applications have you been
19 involved with prior to this one?

20 A. This is the first in terms of aquaculture.

21 Q. Is it fair to say that your testimony does not in any way
22 address the ecology of the aquaculture project, correct?

23 A. That's correct.

24 Q. You testified that you have a 19-foot boat. Dr. Rice

1 farm as well as other objects in Segar Cove including
2 docks to see how much they've limited the watersheet; is
3 that right?

4 A. That's correct.

5 Q. We've talked about the town of South Kingstown ordinance.
6 Do you know whether or not that ordinance, which is
7 Section 4-8, has been approved as part of the South
8 Kingstown Harbor Management Plan?

9 A. I believe it's -- the Harbor Management Plan is
10 referenced in the beginning of that ordinance. I'd have
11 to go back and look and see what the exact language is,
12 but I do believe it is referenced in there.

13 Q. The question is, has it been adopted or approved as part
14 of the management plan? You don't know that as you sit
15 here today, right?

16 A. I do not, no.

17 Q. In talking about those buffer areas I want to be clear.
18 At 4-8-1, it talks about a waterskier in his or her
19 boat -- no waterskier or his or her boat shall approach
20 any stationary or moving object, correct?

21 A. That's correct.

22 Q. Do you consider the shore to be a stationary object?

23 A. I would, yes.

24 Q. And have you included that 200-foot buffer from the shore

1 in your calculations as well as from docks and the
2 proposed farm?

3 A. We did not, no.

4 Q. All right. So you've said that you were going to lose --
5 by this proposal you are going to lose 10 acres of
6 available area, right?

7 A. Correct.

8 Q. If you included that 200-foot buffer from the stationary
9 shoreline, wouldn't that decrease the 10 acres to about 5
10 acres as Mr. Osgood testified to last week?

11 A. I'd have to put in the GIS to be able to quantify it.

12 Q. You never included that buffer zone in your calculation
13 so it's not part of your report or your testimony at this
14 point?

15 A. That's correct. It was based off of the stationary
16 objects of those docks.

17 Q. Now, in terms of the Category B assent criteria that we
18 talked about, or that Mr. Capizzo talked about with you
19 in your report which is Exhibit 1, you never testified or
20 never stated in that report that the proposed farm would
21 unreasonably interfere with or impair existing public
22 access to or use of the tidal waters or shore, did you?

23 A. If I could just take a quick look at my report?

24 Q. Take your time, Mr. Whitney.

1 [PAUSE]

2 A. Just in looking at the introduction to our report, we did
3 not use "unreasonable." We made a variety ten statements
4 based on the findings of our review.

5 Q. But I'm going very specifically to the Category B assent
6 requirements. These are a term of art, and as an
7 engineer I'm sure you are used to precision.

8 So while you may have used the word, let's go to
9 Exhibit 1 on the first page, Number 4. You state the
10 position of the proposed -- strike that. Are you with
11 me, Mr. Whitney?

12 A. I am, yes.

13 Q. Great. "The position of the proposed 3-acre aquaculture
14 facility near the shoreline would interfere with riparian
15 access to approximately 590 feet of shoreline along Segar
16 Cove with the original proposed configuration."

17 You don't say "unreasonably interfere" there, do
18 you?

19 A. The word "unreasonably" is not there.

20 Q. Also, going to the Category B assent requirements J, no
21 where in your report did you state that the alteration or
22 activity will not result in significant conflicts with
23 water dependent uses and activities such as recreational
24 boating, fishing, swimming, navigation and commerce, do

1 you?

2 A. Can you repeat the question? I think there was a double
3 negative in there.

4 Q. Sorry. In your report -- I'm not trying to trick you up
5 here. It's 5:21 in the day --

6 A. Exactly.

7 Q. Going to Item J of the Category B assent in your report,
8 no where do you state that there are significant
9 conflicts with water dependent uses and activities such
10 as recreational boating, fishing, swimming, navigation
11 and commerce, do you?

12 A. I don't believe we use those words, no.

13 Q. And you understand those are the Category B assent
14 requirements, correct?

15 A. I do.

16 Q. And you're familiar with the CRMC regulatory scheme, I
17 presume?

18 A. Yes.

19 Q. So in fact then, today in your testimony you got a little
20 more expansive and you're talking about a significant, I
21 believe, let me get my words right here. Let's be clear
22 that when you make your determinations today, which are
23 different from your report, you're only talking about
24 Segar Cove, not Potter Pond, right?

1 A. The questions that I was being asked were predominantly
2 about Segar Cove, that's correct.

3 Q. Okay. And again, your area that you're testifying is
4 limited to boats with towed water sports and personal
5 watercraft which are jet skis, right?

6 A. We also talked about those. I think we also talked about
7 kayakers, paddle board and sailboats during the testimony
8 too.

9 Q. But would you agree that generally the access for paddle
10 boats and canoers, kayakers is less impaired by the farm
11 than motor sports, right?

12 A. I would agree, yes.

13 Q. You heard testimony that you can paddle through the
14 farms, right?

15 A. I did.

16 Q. And in fact, though, going back to this it's really an
17 issue of navigation. And you talk about the other farm,
18 the existing farm that's out there. You were able to
19 navigate that, were you not, or whoever was driving your
20 boat?

21 A. Yes, they were navigating, yes.

22 Q. So they were able to get around that -- say you're going
23 from Skier's Cove back to Segar Cove. Even though it
24 narrows at certain points, one can navigate between those

1 Q. And, additionally, the farm would only occupy 0.9 percent
2 of Potter Pond if approved, right?

3 A. I don't know that we calculated that number so I'd have
4 to verify.

5 Q. I think we did --

6 A. Did we?

7 Q. -- it before --

8 A. We might have. Let me see. Yes, 0.9 percent on Page 4,
9 that's correct.

10 Q. Okay. And you've calculated that the area of Segar Cove
11 that's currently restricted with the 200-foot town buffer
12 for waterskiers is at 57 percent of the cove, right?

13 A. 30.3 acres, which would be 57 percent, yes.

14 Q. So that's as it is today without any farm in there,
15 right?

16 A. Actually, are you referring to Section 1.6.1?

17 Q. I was on Page 7 --

18 A. Page 7, yes. I didn't mention -- it didn't come up in
19 the line of questioning, but I did notice as I was
20 preparing the other day that there was an error in those
21 numbers. I did the reciprocal. So in that line it
22 says -- it currently says any loss of 30 --

23 Q. Hold on so the Committee knows where you are.

24 A. Sure.

1 Q. You are in Exhibit 1 and on Page 7?

2 A. Page 7, right, Section 1.6.1.1. It's right in the middle
3 of the page. It's the --

4 Q. Existing conditions?

5 A. Yes, existing conditions. The fifth line down starts
6 with the word "in." It presently says, "In a loss of
7 approximately 30.3 acres, 57 percent." I reversed the
8 numbers. I did the reciprocal. It should read, "In a
9 loss of 23.2 acres or 43 percent." I testified earlier
10 that there was 30.3 acres available. I think attorneys
11 would call that a scrivener's error.

12 Q. Well, percents change. I'm not sure if that's quite
13 scrivener's. John Boehnert can weight in scrivener's
14 error for us.

15 If you applied that 200-foot buffer to the shoreline
16 with this number, what would the area currently be that
17 is covered by the buffer area, all the buffer areas? Do
18 you have that number?

19 A. I don't in front of me, no. I'd have to calculate that.

20 Q. What would it take for you to do that? Would you be able
21 to provide that?

22 A. I would. I would have to have somebody pull up NGIS and
23 do that.

24 Q. Okay. Any other errors in your report that you have

1 discovered that you haven't notified us or the Committee
2 of at this point?

3 A. Yeah, just in Section 1.6.1.2, just below it. The
4 20.2 acres should be 20.3.

5 Q. So you're talking in the second paragraph of that
6 Section 22 on the third line should be 20.3?

7 A. Yes, yes, and then on that line as well, 10.1 acres
8 should be 10.0.

9 Q. 10 even, okay?

10 A. Yes, yes.

11 Q. Again, this isn't factoring in that 200-foot buffer from
12 the shoreline, right?

13 A. Right, right, right. The regulation doesn't call out the
14 shoreline in that piece, where it does in the personal
15 watercraft piece as well. That's just the way the
16 regulation is written, I guess.

17 Q. Did you speak to the harbormaster about how this is
18 applied?

19 A. I did not.

20 Q. If there was a kayaker in the middle of the cove right
21 now without the farm, anyone that wanted to waterski
22 would have to stay 200 feet away from that kayaker; is
23 that right?

24 A. That's correct. It would be a moving object or a

1 Let me ask you. Without the farm, how many skiers
2 can be accommodated in the cove with all of the
3 applicable buffers in place?

4 A. I think Figure 5 doesn't show the number of skiers that
5 could be accommodated. It's really -- that was a
6 simulation so it's showing the path that was taken by a
7 vessel on a day skiing, simulating skiing.

8 Q. And that was Mr. Latham, one of the objector's, vessels,
9 right?

10 A. It was.

11 Q. And that was the same day that you took those pictures,
12 the end of June 2018?

13 A. That's correct.

14 Q. Well then forget Figure 5.

15 Again, Committee Member Reynolds was talking about
16 the geometry. So let me ask you. Without the farm but
17 using all the necessary buffers that the town of South
18 Kingstown calls for, how many skiers could you have in
19 Segar Cove safely?

20 A. You could probably have two maybe three vessels in that
21 area doing small loops.

22 Q. All right. So that's two to three skiers with small
23 loops without the farm; do I have that correct?

24 A. That's my opinion, yes.

1 Q. And one to two skiers with the farm, correct?

2 A. Correct.

3 Q. And that assumes that there's no other stationary or
4 moving object in the area when those skiers are around
5 that would impact that 200-foot buffer, right?

6 A. Correct.

7 Q. So it would come down to, the impact is one waterskier on
8 this farm if the farm is implemented?

9 A. At a time, yes.

10 Q. Okay.

11 A. At a point in time, yes.

12 MS. NOONAN: I'd like to go to some of the
13 figures that you have. Let's start -- actually, if you
14 could, before we get to that, let's put up Exhibit 2,
15 please, Objectors' Exhibit 2, which is the mooring and
16 dock field. Mr. Moore, if you want to do that, or
17 Leslie, if you can do that. I'm certainly not doing it,
18 so...

19 MS. PARKER: Yes, it will just take me a
20 minute.

21 MR. MOORE: Leslie, you have control.

22 MS. PARKER: Thank you.

23 [PAUSE]

24 MS. NOONAN: Thanks, Leslie. Sorry. Just to

1 A. That would be a correct statement, yes.

2 Q. Okay. And in looking at this, maybe Leslie if you can
3 zero in or expand the opening to the cove, did you do any
4 calculations about the ability of skiers or personal
5 watercraft, jet skiers, to enter or leave the cove in
6 light of the town ordinances on buffers?

7 A. Not specific to leaving the cove, no.

8 Q. And you see, if I'm reading that right, that it's
9 240 feet across; do you see that?

10 A. Yes, I believe that was shoreline based on GIS is what
11 Mr. Osgood testified, yes.

12 Q. And so if you applied the 200-foot buffers on either side
13 from the shoreline, effectively this cove should be
14 closed to towed water sports; is that fair?

15 A. If there was water for that 240 feet you'd have 20 feet
16 to be able to --

17 Q. You have -- I'm sorry, two --

18 A. Yes, yes, I'm sorry. It would effectively be closed,
19 yes.

20 Q. Right, because you have 200 feet coming from each
21 shoreline, correct?

22 A. That's correct, yes.

23 Q. Okay. I'm going to turn to your figures of your other
24 report, but before I do that I just wanted to ask you in

C E R T I F I C A T I O N

I, Lisa M Reis, hereby certify that the foregoing Pages 296 through 477, inclusive, are a true and accurate transcript of my stenographic notes of the proceedings, via Zoom, which occurred on the above-entitled dates, to the best of my ability.

LISA M. REIS, RPR
Court Reporter/Notary Public
My Commission expires on 7/27/24

Sworn to and subscribed before me,
This 30th day of November, 2020