

STATE OF RHODE ISLAND

PROVIDENCE, SC.

SUPERIOR COURT

[FILED: August 23, 2023]

SALLY ROBINSON SQUIBB,  
as Trustee of the Sally Robinson  
Squibb Trust - 2015

*Appellant,*

v.

STATE OF RHODE ISLAND  
COASTAL RESOURCES  
MANAGEMENT COUNCIL;  
and RAYMOND COIA; in his capacity  
as Chair of the Coastal Resources  
Management Council; and JEFFREY  
WILLIS, in his capacity as the  
Executive Director of the Coastal  
Resources Management Council; and  
JONATHAN J. JANIKIES, as Trustee  
of the Jonathan J. Janikies Revocable Trust.

*Appellees.*

C.A. No. PC-2022-02007

**DECISION**

**NUGENT, J.** Before the Court is an appeal brought by Appellant Sally Robinson Squibb, as Trustee of the Sally Robinson Squibb Trust - 2015 (Ms. Squibb) challenging Appellee Coastal Resources Management Council’s (CRMC or Council) March 10, 2022 decision (the Decision) to allow Appellee Jonathan J. Janikies (Mr. Janikies) to construct a residential boating facility (the dock), with a boat lift and a jet ski lift (collectively, the boat lifts) from his property. Jurisdiction is pursuant to G.L. 1956 § 42-35-15 (judicial review of contested administrative cases).

## I

### Facts and Travel

Ms. Squibb and Mr. Janikies each own nearby, non-adjacent lots of waterfront real estate located in the Town of Narragansett, Rhode Island. (*Compare* Compl. ¶¶ 1-2 *with* Janikies’ Answer ¶¶ 1-2.) Both Parties’ properties abut Narragansett Bay. (*Compare* Compl. ¶¶ 10-11 *with* Janikies’ Answer ¶¶ 10-11 (admitted).) Ms. Squibb’s property is within approximately 310 feet of Mr. Janikies’ property. (*Compare* Compl. ¶ 12 *with* Janikies’ Answer ¶ 12 (admitted).) In late 2018, Mr. Janikies filed an application with the CRMC to construct the dock and the boat lifts from his property on the Narragansett shoreline.<sup>1</sup> (R. 1 (Decision and Appeal Letter (Decision)) at 1.) Mr. Janikies revised his application on April 10, 2020 and made final amendments to the application on February 19, 2021. (R. 3 (Application Materials and Plans (Plans)) at 1, 11.)

The proposed project is a residential boating facility on the Narragansett shore directly across from Dutch Island that is approximately four-feet by eighty-five-feet with a jet ski lift and a thirty-thousand-pound boat lift. *See* Decision 1. The plans contemplate a four-foot by eighty-five-foot fixed timber pier leading to a four-foot by twenty-foot fixed terminal “L” section—extending approximately seventy-two feet seaward of mean low water into a narrow portion of the West Passage of Narragansett Bay at a point where Dutch Island lies less than one nautical mile to the east. *See id.*; *see also* Plans 1.

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<sup>1</sup> “The CRMC was established by the Legislature to regulate the use of land located near coastal waters. G.L. 1956 (1991 Reenactment) chapter 23 of title 46. The CRMC was deemed to be the ‘principal mechanism for management of the state’s coastal resources.’” *Strafach v. Durfee*, 635 A.2d 277, 279 (R.I. 1993). “In meeting these objectives, the CRMC has been given the authority to develop policies, programs, and regulations that pertain to coastal areas.” *Id.* Our Supreme Court has unequivocally indicated: “[W]e hold that CRMC has exclusive jurisdiction over [noncommercial residential] wharves in tidal waters, beginning at the mean high-water mark.” *Town of Warren v. Thornton-Whitehouse*, 740 A.2d 1255, 1260 (R.I. 1999).

The Council held a hearing on October 26, 2021 to take evidence and to consider the merits of Mr. Janikies' requests for variances. (Decision 1.) Ms. Squibb attended this hearing to object to Mr. Janikies' application. (Semimonthly Meeting of CRMC, (Hr'g Tr.) 152, Oct. 26, 2021.) On March 10, 2022, CRMC issued its decision allowing Mr. Janikies to construct the dock and boat lifts. (Decision 1.)

## A

### The CRMC Staff Report

In response to Mr. Janikies' application, the staff of CRMC (Staff) reviewed the plans and generated a report to advise the Council. On August 6, 2021, the Staff produced a report concerning Mr. Janikies' application without any technical objections but withheld its recommendation on the dock and boat lifts, deferring its decision-making to the Council.<sup>2</sup> (R. 2 (Staff Report) at 1, 7.)

The CRMC Staff Report provided the following project description:

“The proposed residential boating facility consists of a 4ft x 85ft fixed timber pier leading to a 4ft x 20ft fixed terminal L section with a 30,000lb boat lift and a jet ski lift. The facility is proposed 111' in length, extending 72' seaward of the cited [mean low water] mark. This design requires a 22' length variance to Red Book 650-RICR-20-00-01 Section 1.3.1(D)(11)(l), 50' setback variance to Section 1.3.1(D)(11)(m) and *\*variances to 1.3.1(D)(11)(p)/1.3.1(D)(11)(r) for steel construction.* The project requires Council review for a boat lift in Type 2 waters,<sup>[3]</sup> *\*provided the dock is approved.*” (Staff Report 2.)

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<sup>2</sup> This report was subsequently amended on October 5, 2021. (Staff Report 1.)

<sup>3</sup> The CRMC defines the category of Type 2 waters as “waters in areas with high scenic value that support low intensity recreational and residential uses. These waters include seasonal mooring areas where good water quality and fish and wildlife habitat are maintained.” Coastal Resources Management Program (CRMP) 1.2.1.

More specifically, the report indicated:

“The residential boating facility is proposed to be located extending from the existing concrete deck.<sup>141</sup> This location was agreed to by staff numerous times as the best environmental choice for the facility as 1) it was in a location similar to the previously existing dock and 2) it avoided any impact to the thickly vegetated steep bank and 3) it met the minimum 25’ setback from adjacent property line extensions. The fixed pier is proposed to extend 45 feet to clear a large boulder located at 38 feet past MLW. The pier is then proposed to step down to a fixed 4ft x 20ft terminal L section. The terminal L is located 55 feet from MLW. A 30,000 lb[.] boat lift is proposed at the terminus; piles associated with the boatlift are proposed 72 feet from MLW. In addition, a jet ski lift is proposed on the southern side of the L section, which is allowed under RICRMP regulations.”  
*Id.* at 3.

A thirty-day public notice on the project commenced in January 2019. *Id.* at 2. During this public-notice period, CRMC Staff received comments from “various concerned parties” that expressed concerns about “potential prop wash impacts, the distance to nearby moorings, and the installation methods of the facility due to the large exposure of the site.” *Id.*

The U.S. Army Corps of Engineers (ACOE) “deemed the project eligible for a Pre-Construction Notification (PCN) review on 1/10/19, which requires direct approval from the ACOE.” *Id.* at 2. CRMC Staff visited the site on January 15, 2019 and advised that the facility should be shortened in length. *Id.* The Staff Report indicated that the proposed site for the project’s foundation was the “location with the least environmental impact” “to best protect the existing vegetated coastal bluff.” *Id.*

In February 2019, CRMC Staff relayed these concerns to Mr. Janikies and “recommended a shorter facility to reduce the variance.” *Id.* In early February 2020, CRMC Staff received revised plans for an even longer facility than the original plans. *Id.* CRMC Staff contacted Mr. Janikies

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<sup>4</sup> According to the CRMC Staff Report, “[a]lthough not located in a high fetch area, the site can be subjected to significant wave action.” (Staff Report at 4.)

and his professional engineer “to indicate the project was not minimized . . . and still hadn’t addressed the previous variance burdens of proof or objector concerns and could not receive staff support.”

According to the CRMC Staff Report:

“Staff strongly advised the applicant revise the project to reduce the requested length variance. In April 2020 revised plans were received which had shortened the request and the project was sent to re-Notice. Similar and additional comments were again received during the public notice period. In May, staff received the PE updated response/variance request and the ACOE reviewed the project, again holding it PCN-eligible pending Council decision.”<sup>5</sup>  
*Id.*

In February 2021,

“[CRMC S]taff . . . learned *\*through an objector* that a Town mooring field was in the vicinity of the proposal and requested an update from the PE regarding the proposal relative to the mooring field. The PE supplied additional information relative to the field, including an updated plansheet reflecting the mooring field location and additional variance request. Minutes from the Town’s Harbor Commission meeting which recommended approval of the facility in its proposed location were also submitted *\*although the mooring field location/setback was not included on the plans reviewed, staff presumed the Commission reviewed the project relative to its Harbor Management Plan which includes mooring fields.* The Executive Director determined a 3<sup>rd</sup> re-Notice was not required. *Id.* at 3.

Accordingly,

“*\*The application was scheduled to be heard at the August 24, 2021 Council meeting, however, an objector requested a continuance which was granted. In order to clarify all required variances for the project (including steel pile construction, length and mooring field setback distance), a 3rd 30-day public notice was issued on 8/10/21, which concluded with several additional comments.*” *Id.*

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<sup>5</sup> At this juncture, “[t]he application remained pending due to National Grid and various offshore wind farm applications as well as COVID constraints which reduced Council agenda availability.” (Staff Report 2.)

Additionally,

*“the Town of Narragansett's Harbor Commission re-heard the proposal on 9/7/21 and voted to place the matter on file. That motion results in no additional formal action at this time from the Town. The Harbormaster has since confirmed that of the two existing moorings in the adjacent mooring field, the only one anywhere near the applicant's proposed dock is owned by the applicant and has since been moved slightly north, into North Kingstown waters.” Id.*

The CRMC Staff reviewed the comments submitted by the objectors and made the following relevant remarks in its Report:

“3) Scenic/aesthetic impacts should be taken into consideration with this proposal. Although the design is not uncommon for other waters of the State (Mt Hope Bay, Bristol, Jamestown, Newport, Sakonnet River, etc[.]), it is much larger in scope than many along this West Passage shoreline (likely due to the fact that much of the West Passage shoreline is Type 1 waters, which prohibits new docks outright).

...

“7) Overall, the majority of comments pertained to the visual/aesthetic impacts of the proposed facility on this particular shoreline, where many of the docks have historically been shorter and/or seasonal in nature. Cumulative scenic impacts from facilities with similar designs in the future may become significant on this shoreline.” *Id.* at 5-6.

In review of Mr. Janikies' variance requests, the CRMC Staff Report made the following remarks:

“1) The applicant has provided updated variance requests as required. With the exception of the potential for cumulative scenic/aesthetic impact, it is staff's opinion that the facility has been designed consistent with the applicable goals and policies of the CRMP and will not result in significant adverse environmental impacts or use conflicts.

“2) Due to the site conditions (steep vegetated bank, rock outcrop, ledge, high wave energy, mooring field), the applicable 50' MLW length and 50' mooring field setback and driven pile variance cannot be met and the chosen design/location of the pier portion of the facility is a reasonable use of the site. Local harbor commission review has indicated no conflict with the proposed facility location, including distance to nearby mooring field.

“3) Staff defers to the Council on the issue of whether first the location and second the size of the proposed boat lift is appropriate for this shoreline. The lift itself does not require a variance, but does factor into the pier’s length variance. However, staff could still support a length variance for the pier seaward of 50’ MLW without a boat lift due to the site conditions.” *Id.* at 6.

In sum, the CRMC Staff report indicated:

*“\*Provided the Council approves the proposed dock, whether the boat lift is appropriate for this shoreline and of this magnitude is deferred to the Council for consideration of current and cumulative scenic/aesthetic impacts.*

*“\*Following review of a 3<sup>rd</sup> public notice period and local harbor commission input staff’s opinion of this application review remains the same as originally indicated: There are no technical biologic or engineering objections to the above described residential boating facility and staff defers to the Council for consideration of the variances and appropriateness of the proposed dock and boat lift as well as the associated objections.”*  
*Id.* at 7-8.

## **B**

### **CRMC’s Hearing on the Application**

On October 26, 2021, the CRMC held a hearing to review Mr. Janikies’ application and to take testimony from witnesses and objectors. (*See Hr’g Tr.* 1, 6, Oct. 26, 2021.) Anthony DeSisto served as the hearing officer. *Id.* During these proceedings, Mr. Janikies was represented by Mr. Joseph D’Angelis; Ms. Squibb was represented by Mr. Christopher D’Ovidio. *See id.* at 13:2-3.

## **1**

### **Testimony of Warren Hall, P.E.**

Warren Hall testified in favor of Mr. Janikies’ application that he is a registered Professional Engineer in the state of Rhode Island with all necessary credentials and that he is employed as the town engineer for the town of Middletown, Rhode Island. *Id.* at 23:8-18. The CRMC did not qualify Mr. Hall as an expert but nevertheless allowed him to give opinion

testimony based on his background. *Id.* at 24:6-19, 89:22-23. Mr. Hall indicated that he has been involved in coastal projects for over thirty years, that he has designed over four hundred piers, that he has designed piers in every one of the coastal communities in Rhode Island, and that he has worked on over twenty boat lift projects. *Id.* at 25:1-17.

Mr. Hall indicated that although the plans used the term “jet-ski lift,” the jet-ski lift was to be used for “a tender or some smaller vessel” “to access Mr. Janikies’ mooring.” *Id.* at 26:17-27:1. Mr. Hall added that, because the site is a “high energy area,” he “recommended a boat lift to prevent [the] maintenance issues of [a] float.” *Id.* at 27:9-15. Mr. Hall added that “there is a large outcropping of ledge” located thirty-eight feet beyond mean low-water that is the basis for seeking the twenty-two-foot variance. *Id.* at 28:4-12. Mr. Hall explained that there were two options for attaching wood piles to the ledge: (1) the first option involves drilling into the ledge, placing the pile inside the drillhole and filling the annulus; (2) the second option involves drilling a two-inch diameter pin into the ledge and attaching the pile to the pin by means of bolted sleeves. *See id.* at 28:24-29:18.

Mr. Hall agreed that Mr. Janikies was also “seeking a variance to the 50-foot [setback] requirement from the Town mooring field.” *Id.* at 29:19-23. Mr. Hall went on to state that the only mooring in proximity to the project belonged to Mr. Janikies, that it was 165 feet from the proposed dock, and that no other boat owners with a Narragansett mooring permit would be affected by the project. *Id.* at 30:3-31:5. Mr. Hall opined that, due to the conditions of the site, following CRMC standards would cause undue hardship to Mr. Janikies by preventing him from building a dock in that location. *Id.* at 32:9-16. On cross-examination, Mr. Hall acknowledged that the manner in which the Narragansett Harbor Commission had defined the term “shoreline” made it unclear whether the term meant mean high, mean low, etc.; however, he indicated that whether the project



would encroach within fifty feet of the mooring field was not unclear: “It’s within 50 feet of the mooring field. Whether I hold mean low, mean high, mean sea level, it’s within the 50 feet.” *Id.* at 39:11-14.

Mr. Hall also indicated that the dock was designed in its present configuration to accommodate a large boulder approximately 30 feet from the shore. *Id.* at 41-42. Mr. Hall opined that building the dock in an alternative configuration to avoid the boulder would have subjected the dock to tripping waves and breaking waves and that the present configuration is the “better design.” *Id.* at 42-43. Mr. Hall also indicated that the dock could exist without the boat lifts but was uncertain if the area would be suitable for a float. *Id.* at 52:15-53:5. Mr. Hall indicated that the thirty-thousand-pound boat lift would be lifting a forty-four-foot boat that Mr. Janikies intended to purchase. *Id.* at 45:6-14.

## 2

### **Testimony of Jonathan Janikies**

Mr. Janikies testified that he intended to buy a forty-four-foot Boston Whaler center console without any superstructure to use with the thirty-thousand-pound boat lift.<sup>6</sup> *Id.* at 61-62. Mr. Janikies also testified that he intended to use the jet ski lift to get his tender in and out of the

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<sup>6</sup> “Boston Whaler” is the brand name of a boat manufacturer. *See* About Boston Whaler, Boston Whaler, <https://www.bostonwhaler.com/about-boston-whaler.html> (last visited July 20, 2023). The term “center console” refers to a “boat with [a] center-mounted helm station.” Center Console boats for sale, Boat Trader, <https://www.boattrader.com/boats/type-power/class-power-center/> (last visited July 20, 2023). Mr. Perkins testified that his understanding of the term “superstructure” includes “fishing towers” and “top decks.” Tr. 119:19-21. Mr. Alarie indicated that the boat which Mr. Janikies intended to purchase would come with a “hard top” or “T-top,” however he could not say whether that “qualifies as a superstructure or not.” Tr. 122:18-22. The base model 420 Outrage includes a hard top; however, a purchaser may optionally choose to add an “upper station,” which would qualify as a superstructure. 420 Outrage Standard Features & Options, Boston Whaler, <https://www.bostonwhaler.com/boat-models/outrage/420-outrage.html> (last visited July 20, 2023).

water because doing that on the rocky shoal is “very slippery” and dangerous.<sup>7</sup> *Id.* at 62:13-21, 69:18. Mr. Janikies clarified that he would use his tender as a dinghy to get to a boat on his mooring but that he did not have a boat moored there at that time. *Id.* at 68:16-69:6.

### 3

#### **Testimony of Gordon Perkins**

Gordon Perkins testified in opposition to the Application on behalf of Ms. Squibb that he has thirteen years of experience in the field of visual impact assessments, visual simulations, and geographic information system (GIS) mapping with specific expertise related to offshore wind development in coastal settings. *Id.* at 84:15-85:10. Mr. Perkins testified that he had obtained a bachelor’s degree in landscape architecture in 2001. *Id.* at 86:4-9. Mr. Perkins testified that he produced a simulation of the project’s visual impacts and its location relative to the mooring field, which differed from the rendition produced by Mr. Hall. *Id.* at 98:21-99:4. Mr. Perkins clarified that there is a distinction between visual simulations and renderings:

“Simulations are used for site coordinates on the ground, as well as in the air, to ensure that the position and the location and the depiction of all these elements are in the correct geographical space. You can think of a simulation as a 3D map almost, in that everything is very accurately placed within the image. They’re calibrated photographs. So what you see is what you would get if you took a photograph of the dock as proposed.” *Id.* at 100:9-20.

Mr. Perkins testified that the simulation he produced measured the shoreline from the mean low-water mark. *Id.* at 117:7.

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<sup>7</sup> In the nautical context, the term “tender” refers to “a boat or small steamer for communication between shore and a larger vessel.” Webster’s Third New International Dictionary of the English Language Unabridged 2355 (3rd ed. 1971).

### The Testimony of Peter Alarie

Peter Alarie testified that he has a U.S. Coast Guard 100-ton master's certificate to captain vessels less than one hundred gross tons in inland areas, that he has a yachtmaster offshore license, enabling him to master vessels up to 200 gross tons, and that he has an instructor certificate for that same license. *Id.* at 121:2-10. Mr. Alarie added that he teaches both U.S. Coast Guard 100-ton master's classes as well as Royal Yachting Association yachtmaster classes, which has a practical teaching component conducted on board vessels. *Id.* at 121:15-21. Mr. Alarie indicated that the majority of classes he teaches pertain to vessels in the thirty-five- to forty-five-foot range. *Id.* at 134:4-6. Mr. Alarie testified that he is familiar with the procedure for operating a vessel into a boat lift. *Id.* at 122:23-23:1.

Mr. Alarie indicated that he was familiar with boat lifts in more sheltered areas of Narragansett Bay but that he was not aware of any in the more open waters of the Bay's West Passage. *See id.* at 123-25. Mr. Alarie recalled experiencing significant difficulty on a twenty-six-foot vessel navigating into a boat lift located in the comparatively flat waters of Tiverton, under only twelve knots of wind—a feat which took four experienced skippers to accomplish safely. *Id.* at 125:8-26:2. Mr. Alarie maintained that a vessel of the size which Mr. Janikies proposes to use:

“would be very difficult to use on a boat lift in the proposed location and would be reckless for all but the most experienced skipper in all but the most calm conditions. Even a smaller vessel in the range of 25 would be equally difficult to use in the proposed location.” *Id.* at 126:23-27:10.

Mr. Alarie also estimated that, due to wave and wind conditions at the site, for more than fifty percent of the summer daylight hours, the boat lift would not be able to be used. *Id.* at 127:11-15. Mr. Alarie explained that operating a vessel into a boat lift is challenging because the skipper must maintain the vessel's position on the lift despite the surging energy of the waves for

enough time (possibly up to a minute) until the slow mechanism of the lift has “firmly grabbed the vessel to lift it clear of the water.” *Id.* at 127:22-128:12.

**5**

**Testimony of Stephen Nightingale**

Stephen Nightingale testified that he conducted an analysis of the assents granted by CRMC relating to docks in the West Passage of Narragansett Bay based on an incomplete data set given to him by CRMC Staff. *Id.* at 135:1-8.

**6**

**Public Testimony**

Six members of the public gave testimony, including Ms. Squibb;<sup>8</sup> one citizen spoke in favor of the application, and four were opposed. *See id.* at 141-153.

**C**

**CRMC’s Decision**

Following the testimony of witnesses, the CRMC held a two-part vote and deliberation. (Decision 1.) The first motion entertained granting approval on the dock application and was approved unanimously. *Id.* at 14. The second motion entertained granting approval for the boat lifts and was approved by a 4-2 vote. *Id.*

The CRMC made the following pertinent findings of fact:

8. “The proposed facility is approximately 111 feet in length and would extend approximately 72 feet past the cited mean low water mark.
9. “The proposed facility extends approximately 15 feet beyond a large boulder, which is located approximately 38 feet beyond mean low water.

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<sup>8</sup> The transcript identifies Ms. Squibb as “Ms. Robin Squibb.” Tr. at 13:2-5.

10. “CRMC staff concluded that terminating the facility inland of the boulder does not appear to leave an appropriate navigational area for the proposed project.
11. “CRMC staff concluded that terminating the facility inland of the boulder would increase wave loads to the facility as the boulder is located within the wave breaking and tripping zone.
12. “CRMC staff noted that the boulder should not be removed.
13. “CRMC staff also noted that relocating the boat lift closer to the boulder could create a hazard.” (Decision 4).

The CRMC concluded “that the proposed design allows for continued water dependent uses such as paddle boarding and swimming.” (Decision 5). CRMC further noted, “in regard to aesthetic impacts, that the proposed design is not uncommon for other waters of the State (Mt. Hope Bay, Bristol, Jamestown, Newport, Sakonnet River, etc.).” (Decision 5). CRMC found “that the proposed design location is reasonable relative to the boulder” and “that the Applicant’s proposed facility will not result in significant environmental impacts or use conflicts.” *Id.* at 6.

With regard to variances, CRMC found “that due to the conditions at the site (i.e. steep vegetated bank, rock outcrop, ledge, high wave energy, mooring field) the following CRMP provisions could not be met: the 50 foot mean low water mark length setback; the 50 feet mooring field setback; and, the driven pile variance.”<sup>9</sup> *Id.* CRMC ultimately found that Mr. Janikies’ proposed dock and boat lifts met the following variance requirement standards:

- 650-RICR-20-00-01 Section 1.3.1(D)(11)(l) (length variance);
- 650-RICR-20-00-01 Section 1.3.1(D)(11)(m) (mooring field setback);
- 650-RICR-20-00-01 Section 1.3.1(D)(11)(r) (driven pile structural support); and

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<sup>9</sup> The CRMC noted “that the variance could be relieved if the dock was shorter, however, that would leave the facility in conflict with the boulder.” (Decision 6).

- 650-RICR-20-00-01 Section 1.3.1(D)(11)(p) (steel and concrete pile support). (Decision 6).

Ms. Squibb timely initiated this appeal by a complaint filed in Providence County Superior Court on April 7, 2022. *See generally* Compl. (bearing filing date stamp). On May 3, 2023, the Court heard the Parties’ oral arguments. *See* Docket (bearing date of hearing).

## II

### Standard of Review

Final rulings and certain interlocutory orders issued by State agencies such as CRMC are subject to judicial review by the Superior Court pursuant to G.L. 1956 chapter 35 of Title 42 (the Administrative Procedures Act (APA)). Section 42-35-15(g) provides, in pertinent part:

“The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

“ . . .

“(3) Made upon unlawful procedure;

“(4) Affected by other error of law;

“(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

“(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”

Under the APA, the Superior Court’s jurisdiction over administrative appeals is “limited to an examination of the certified record to determine if there is any legally competent evidence therein to support the agency’s decision.” *Barrington School Committee v. Rhode Island State Labor Relations Board*, 608 A.2d 1126, 1138 (R.I. 1992). “If competent evidence exists in the

record considered as a whole, the court is required to uphold the agency’s conclusions.” *Id.* However, the Superior Court may “reverse, modify, or remand the agency’s decision if the decision . . . is made upon unlawful procedure, is affected by other errors of law, is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, or is arbitrary or capricious and is therefore characterized by an abuse of discretion.” *Id.* (citing § 42-15-35(g)).

Our Supreme Court has indicated that “the rationality of an agency’s decision must encompass its fact findings, its interpretation of the pertinent law, and its application of the law to the facts as found.” *Sakonnet Rogers, Inc. v. Coastal Resources Management Council*, 536 A.2d 893, 896 (R.I. 1988) (quoting *Arrow Transportation Co. v. United States*, 300 F. Supp. 813, 817 (D.R.I. 1969)) (brackets omitted). Moreover, “[a]n administrative decision that fails to include findings of fact required by statute cannot be upheld.” *Id.* Although the Superior Court must give deference to the factual findings made by an agency, it is permitted to “determine whether legally competent evidence justifies the conclusions” of the agency under review. *See Auto Body Association of Rhode Island v. State Department of Business Regulation*, 996 A.2d 91, 95 (R.I. 2010) (citing *Rhode Island Public Telecommunications Authority v. Rhode Island State Labor Relations Board*, 650 A.2d 479, 485 (R.I. 1994)). Legally competent evidence is defined as “such relevant evidence that a reasonable mind might accept as adequate to support a conclusion[] and means an amount more than a scintilla but less than a preponderance.” *Foster-Glocester Regional School Committee v. Board of Review*, 854 A.2d 1008, 1012 (R.I. 2004) (quoting *Rhode Island Temps, Inc. v. Department of Labor and Training, Board of Review*, 749 A.2d 1121, 1125 (R.I. 2000) (per curiam)). Yet, the Superior Court “does not substitute its judgment for that of the

agency concerning the credibility of witnesses or the weight of the evidence concerning questions of fact.” See *Tierney v. Department of Human Services*, 793 A.2d 210, 213 (R.I. 2002).

### III

#### Analysis

##### A

#### **Whether the Decision Made the Findings Required by CRMC Regulations**

There is no dispute that the proposed boat lifts are to be located in “Type 2” Waters governed by the CRMP boat lift standards. However, Ms. Squibb contends that the Decision failed to recite the required findings that CRMP boat lift standards were met. (Appellant’s Brief in Support of Appeal (Squibb Br.) 5.)

##### 1

#### **Appropriate Site Conditions Including Impact on Public Trust and Coastal Resources, Impact on Aesthetic and Scenic Resources, and Cumulative Impacts**

Ms. Squibb contends that the Decision failed to make the required finding that the boat lift did not impact aesthetic and scenic resources and whether measures were taken to mitigate these impacts. *Id.* at 7. The CRMC argues that the regulation does not require it to make an express factual finding as to the extent of a project’s aesthetic impact, but rather, only requires CRMC to “consider[.]” a project’s visual impacts. (Defendant Coastal Resources Management Council’s Memorandum of Law in Opposition to Plaintiff’s Administrative Appeal (CRMC Mem.) 6.) Mr. Janikies argues that CRMC properly relied on CRMC Staff’s finding that docks of similar size and design are common in other waters of the state. (Memorandum of Law in Opposition to Sally Robinson Squibb’s Appeal from the Coastal Resource Management Council (Janikies Mem.) 11.)

For “Type 2” Waters, CRMC’s “goal is to maintain and, where possible, restore the high scenic value, water quality, and natural habitat values of these areas, while providing for low



intensity uses that will not detract from these values.” CRMP § 1.2.1(C)(2)(a). Residential boating facilities may be permitted in Type 2 Waters, “provided it can be demonstrated that there will be no significant adverse impact to coastal resources, water dependent uses or public’s use and enjoyment of the shoreline and tidal waters of the State.” *Id.* § 1.2.1(C)(2)(d). Applicants for residential boating facilities in Type 2 waters, “shall describe the measures taken to mitigate impacts on the scenic quality of the area . . . .” *Id.* § 1.2.1(C)(2)(e). Boat lifts may be allowed in Type 2 waters in accordance with CRMP section 1.3.1(P). *Id.* § 1.3.1(D)(7).

Boat lift applications must meet “Category B” requirements. *Id.* § 1.3.1(P)(2)(a). And,

“It is the Council’s policy to assess all boat and/or float lifts for their appropriateness given site conditions, including impacts on public trust and coastal resources, aesthetic and scenic resources, and cumulative impacts. Boat and/or float lifts in Type 2 waters shall be allowed only for the minimum amount necessary to accommodate a residential dock.” *Id.* § 1.3.1(P)(1)(b).

Importantly, Category B applicants must “[d]emonstrate that measures have been taken to minimize any adverse scenic impact . . . .” *Id.* § 1.3.1(A)(1)(k). Additionally, CRMC “has determined that boat and float lifts detract from the high scenic value and important visual characteristics of Type 2 waters, and, . . . these structures may be considered an unacceptable intensification of use within certain public waters designated for low intensity use . . . .” *Id.* § 1.3.1(P)(3)(c).

As a threshold matter, the Court must determine the correct interpretation of CRMC’s boat lift policy. “A court will give great deference to an agency’s interpretation of its own rules . . . although the doctrine requires deference, it does not require that courts give agency interpretations controlling effect; thus courts are free to substitute judgment if they strongly disagree with the agency’s legal interpretation of its own rule.” *Sulyma v. National Grid*, No. KC-2015-0992, 2015 WL 9260433, at \*3 (R.I. Super. Dec. 15, 2015) (Rubine, J.) (brackets and internal quotation marks

omitted) (citing 3 Charles H. Koch, Jr., *Administrative Law and Practice* § 10:26 (3d ed. February 2023 Update)). Here, finding no ambiguity in the language quoted above, the Court will give it its plain, ordinary meaning. *See In re Proposed Town of New Shoreham Project*, 25 A.3d 482, 505 (R.I. 2011) (holding that when a statute’s language is clear and unambiguous, a court gives language its plain, ordinary meaning).

Here, CRMC’s policy is to “assess” a boat lift’s impacts on “aesthetic and scenic resources.” Although this does not “require” CRMC to make an express finding on this point, the Court cannot affirm the CRMC’s decision without finding substantial evidence on the record to support an inference that CRMC impliedly assessed the boat lifts’ impacts on aesthetic and scenic resources.

Next, the Court will consider whether there is substantial evidence on the record for the Court to discern such a finding because “[a]dministrative fiat and surmise cannot alone sustain an agency’s factual findings.” *State of Rhode Island, Office of the Secretary of State v. Rhode Island State Labor Relations Board*, 694 A.2d 24, 28 (R.I. 1997). The CRMC described the Staff Report’s references to other docks in the area as “important” to this appeal and points out that some of those docks also included boat lifts. (CRMC Mem. 3.) Ms. Squibb responds by pointing out that although the length of the docks referenced in the report aligned with Mr. Janikies’ proposed dock, the size of the boat lifts connected to the docks referenced in the report did not align with the size of the boat lifts proposed by Mr. Janikies. (Reply Memorandum of Law in Further Support of Appellant’s Administrative Appeal (Reply Mem.) 4.)

The Staff Report states: “The proposed boat lift is much larger than other lifts approved in the area.” (Staff Report 5.) Crucially, the Staff Report *did not* make any finding related to the potential for cumulative scenic and aesthetic impact. *Id.* The Staff Report cautioned the CRMC

about this potential: “[O]n this particular shoreline, . . . many of the docks have historically been shorter and/or seasonal in nature. Cumulative scenic impacts from facilities with similar designs in the future may become significant on this shoreline.” *Id.* at 6. In contrast, the Decision merely indicated that Mr. Janikies’ “facility is consistent with similar length facilities permitted by the CRMC in other open waters of the State[.]” and that “in regard to aesthetic impacts, that the proposed design is not uncommon for other waters of the State (Mt. Hope Bay, Bristol, Jamestown, Newport, Sakonnet River, etc.)” (Decision at 5 ¶¶ 25, 27). However, the Staff Report withheld making a finding as to the cumulative aesthetic impacts of boat lifts of such size in conjunction with lengthy docks; thus, the CRMC may not rationally base its conclusions on a finding that does not exist in the record. Also, the record is devoid of any reference to steps taken by Mr. Janikies to mitigate the potential scenic impacts to the area.

The Court agrees with Ms. Squibb’s contention that there is a lack of substantial evidence for the Decision’s Findings of Fact Nos. 40.a, 41.a, 42.a, and 43.a, all of which find that the proposed boat lift conforms with the applicable goals and policies of the Coastal Resources Management Program based on CRMC Staff’s purported conclusion that the facility’s design as a whole, is consistent with the applicable goals and policies of the CRMP. *See Greco v. Tikoian*, No. C.A. PC/03-5868, 2006 WL 587569, \*10 (R.I. Super. Mar. 9, 2006) (Vogel, J.). (reversing grant of Category B assent for residential boating facility in part because of applicant’s failure to describe measures taken to mitigate scenic impacts).

## 2

### **Minimum Relief Necessary**

Ms. Squibb contends that the Decision failed to make the required finding that the boat lifts are the minimum amount of relief necessary to accommodate the dock. (Squibb Br. at 10.) The CRMC and Mr. Janikies argue that there was sufficient evidence in the record to support Mr.

Janikies' need for the boat lifts because Mr. Hall testified that a boat lift would present less safety concerns than having a float. *See* CRMC Mem. 7; Janikies Mem. 13-14.

“Boat and/or float lifts in Type 2 waters shall be allowed only for the minimum amount necessary to accommodate a residential dock.” CRMP 1.3.1(P)(1)(b). The record clearly states that Mr. Janikies' intent is to use the dock to avoid the rocky shoals when launching his tender. The record is devoid of reference to any reason why Mr. Janikies would be unable to use the dock without the boat lifts. The substantial evidence on the record does not support a finding that granting the boat lifts is the minimum relief necessary.

### 3

#### **Undue Hardship**

Ms. Squibb contends that the Decision failed to make the required finding that the boat lifts meet the undue hardship requirement. (Squibb Br. at 11.) The CRMC argues that there is no regulation stating that a boat lift requires its own undue hardship variance. CRMC Mem. 8. Mr. Janikies argues that the four hardship findings that CRMC made in support of granting the dock were also sufficient to support granting the boat lifts and that no additional factual finding is required. *See* Janikies Mem. 15-16.

Here, as a threshold matter, the Court agrees that a boat lift application does not require its own undue hardship variance. Consequently, Ms. Squibb's argument does not float.

### B

#### **Whether the Decision's Conclusions of Law Were Arbitrary and Capricious and Clearly Erroneous in View of the Reliable, Probative, and Substantial Evidence on the Whole Record**

Mr. Janikies and CRMC both argue that there is a sufficient amount of evidence in the record to support the Decision. CRMC Mem. 7-8; Janikies Mem. 17-18. Ms. Squibb contends that the Decision (1) lacked a finding relative to impacts on aesthetic and scenic resources, (2) lacked

a finding relative to measures taken to mitigate impacts on aesthetic and scenic resources, and (3) lacked a finding that the boat lifts were the minimum relief necessary. (Squibb Br. 12.) Ms. Squibb asserts that, as a result, the Decision’s conclusions of law are arbitrary and capricious and not supported by the record. *Id.*

For the reasons discussed *supra*, sections III.A.1-2, the Court agrees with Ms. Squibb’s assertion that the Decision’s conclusions of law are arbitrary and capricious and not supported by the record.

Also, the Court finds that the CRMC’s conclusion granting Mr. Janikies a variance to the 50-foot mooring setback due to a lack of navigational area caused by the presence of a large boulder is an error of law and otherwise arbitrary and capricious. First, interference with navigation is grounds for denial. CRMP § 1.2.1(C)(2)(d)(3). CRMC only considered navigation in the context of using the dock and did not make any express findings relative to “public trust uses of the tidal or inter-tidal areas of the shoreline.” *Id.* Second, granting Mr. Janikies’ length variance due to the presence of a large boulder contradicts the express language of CRMP § 1.2.1(C)(2)(d)(4), which provides that: a water depth issue “adjacent to the site . . . requir[ing] dock span lengths in excess of the standards contained in § 1.3.1(D) of this Part in order to allow normal and appropriate use of the dock by a vessel[]” is “grounds for denial.” The presence of a large boulder close to the shore is a challenge to navigation from the dock because the rock essentially raises the “adjacent” sea floor and creates a “water depth” issue. Therefore, the Court declines to affirm CRMC’s Decision because doing so would be an endorsement of the CRMC’s circumventing of its own policy.

As further grounds to deny Mr. Janikies’ application, Decision Finding Nos. 35e, 36.e., 37.e., 38e, 40.e., 41.e., 42.e., and 43.e. all rely on the record being devoid of any facts suggesting

that Mr. Janikies' need for the variances was due to any prior action of his predecessors in title. However, the Staff Report states that "[h]istorically, a previous dock founded from this developed portion of the shoreline but it is long since removed and has no valid CRMC permit." (1.) Additionally, an email from Tracy Silvia to Warren Hall dated March 1, 2019, states: "As to relocation of the facility, the rock issue could be avoided by moving the entire proposed dock to the north, however, CRMC staff is in agreement that the proper place for a dock at this location would be to found from the developed portion of the feature where a historic dock existed rather than disturb other sections of the shoreline. Removal of the rock is also not preferred by staff." These two statements from Staff in effect acknowledge that Mr. Janikies' need for the variances may be due to earlier actions of his predecessor(s) in title.

#### **IV**

#### **Conclusion**

Substantial rights of the appellant have been prejudiced because the administrative findings, inferences, and conclusions of the Decision are arbitrary and capricious and characterized by an abuse of discretion. The Council's March 10, 2022 decision to allow appellee to construct a residential boating facility with a boat lift and jet ski lift is reversed. Prevailing counsel shall prepare an order for entry.



**RHODE ISLAND SUPERIOR COURT**  
*Decision Addendum Sheet*

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**TITLE OF CASE:** Sally Robinson Squibb, as Trustee of the Sally Robinson Squibb Trust – 2015 v. State of Rhode Island Coastal Resources Management Council, et al.

**CASE NO:** PC-2022-02007

**COURT:** Providence County Superior Court

**DATE DECISION FILED:** August 23, 2023

**JUSTICE/MAGISTRATE:** Nugent, J.

**ATTORNEYS:**

**For Plaintiff:** Christopher A. D’Ovidio, Esq.

**For Defendant:** Anthony DeSisto, Esq.; Joseph DeAngelis, Esq.; Lucas G. Spremulli, Esq.