

STATE OF RHODE ISLAND
PROVIDENCE, SC.

COASTAL RESOURCES MANAGEMENT COUNCIL
Oliver H. Stedman Government Center
4808 Tower Hill Road, Suite 116
Wakefield, RI 02879-1900

PLANNING AND PROCEDURES SUBCOMMITTEE
RECOMMENDATION

Petition of: Quidnessett Country Club

Docket No.: 2024-04-071

Quidnessett Country Club (“Petitioner”), filed with the Coastal Resources Management Council (“Council”) a petition for a regulation change (“Petition”) regarding water type classifications. Specifically, Petitioner has proposed changing the water type classification for a portion of the Narragansett Bay from a Type 1 (Conservation Areas) classification to a Type 2 (Low Intensity Use) classification. The subject area of the Narragansett Bay is adjacent to approximately 1,430 feet of shoreline in North Kingstown. That segment of shoreline abuts property owned by the Petitioner at 950 North Quidnessett Road, (Assessor’s Plat 167, Assessor’s Lot 002) North Kingstown, RI, as well as property owned by Bayview Real Property, LLC at 860 North Quidnessett Road (Assessor’s Plat 167, Assessor’s Lot 003) and 860 NQR LLC at 862 North Quidnessett Road (Assessor’s Plat 167, Assessor’s Lot 001).

Petitioner’s request was brought before the Planning and Procedures Subcommittee (“Subcommittee”) for evaluation. Accordingly, the Subcommittee held several meetings to assess the Petition on the following dates: May 14, 2024; July 23, 2024; September 24, 2024; December 10, 2024. These meetings were held pursuant to the Administrative Procedures Act. At that time, Petitioner, other interested parties, and CRMC Staff, submitted evidence, all of which was incorporated into the record. All evidence so submitted to the Council pursuant to this Petition, whether it be by interested parties, through its staff members and other various state agencies, has been and is available to all interested parties at the Council offices located at the Stedman Government Center, 4808 Tower Hill Road, Wakefield, Rhode Island 02879.

The Petition was first brought before the Subcommittee on May 14, 2024. The Petitioner was not in attendance. CRMC Executive Director Jeffrey Willis stated that the Petition was in response to a CRMC enforcement matter that was the result of Petitioner’s construction of a rip rap revetment without a CRMC permit. The Executive Director further explained that structural shoreline protection is prohibited along Type 1 shorelines, and thus, Petitioner has filed a Petition to change the water type.

CRMC Coastal Policy Analyst Bruce Lofgren stated that the Subcommittee had three avenues in which it could respond to the Petition. First, the Subcommittee could deny the Petition. Second, the Subcommittee could initiate rulemaking. Third, the Subcommittee could direct CRMC Staff to issue an Advance Notice of Proposed Rulemaking pursuant to R.I.G.L. § 42-35-2.5. At that meeting, the Subcommittee voted to address the Petition through an Advanced Notice of Proposed Rulemaking.

The Subcommittee held a second meeting regarding the Petition on July 23, 2024. At that meeting, the Executive Director explained that the purpose of the meeting was to gather additional public comment beyond the written comment obtained through the Advanced Notice of Proposed Rulemaking. After the Executive Director explained the purpose of the July 23, 2024 meeting, Chair Coia opened the meeting to public comment. Twenty-seven (27) commenters spoke in favor of the Petition. Eight (8) commenters spoke in opposition to the Petition.

Prior to the September 24, 2024 meeting, CRMC Staff generated an Inter-Office Memorandum, complete with Staff Recommendations(s). The Staff Recommendation, in the CRMC Staff Report, states “The CRMC Staff recommends the Planning and Procedures Subcommittee deny the Petition for the Promulgation of Rules and not initiate rule making, and that the Planning and Procedures Subcommittee adopt the Staff’s recommendations as a grounds for denial in this instance.”

During the September 24, 2024 meeting, Mr. Lofgren and Coastal Policy Analyst, Kevin Sloan, summarized the Staff Report before the Subcommittee. Mr. Sloan explained that it was CRMC Staff’s position that the Petition should be denied. Mr. Sloan provided the following three reasons for the Staff’s opinion: one, the appropriateness of the current Type 1 water type classification; two, inconsistency with the coastal planning mandated by the CRMC enabling legislation and state regulations contained within the Red Book; and three, potential negative impacts to the public shoreline lateral access, coastal habitat, and marine resources. Mr. Lofgren and Mr. Sloan explained each of these points in detail through the remainder of their presentation to the Subcommittee.

After Mr. Lofgren and Mr. Sloan presented their Staff Report to the Subcommittee, members of the Subcommittee asked them questions. Chair Coia asked questions related to the timeline for the water type designation, and the construction of the golf course. Council Member Gomez asked questions related to habitat and erosion. Council Member Reynolds asked about shoreline protection alternatives.

During the December 10, 2024 meeting, the Petitioner, through its Legal Counsel, Robin Main, presented its Petition to the Subcommittee. Attorney Main introduced the following three witnesses before the Subcommittee: Joseph Klinger, the Vice President and principal

environmental scientist with Ecotones, Incorporated; Timothy Gerrish, a registered landscape architect, and golf course architect based in Providence; and Abraham Cohen, the Vice President of Business Development at Marquis Health Consulting Services, which oversees the nursing facilities at Bayview at Scalabrini, a facility that abuts the Quidnessett Country Club to the North. Mr. Klinger described the Petition and the basis for the Petition. Mr. Gerrish testified regarding whether the Quidnessett Country Club's golf course could be redesigned to retreat from coastal erosion. Mr. Cohen testified that Bayview at Scalabrini supports the Petitioner's Petition.

After Attorney Main presented her witnesses, CRMC Staff responded to the presentation. Specifically, Mr. Lofgren indicated that the witness testimony would not change his recommendation to the Subcommittee.

After hearing thereon, and consideration thereof, the Council made the following findings of fact:

1. On April 12, 2024, CRMC received Petitioner's request to reclassify a portion of Narragansett Bay from Type 1 Waters to Type 2 Waters.
2. The proposed portion of Narragansett Bay is adjacent to the following properties: 950 North Quidnessett Road, (Assessor's Plat 167, Assessor's Lot 002) North Kingstown, RI 02852; 860 North Quidnessett Road (Assessor's Plat 167, Assessor's Lot 003) North Kingstown RI 02852; and, 862 North Quidnessett Road (Assessor's Plat 167, Assessor's Lot 001) North Kingstown, RI 02852.
3. Petitioner's Petition specifically requested that 650-RICR-20-00-1.6(I) be amended to include the following description of the proposed water type classification change: "Straight line extension 500 feet offshore and perpendicular to shore at the northernmost boundary the coastal wetland/barrier east of Quidnessett Country Club and North of Line 43 (from point at approximately 204,197N/352,897E RIspf83). Straight line extending 500 feet offshore of and parallel to the northern property line of 862 North Quidnessett Rd., AP 167, Lot 1, N. Kingstown. (from point at approximately 205,756N/353,143E RIspf83). The area between these lines is Type 2 Waters."
4. The Petition also requested that the visual depiction of the subject portion of Narragansett Bay, as displayed in 650-RICR-20-00-1.6(I)(5), be amended to depict the written amendment outlined above.
5. The portion of Narragansett Bay described in the paragraph above is currently classified as Type 1 Waters.

6. The Petitioner has requested that the portion of Narragansett Bay described above be classified as Type 2 Waters.
7. Petitioner's Petition came before the Subcommittee pursuant to R.I.G.L. § 42-35-6 and 650-RICR-10-00-01.4.9.
8. Petitioner, via an April 18, 2024 email sent by its Legal Counsel, Jennifer Cervenka, waived the agency's 30-day response requirement under R.I. Gen. Laws § 42-35-6 so that the agency could complete its investigation on the Petition.
9. The Subcommittee directed CRMC Staff to proceed with Advanced Notice of Proposed Rulemaking pursuant to R.I.G.L. § 42-35-2.5.
10. Under R.I.G.L. § 42-35-2.5, the Subcommittee solicited and received written and oral comment from the public, heard testimony from witnesses presented by the Petitioner and argument from Petitioner's attorney, and received written and oral reports from CRMC Staff.
11. The CRMC Staff Report states that "[b]ased on the evidence and facts presented herein, it is CRMC Staff's opinion that the Petition be denied for the following reasons: 1. The appropriateness of the current Type 1 WTC; 2. Inconsistency with coastal planning mandated by the CRMC's enabling legislation and state regulations contained in the Redbook; and 3. The potential negative impacts to public shoreline lateral access, coastal habitat, and marine resources."
12. During the December 10, 2024 Subcommittee meeting Council Member Gomez moved to deny the Petition based on the Staff Report and the discussion before the Council. Council Member Horbert seconded the motion. The motion carried on a unanimous roll call vote.
13. The Subcommittee hereby adopts and incorporates the findings made by CRMC Staff.
14. The Subcommittee hereby finds that Petitioner has not met the burden of proof under the applicable sections of the CRMC's Management Procedures.
15. Based on the foregoing, there is a reasonable probability of conflict with a plan or program for management of the State's coastal resources as well as damage to the coastal environment of the State of Rhode Island.

Conclusions of law:

1. The Coastal Resources Management Council has been granted jurisdiction over the above-mentioned regulation pursuant to RIGL Section 46-23-1, *et. seq.*
2. The proposed regulations change conflicts with the management plan approved and adopted by this Council and in effect at the time the Petition was submitted.
3. The record reflects that the evidentiary burdens of proof as set forth in the Coastal Resources Management Council's Management Procedures have not been met for this proposed regulation change.

WHEREFORE, as a result of these findings of fact, and conclusions of law, it appears that the proposed regulations change has a reasonable probability of causing a detrimental impact upon the coastal resources of the State of Rhode Island. As a result of these findings of fact and conclusions of law, the Subcommittee hereby recommends that the Council deny the Petition.

FOR THE SUBCOMMITTEE,

Jeffrey M. Willis, Executive Director

Dated: