

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, March 28, 2006 at 6:00 PM at the Narragansett Bay Commission Boardroom – One Service Road, Providence, RI.

MEMBERS

Mike Tikoian, Chair
Paul Lemont, Vice Chair
Jerry Zarrella
Jerry Sahagian
Ray Coia
Tom Ricci
Neill Gray
Dave Abedon
Michael Sullivan
Joe Shekarchi
Bruce Dawson

STAFF PRESENT

Grover Fugate, CRMC Executive Director

Dave Reis, CRMC Environmental Scientist
Amy Silva, CRMC Environmental Scientist
Tracy Silvia, CRMC Environmental Scientist

Brian Goldman, Legal Counsel

1. Chair Tikoian called the meeting to order at 6:00 P.M.

Chair Tikoian made a brief statement of clarification on the council's permitting process.

Vice Chair Lemont, seconded by Mr. Ricci moved approval of the February 28, 2006 minutes. Mr. Goldman noted that the February 28th minutes had been held for members to amend or make corrections. Mr. Goldman stated that he sat down with Lori to do the corrections from the comments received from council members. Mr. Goldman said there were some additional council comments and requested that the minutes be held to allow council members an additional chance to comment. Vice Chair Lemont withdrew his motion and Mr. Ricci withdrew his second. The February 28th minutes were held until the next meeting.

Chair Tikoian introduced and welcomed new council member, Bruce Dawson to the council. Chair Tikoian stated that Mr. Dawson had been appointed by the Governor and confirmed by the Senate.

2. **SUBCOMMITTEE REPORTS**

Vice Chair Lemont reported that the Policy and Planning Subcommittee met on February 22nd and recommended changes to Section 300.4 to add new section for out walls; changes to the Management Procedures Section 4.3 – Schedule of Fees to add Section 4.3.8 for a fee for revised site plans submitted to staff after staff has begun its review; new Section 300.4.B.13 – out walls under the jurisdiction of CRMC and section 4.3 a fee

for the number of times an applicant meets with staff. Vice Chair Lemont requested that the proposed changes by the policy and planning subcommittee be received and sent out to public notice.

3. STAFF REPORTS

Mr. Fugate announced there would be a staff presentation tonight.

Chair Tikoian informed council members that Grover and himself presented testimony on behalf of CRMC before the Joint Committee of the Senate on the workings of CRMC, what they're doing, where there at and answered questions from the committee members. Chair Tikoian stated that the premise of the hearing was for CRMC to produce information on their separation of powers bill.

Chair Tikoian asked for personal privilege. Chair Tikoian noted that there was an article in the newspaper regarding his recusal from certain votes and stated that he recused himself in accordance with the Rhode Island General Laws 25 times over 10 years not 6 months. Chair Tikoian also stated that he enjoys his time on the council. Mr. Zarrella asked for personal privilege. Mr. Zarrella said he did not mind the Chair recusing himself but when the Chair recuses himself and he sits and votes on the application, he found it offensive when the Chair criticizes them in the newspaper. Chair Tikoian said he has not criticized anybody.

4. Chair Tikoian read through the agenda to see which applicants/attorneys were present.

5. PRESENTATION: MetroBay Special Area Management Plan

Mr. Fugate explained that the presentation was to update council members on the MetroBay Special Area Management Plan and that Jennifer McCann, URI Coastal Resources Center would explain the revisions to the new MetroBay SAM Plan. Mr. Fugate stated that this was part of the Providence SAM Plan and address three issues: 1) buffers, 2) coastal hazards; and 3) water sheets and how to use them in type 6 waters, which are designated for industrial use. Mr. Fugate said this was explained in the internet map service (the mapper). Jennifer gave a presentation on the internet map server and explained that this plan revitalizes northern Narragansett Bay which includes Cranston, East Providence, Pawtucket and Providence. Jennifer said the website is available for council members and went through and explained the pages on the website. Chair Tikoian thanked Jennifer, CRMC staff and the URI Coastal Resources Center staff for their work on this.

6. APPLICATIONS WHICH HAVE BEEN OUT TO NOTICE FOR 30 DAYS AND ARE BEFORE THE FULL COUNCIL FOR DECISION:

2005-04-101 HENRY & SHEILA KELLY GEDIMAN -- Construct and maintain a residential boating facility consisting of access stairs, a 4' x 58' fixed timber pier, 3' x 25' ramp, and an 8' x 18.75' float. A variance to RICRMP 300.4.E.3.(J) is required (standard setback from property line is 25', 15 is proposed). Per Consultants lot 10 which is where the dock will emanate from is tied together to lot 7 which contains the residential dwelling. Located at plat 73, lot 10; 1728 Main Road, Tiverton, RI.

Chair Tikoian recused himself. Vice Chair Lemont presided over the application.

Sheila Kelly Gediman, the applicant was present. Joseph DeAngelis, the applicant's attorney and Herb Sirois, the applicants engineer were also present on behalf of the applicants. Mr. Reis gave council members a brief summary on the application. Mr. Reis stated that the application is to construct and maintain a residential boating facility consisting of access stairs, a 4' x 58' fixed timber pier, 3' x 25' ramp, and an 8' x 18.75' float. Mr. Reis stated that the dock extends 45' beyond MLW. Mr. Reis said the staff biologist and engineer had no objections to the application. Mr. Reis noted that two variances from the property line extensions were needed and the abutters objected to the application. Mr. Reis explained that there was a 25' setback requirement from the property line to the dock. Mr. Reis said this was a narrow lot and that there was 11 feet distance between the dock and the property lines and that a 14' variance was needed on each side. Mr. DeAngelis said this was not run of the mill dock and that this was a fairly small lot. Mr. DeAngelis explained that the applicants live across the street and that staff requested a deed restriction to join the two lots and the applicants agreed. Mr. DeAngelis said the dock is 45' from MLW and they need two variances from the north and south abutters. Mr. DeAngelis stated that they have Army Corps approval and DOT approval. Mr. Sirois stated that he felt the applicants met the variance criteria under Section 120. Mr. Sirois explained that the lot is 30 feet wide and cannot meet the CRMC standard without the variances. Mr. Sirois said that this was the minimum variance necessary. Mr. Sirois stated that Malcolm Compton's dock is 84' +/- to the north and the Ziepniewski's dock is 54' distance from this dock. Mr. Sirois said that Mrs. Ziepniewski wishes to expand her dock in the future and if she expands her dock there will be 32' from this dock float to float. Mr. Sirois felt that the 32' distance was sufficient. Vice Chair Lemont noted that when the staff report was written there was only one objector and asked staff if there report would have been the same with the 2nd objector. Mr. Reis replied yes. Vice Chair Lemont asked if these types of variances had been approved in the past. Mr. Reis replied yes if there were no navigational hazards.

Objectors:

Mary Ziepniewski, the objector was present with her engineer Joe Hanlon. Ms. Ziepniewski referred to an aerial photograph and felt that even if the dock was 32' from her dock that it would be very close to her property line and wall. Ms. Ziepniewski felt there would be no room for the boats to move around. Ms. Ziepniewski said there were no size limits on the boats on the dock and felt this dock was too close to her property line. Ms. Ziepniewski noted that the applicants lived across the street and were part-time residents. Ms. Ziepniewski was concerned with the 50' standard and setback. Vice Chair Lemont explained that the applicant own land and have rights and the question is whether the dock is allowed under the CRMC rules and regulations. Mr. Fugate explained the 50' standard and that the requirement is a 25' setback from the property line. Ms. Ziepniewski felt that there was not enough space. Ms. Ziepniewski said that the two docks to the south rent out their slips. Mr. Fugate explained that you can have four boats on a residential dock or you would be in violation of the assent. Mr. Hanlon said he has worked with Ms. Ziepniewski and worked on a proposed float for her dock. Mr. Hanlon was concerned with the 25' offset requirement and felt that there would be vibration during the construction and that this could cause damage to Ms. Ziepniewski's house because her house is on pilings in the water. Mr. Fugate noted that the application requires an Army Corps permit and that permit had been received. Mr. Reis noted that a number of houses in this area are in tidal waters not just this house. Mr. Hanlon was concerned with parking in the area and felt this would infringe on her privacy when she uses her patio. Mr. Hanlon felt the applicants knew a variance would be needed for this lot when they purchased the property. Mr. Sahagian felt comments relating to the Ms. Ziepniewski's privacy and the purchase of the property should come

from an attorney not the engineer. Ms. Ziepniewski submitted photographs of the area as exhibits. Mr. Zarrella asked how big her boat was. Ms. Ziepniewski said she has a row boat right now. Mr. Zarrella asked how far her pilings were in the water 3 or 4 feet. Mr. Hanlon replied the pilings were 10-15 feet in the water. Mr. Zarrella asked how much of the living space was over high tide. Mr. Hanlon replied the elevation was 3-5 feet. Mr. Goldman noted that Ms. Ziepniewski put a line on the photograph and that the council could only accept it for ID only. Mr. Gray said the objector's dock is 19' from the property line. Mr. Hanlon replied yes. Mr. Gray explained that half of 50' would be 25' which would make the dock 6 feet off the property line. Mr. Gray asked if the house was physically over tidal waters. Mr. Hanlon replied yes. Mr. Gray said the objectors concern was with multiply vessels on the applicants dock and noted that there was only 3-4 feet at lowtide and the dock was 18' long. Mr. Gray felt the dock could not be overburden with 4 large vessels. Mr. Hanlon said the dock was 40-50 feet long and extends to the end shore float of the applicants' dock. Mr. Gray said there was a 25 discrepancy on the dock length and what was on the plan. Mr. DeAngelis replied that the float was taken out during the winter. Mr. Hanlon said that Ms. Ziepniewski has no floats on her dock. Vice Chair Lemont asked when Mr. Sirois took the measurements. Mr. Sirois replied in March 2005. Vice Chair Lemont asked why the discrepancy and need to look at whether it is 25' or maybe 50'. Mr. DeAngelis replied that there was nothing erroneous in Mr. Sirois's testimony and there would still be 32' of separation between the docks. Mr. Hanlon responded that there would be 32' from the fixed portion of the dock and 28' from the float. Mr. Dawson noted that the aerial photograph on page p10 has a dock and that the assessor's information on page p18 has no dock. Mr. Dawson asked if there was a dock on lot 8. Mr. Sirois replied that the photo predated the application and said that the dock on lot 8 is further to the north and that his plan does not show this. Mr. Sirois said the assessor's map was an older photo. Mr. Gray referred to the site plan on page p10 which showed lots 9, lot 10 and lot 11 – Ms. Ziepniewski's dock and asked if the "T" dock was on lot 8. Mr. Sirois stated that the "T" dock is on lot 7. Mr. Gray said he was not seeing a dock on lot 8. Mr. Sirois replied correct. Mr. DeAngelis asked if Mr. Sirois took the measurements for the dock on lot 8. Mr. Sirois replied yes and that the dock is 84'. Chee Laureanno, a registered representative/property agent for Malcolm Crompton was present on behalf of Mr. Crompton. Mr. Goldman explained that under the rules that only an attorney, the applicant or a family member could represent an applicant. Mr. Goldman said she would need a power of attorney or an attorney. Mr. Goldman stated that Ms. Laureanno did not have the standing to represent the applicant. Vice Chair Lemont said they cannot allow her to testify. Ms. Laureanno wanted to submit photographs of the site. Mr. Gray noted that there was a letter on page p27 in the packet signed by Ms. Laureanno can the council consider the letter in their deliberations. Mr. Goldman replied that the letter needed to be signed by the applicant. Mr. Gray asked if the variance still applied. Mr. Goldman replied the applicant would still need a variance and need to get a letter of no objection from the abutter. Vice Chair Lemont asked Mr. DeAngelis if he thought they could resolve this issue. Mr. DeAngelis replied he thought they could but xxx withdrew her letter of no objection and objected to the application. Vice Chair Lemont asked if they would agree to a limit of two boats on the dock. Mr. DeAngelis replied yes. Vice Chair Lemont asked if there were any other staff stipulations. Mr. Reis replied no just the standard staff stipulations. Mr. Gray noted the objectors' concern of piling driving during construction and damage from the vibration and asked if this was a legal issue or a CRMC issue. Mr. Fugate replied that it was a legal issue. Mr. Gray, seconded by Mr. Ricci moved approval of the application with the two variances contingent on the applicants tying the two lots together, a limit of two boats on the dock and all staff stipulations. Mr. Shekarchi asked what was the purpose of tying of the two lots together.

Mr. Fugate explained that there had to be a lot association with a residence for a dock and that this lot was across the street and that the applicant could not sell off the lot with the dock on it. Mr. Shekarchi and Mr. Zarrella were opposed. The motion carried.

Mr. Sahagian left at 7:00 p.m. to attend another meeting.

Vice Chair Lemont called for a recess at 7:00 p.m. Chair Tikoian called the meeting back to order at 7:08 p.m.

2005-05-125 NANCY HURD -- Construct and maintain a 161' residential boating facility consisting of a 4' X 126' fixed timber pier, a 3' X 20' ramp, and a 10' X 15' terminal float. The facility will extend 100' seaward of mean low water (MLW) which requires a variance of 50' from RICRMP Standard 300.4.E.3(k). Located at plat 382, lot 357; 236 Channel View, Warwick, RI.

Nancy Hurd, the applicant was present. Mr. Shekarchi explained that he had done work for the applicant's husband two years ago and that he had no conflict with the application. Mr. Shekarchi also noted that he spoke with legal counsel on this and felt that he did not have to recuse himself. Mr. Reis gave council members a brief summary on the application. Mr. Reis stated that the application was to construct and maintain a 161' residential boating facility consisting of a 4' X 126' fixed timber pier, a 3' X 20' ramp, and a 10' X 15' terminal float. Mr. Reis stated that dock extends 100' seaward of MLW with requires a 50' variance. Mr. Reis stated that the staff biologist and engineer recommended approval of the application. Mr. Shekarchi, seconded by Mr. Zarrella moved approval of the application with all staff stipulations. The motion was carried on a unanimous voice vote.

2 005-09-061 HARBOUR ISLAND IMPROVEMENT ASSOCIATION -- Establish a marina perimeter limit and a boat capacity at an existing facility. The proposed MPL is shown on the attached plans and the proposed boat capacity is 20. A dinghy dock is also utilized by approximately 8 dinghys which are not included in the boat capacity cited above. Located at Plat Y-1, lot 117; Cedar Island Road, Narragansett, RI.

John Kennedy, Co-Chair, Stewart Mason, President and John Quirk, a member of the Harbour Island Improvement Association were present. Tracy Silvia gave council members a brief summary on the application. Ms. Silvia stated that the application was to establish a marina perimeter limit with a 20 boat capacity increase. Ms. Silvia stated that the application required a variance for the sanitary facility. Ms. Silvia noted that two objections had been received. Ms. Silvia stated that the applicant relocated the eastern property line to address the objection. Mr. Fugate noted that a variance had been requested for the existing marina. Mr. Gray asked if the marina perimeter line (MPL) was finalized or if they are doing that now. Mr. Fugate replied that they are finalizing it tonight. Ms. Silva noted that they typically look at pulling it within 10 feet of the outer piling and felt it could be pulled back. Mr. Gray said the marina perimeter limit gives an applicant an area within they can do work and felt they should follow the piling lines there now and protect the abutters.

Objectors

Cindy and Mark Jezerski, the abutters were concerned with the mooring field and the parking areas. Mr. Jererski wanted a stipulation that they could not expand the boat capacity. Chair Tikoian explained that if the applicant wanted to expand the boat capacity they would have to come back to CRMC. Ms. Silva noted that the applicant

asked that the boat capacity not be limited and that the 25% expansion be allowed. Mr. Fugate explained that there was a one-time expansion allowed. Mr. Jezerski asked how come the moorings were not included in the number of boats. Ms. Silva replied that the moorings are handled by the town and that there are a number of dinghies in the area. Chair Tikoian said moorings are not included in a boat complex. Mrs. Jezerski said there are 28 boats on the dock, 8 dinghies on the dock and racks on the dock done without permits and vegetation removed. Mrs. Jezerski said the parking lot is 50'x100' and there was suppose to be one parking space per boat. Mrs. Jezerski felt there would be impact on the recreational use of the area. Mrs. Jezerski said there has been expansion of this dock since the 1960's. Mrs. Jezerski wanted no more expansion of the area not even the 25% because she felt the applicant already did this. Chair Tikoian asked her to clarify her statement about the racks and vegetation removed. Mrs. Jezerski stated that there was sea grass and apple trees in front of her property and they were removed to put up the racks. Mr. Fugate addressed the parking spaces and stated that the parking spaces relate to the marina slips not the mooring field. Mr. Fugate addressed the dinghy issue and noted they count boat slips not dinghies, canoes or kayaks. Ms. Silva said they did look at the racks and they are permitted to store dinghies. Mr. Kennedy stated that not all boats on moorings use boat slips. He said the racks were done before he was part of the dock committee and done about 10-12 years ago. Mr. Kennedy said there was not parking problems because not all the parking spaces are used at the same time. Mr. Kennedy said there are two social events during the year and there are problems with parking. Mr. Kennedy said there has been no expansion since 1988. Mr. Kennedy explained that they are looking to permit what is there now. Chair Tikoian asked how many households the marina serves. Mr. Kennedy replied there are 400 houses in the area and he was not sure. Director Sullivan asked him to address the objectors comments on the substantial vegetation removed. Mr. Kennedy replied that this was not done and that they only removed vegetation when the racks were put in and not since then. Ms. Silva noted that this was done without a permit and they moved the rack upland. Mr. Shekarchi noted that Attorney Kristen Sherman had filed an objection and asked if this objection had been satisfied. Ms. Silva replied yes. Mr. Shekarchi asked if there was any change in her recommendation since hearing the objectors' objections. Ms. Silva replied no. Mrs. Jezerski was concerned with expansion of the area and the effect on shellfish in the area. Chair Tikoian asked if she was concerned with further expansion being considered. Mrs. Jezerski said they do not want any expansion not even the 25% expansion. Mr. Gray replied that the 25% expansion of the marina perimeter limit was allowed. Mr. Fugate explained that any marina perimeter limit expansion would have to come back before the full council and there could only be a 25% expansion for 5 boats and the applicant would have to meet the expansion standards. Mr. Gray asked if there was parking with this. Mr. Fugate replied yes there is parking associated with this. Ms. Silva replied there are 14 spaces for parking. Mr. Gray asked if a variance for parking was needed or if they met the regulations for the parking. Ms. Silva replied they met the parking requirements but that they needed a variance for the sanitation only. Chair Tikoian asked if the expansion needed water quality certification. Mr. Fugate replied yes. Mr. Gray asked if the docks was for members of the association and not rented. Mr. Kennedy replied that the docks were for members of the association and that they needed to show ID and proof of residence in the Harbour Association. Mr. Gray wanted this to be part of the stipulations. Mr. Zarrella stated that the objectors were not opposing the marina assent but opposing any expansion to the marina. Mr. and Mrs. Jezerski replied that they are opposed to an expansion but not to what is there now. Mr. Dawson asked how they established the 20-boat capacity when there are 28 boats there now. Mr. Fugate explained that there are 20 boats and 8 dinghies. Mr. Shekarchi, seconded by Mr. Zarrella moved approval of

the application with all staff stipulations, the sanitation variance, the dock be limited to association members and the marina perimeter limit be adjusted to the structures. Mr. Kennedy noted that only association members can use the dock. The motion was carried on a unanimous voice vote.

2004-08-097 FREDERICK & LOUISE WILLIAMS -- Construct and maintain: a single-family dwelling, septic system (ISDS), individual well, detached shed and driveway. As proposed, the project will result in approximately 10,840 square feet of disturbance (loss) to jurisdictional wetlands of which approximately 3,800 square feet of disturbance will occur within the "swamp" itself. The affected wetland is regulated by CRMC's Freshwater Wetlands in the Vicinity of the Coast Program. Located at plat 7, lot 8, West Main Road, Little Compton, RI.

John Boehnert, attorney for the applicant was present. Scott Rabideau, the applicants' wetland biologist was also present on behalf of the applicant. Heather Steeres, president of the Sakonnett River Association and her biologist Linda Steere, Wendy Wallik, Save the Bay and Cynthia Giles, Conservation Law Foundation, the objectors were also present. Mr. Reis gave council members a brief summary on the application,. Mr. Reis state that the application was to construct and maintain a single-family dwelling, septic system (ISDS), individual well, detached shed and driveway. He said the project will result in approximately 10,840 square feet of disturbance (loss) to jurisdictional wetlands of which approximately 3,800 square feet of disturbance will occur within the "swamp" itself. Mr. Reis stated that there was a long history on this application and that he weighed this against the freshwater wetland rules. Vice Chair Lemont asked if the house could be moved any where else on the lot. Mr. Reis passed out an aerial of the parcel which is a 5.2 acre parcel. Mr. Reis said this was a difficult application to review because of the impact to the wetlands. Mr. Reis stated that there are two areas on the parcel they looked at, the southwest corner which shows a roof top of the existing cottage and the northeast area which is the currently proposed for the project. Mr. Reis said DEM has been involved with the application as well. Mr. Reis stated that the resolution was that the applicant needed to restore the wetland destroyed and that this had been done. Mr. Reis said the clearing of the wetland had been done without a permit and had been restored. Mr. Reis said the northeast corner was the best area for the project and that he southwest area would require an ISDS, crossing of the wetland and require 2000 s.f. of fill for a driveway. Mr. Reis explained the northeast corner and said impact of wetland filling was 3,800 s.f. of wetland. Mr. Reis said this area has been cleared and partially restored. Mr. Reis stated that the applicant had received zoning approval for the northeast corner and can only use if for a residential home. Mr. Reis said the applicant received a variance for the setback from the road and wetland. Mr. Reis said this was the minimum variance necessary for any development and that the entire remaining property would be put in a conservation easement except for the southwest corner. Mr. Reis said there were a number of staff stipulations. Mr. Reis felt that it was less detrimental to develop on the northeast site and that there would be no further development in the southwest corner. Mr. Reis said there would be no expanded use of the property. Mr. Reis stated that staff recommended approval of the application with stipulations and the conservation easement. Mr. Reis felt this was the less damaging assessment. Mr. Fugate said this was a fairly large parcel, 5.2 acres and that they would be altering 3,800 s.f. of wetland. Mr. Fugate stated that the parcel currently supports a structure and the applicant did restore the area. Mr. Fugate said the applicant has an approved ISDS from DEM, water quality certification and local approvals are in place. Mr. Fugate stated that there would be no expansion to the existing structure. Mr. Fugate felt the current location for the proposed project was the

best location. Chair Tikoian noted that this application goes back to 1987 for a preliminary determination by DEM. Mr. Goldman explained that in 1993 there was Superior Court action for a DEM violation and that the courts allowed DEM to go forward with enforcement action and that the applicant filed a petition for cert. Mr. Goldman noted that in 1994 the petition for cert was denied and page p65 in the packet gives the summary of this. Chair Tikoian stated that in 2004 the applicant received local approval and the Historical Preservation Commission approval. Chair Tikoian said in January 2006 the applicant received DEM ISDS and water quality certification approval. Chair Tikoian asked the applicant what happened from 1994 to 2003. Mr. Boehnert said they did not seek permits for the application during this period. Mr. Boehnert stated that the DEM permits needed to be explained and gave a summary of the DEM process. Mr. Boehnert said the applicant altered the wetland prior to the 1998 DEM jurisdiction. Chair Tikoian noted that this was prior to the CRMC jurisdiction in 1998. Mr. Rabideau was accepted as an wetland biologist expert. Mr. Rabideau stated that he worked on this application and was familiar with the property and the wetland on the property. Mr. Rabideau stated that he delineated the wetland edge in 2002 which was approved by CRMC staff. Mr. Rabideau explained the first plan and said this showed the ISDS plan, the colored swamp area, the green area was the 3,800 s.f. of swamp and the blue area was the buffer area. Mr. Rabideau said the second plan was a copy of the aerial passed out by Mr. Reis and he took the wetland area and highlighted the 50' buffer area which also shows the northeast and southwest areas. Mr. Rabideau said the black area is the path area. Mr. Rabideau said the plan currently depicts the site. Mr. Boehnert submitted both plans as exhibits. Mr. Rabideau explained both areas, the ISDS and where they would put the house. Mr. Rabideau said in the southwest area there would be 12,000 s.f. of wetland disturbance and in the northeast area they received a variance from the town for the road for the ISDS and there would be 3,800 s.f. of swamp disturbed. Mr. Rabideau said in the southwest area there would be a lot of disturbance to the Sakonnet Preservation land. Mr. Rabideau said in the northeast area there is less impact to the wetland and more impact to the swamp. Mr. Rabideau stated that in the southwest they would have to put in a roadway and driveway and there would be disturbance to the wetland area. Mr. Rabideau felt that putting the dwelling on the northeast corner there would be less impact to the wetland area. Mr. Rabideau said he reviewed the CRMC staff report and agrees with the staff report. Mr. Rabideau said in his opinion as a wetland biologist he felt they avoided the impact to the impact and this was the minimum impact. Mr. Rabideau did a suitable mitigation plan for the wetland impact. Mr. Rabideau felt there would be no adverse impact and no long term adverse impact. Mr. Rabideau felt this was not a random alteration of a wetland. Mr. Rabideau felt this was a necessary wetland alteration to use the property. Mr. Rabideau said his opinion was in his narrative report he submitted to the council. Mr. Shekarchi asked if the DEM water quality certification approval on January 24, 2006 was for the northeast site or the southwest site. Mr. Rabideau replied the approval was for the northeast site. Mr. Shekarchi said the conservation plan on page p24 was for the northern portion and asked why the southwest portion was not included. Mr. Boehnert replied that the shed in the southwest corner is used for recreational use and will not be expanded and there would only be foot traffic to the shed. Mr. Boehnert said the conservation easement includes almost all of the property except the shed. Mr. Zarrella asked how this application was different from the Bonnet Shores application. Mr. Rabideau replied that the staff report recommended approval of this application, these were two different projects and wetlands. Mr. Rabideau said they worked with staff on the application and there were no professional differences of opinions. Mr. Zarrella said they are taking $\frac{1}{4}$ area of swamp. Mr. Rabideau responded 3,800 s.f. of swamp. Mr. Zarrella said he thought the new regulations would prevent something like this happening again. Chair

Tikoian stated that this application fell under the previous regulations in place not the new regulations. Mr. Zarrella said he has a problem with this application. Mr. Fugate explained that they have to treat the application under the regulations in place at the time of the application. Mr. Abedon said there would be no adverse impact to the wetland. Mr. Rabideau replied there would be no adverse impact to the function and values of the wetland. Mr. Abedon asked if this was equal to what staff says. Mr. Reis felt there would not be significant impact to the wetland. Director Sullivan asked if this was an unavoidable impact or encroachment to the wetland for the additional wetland disturbance for the shed of 3,000 s.f. Director Sullivan said the shed was for ancillary use and the structure was an unnecessary impact on the wetland. Mr. Rabideau agreed and said there would be a 25' construction setback from the wetland. Director Sullivan said the shed is on filled land and asked what impact what was stored in the shed would have rather than what stored the home. Mr. Rabideau replied if the shed was not there the chemicals stored in the shed would be stored in the basement of the home. Director Sullivan said on the southwest corner was a potting shed used to store pesticides, fuels, etc. Mr. Rabideau said yes and the shed was in conformance with the CRMC rules. Director Sullivan asked if there would be more potential impact if there were two sheds. Mr. Radideau replied yes.

Objectors

Heather Steers, president of the Sakonnet River Association, was opposed to the application. Mr. Fugate noted that Linda Steere had testified before CRMC before and was qualified as a wetland biologist expert. Ms. Steeres stated that she represents the association. Ms. Steeres stated that she owns AP 7, Lot 9-6 which abuts the Williams property. Ms. Steeres felt there would be disturbance and lost of the 10,800 s.f. of jurisdiction wetland. Ms. Steeres said they were opposed to the application because they felt the applicant did not look at a lot impact site and minimize the impact to the wetland. Ms. Steeres said they submitted a letter dated 11/12/04 to CRMC with a recommendation of an alternate site by Linda Steere which was absent from the CRMC file. Ms. Steeres said she faxed letters to Mr. Fugate on 3/9/06 and 3/10/06 asking CRMC staff to make the recommendation of the alternate site part of the record. Ms. Steeres felt wetlands were vital to the public and benefited the environment. Ms. Steeres requested that CRMC not grant the assent and look at the southwest corner site. Mr. Shekarchi asked if these objections were done at the local level and did they make their objections known at the local level. Ms. Steeres replied no they did not. Ms. Steere stated that she has been involved with the project since 2005 to object to the project and raise the issue whether other alternatives were looked at to minimize the impact to the wetland. Ms. Steere said she looked at the southwest corner which has an existing roadway, path and shed. Ms. Steere said the area to the north of this is 35'x100' area which they looked at as an alternate site in the back corner. Ms. Steere felt the applicant could explore this to use existing roadway and eliminate wetland filling. Ms. Steere said there were a lot of questions whether the southwest location could be used. Ms. Steere felt the applicant did not have to disturb the biological wetland. Ms. Steere felt the applicant did not minimize the impact to the wetland and the project was not minimized to the maximum extent. Ms. Steere said that under the new rules this project would not be allowed. Mr. Abedon asked where the stream is that goes into the Sakonnet River. Ms. Steere said there was a teardrop stream on the map which is on the back corner of the property. Chair Tikoian noted that the letters that Ms. Steeres referred to had been circulated to council members. Mr. Gray asked if the 35'x100' area Ms. Steere referred to was the dotted line area. Ms. Steere replied yes. Mr. Gray asked if the road was a town road or a private road. Ms. Steeres replied a private road. Mr. Gray said the applicant would have to get permission to use the road. Mr. Zarrella

asked if the objectors offered to purchase the property. Ms. Steeres replied no she would have to talk to the board. Mr. Zarrella felt this would be better if it was conservation land and that DEM has funds for this. Director Sullivan noted that Ms. Steere agreed with function of fragmites and felt the placement of the dwelling in the southwest corner was better. Ms. Steere felt other options needed to be looked at and that they not alter a biological wetland. Director Sullivan agreed with the logical sequence of wetland and the alternative is to avoid, minimize and mitigate. Ms. Steere agreed and felt this was not done. Mr. Reis stated that the report did look at alternative. Mr. Reis said they did look at shed which looked like a small cottage with some use and was in an undisturbed site. Mr. Reis said they looked at the habitat. Mr. Reis stated that the conservation land abuts this and would not be disturbed. Mr. Reis said there was a large area of undisturbed land to the west. Wendy Wallik, Save the Bay, stated that they were opposed to the application. Ms. Wallik stated that they submitted their objection in 2004 and they still object to the application as there has been no change since the previous plan. Ms. Wallik said they were concerned with building on a swamp. Ms. Wallik said the applicant altered the wetland without approval and felt they should not be allowed to build because they altered the wetland. Ms. Wallik stated that the zoning approval and Mr. Smith's comments were already part of the record on page p31. Ms. Wallik felt the board may not have had all the necessary information when they made their decision. Ms. Wallik felt the conservation easement would not apply and protect the land if the land was transferred. Ms. Wallik felt there might be another alternate site for this project. Ms. Wallik urged CRMC to deny the application. Mr. Shekarchi said Ms. Wallik felt the zoning board based its decision on the wrong information and asked if they objected or appealed the zoning board decision or the approvals of the DEM water quality certification permit or ISDS permit. Ms. Wallik replied no. Director Sullivan noted that they have no standing to object to the DEM water quality certification or ISDS. Mr. Goldman said that he reviewed the language for the conservation easement and that the easement runs with the land and applies to any successors. Mr. Fugate noted that the shed would be used for accessory use and there could not be any further subdivision of the land. Mr. Fugate said they would limit the use to the small shed and it would also be recorded in the land evidence records and run with the land. Cynthia Giles, Conservation Law Foundation, referred to the application last summer to build a house on a wetland. Ms. Giles stated that the CRMC had new rules and regulations with regards to building on a wetland. Ms. Giles felt that this application was the same as last year's application because the lot was 90% wetland. Ms. Giles stated that the staff recommended approval of the application. Chair Tikoian replied that the staff report is there and that the council is here to hear the application and make a decision. Ms. Giles felt the protecting wetlands is the CRMC's job. Ms. Giles said the DEM water quality certification and ISDS did not say it was appropriate to fill wetlands. Ms. Giles said the local building and zoning approvals were contingent on CRMC approval. Mr. Giles felt that it was up to the council to decide if a wetland should be filled. Ms. Giles noted that there was no staff engineering report in the file. Mr. Fugate explained that freshwater applications only require biologist review unless there is a flood area then an application would need engineering approval. Ms. Giles said the report said building a home on the northeastern part would be difficult. Ms. Giles felt the council could still deny the application and protect the wetland. Fran Clark, Little Compton Conservation Commission, said the commission had not weighed in on this application. Mr. Shekarchi said it was troubling to him that they did not object at the local level. Ms. Clark replied that they were not notified by the town about the application. Mr. Boehnert said Ms. Steere's statement regarding looking at an alternate site was not true they did look at an alternate site at the southwest corner and it was determined that it was not viable to build in this area by both CRMC and their consultant. Mr. Boehnert said the wetland rule

change did not apply to this application and that it falls under the old regulations. Mr. Boehnert noted that the previous alteration of the wetland had not done any harm. Mr. Reis said the jurisdiction wetland was the same rule for wetlands. Mr. Reis said jurisdiction wetland has value as does regulation wetlands. Mr. Rabideau wanted to stress the importance of the conservation easement. Mr. Gray said he was in a quandary regarding crossing the solid line for filling in the northeast corner and filling in the southwest corner within the solid line. Mr. Gray said looking at the photograph the finger in the southwest corner juts into the wetland and there would be intrusion to the wetland on all three sides. Mr. Gray said he can see what staff is saying and what Ms. Steere is saying that they can stay within finger. Mr. Gray asked what the benefit of the land conservation was. Mr. Fugate replied that the conservation easement was a benefit to CRMC and it protects the land. Mr. Gray asked if this application was the same as the other application. Mr. Fugate said no, the other application had no local approvals. Mr. Gray said there was no balance with a conservation easement. Mr. Fugate said no they were building on 90% of the lot. Mr. Gray felt there was a benefit to the easement and it keeps them from further developing. Mr. Zarrella said he is an advocate for property rights but his obligation was to the people of Rhode Island to protect the land. Mr. Zarrella felt that this application was similar to the Santilli application. Mr. Zarrella felt they needed a site visit on this. Mr. Zarrella disagreed with Ms. Steere on the 35'x100' house as the applicant had to meet town setbacks. Mr. Abedon said the house was 30'x48' and asked if the house had been bigger than this and reduced. Mr. Reis said the house could be reduced. Mr. Ries noted that the applicants have owned the land for twenty years. Mr. Reis said it was his intent to protect the interest of the state. Mr. Reis felt the applicant qualified for a permit on this house. Mr. Abedon said if the house was 4 bedrooms could they reduce it to 3 bedrooms. Mr. Boehnert said they reduced the house to 3 bedrooms with no garage. Mr. Abedon asked if the 45' setback was the maximum from the town. Mr. Boehnert replied that the 45' was the limit from the town. Director Sullivan said this was the maximum they could get for the setback. Director Sullivan said the DEM ISDS and water quality certification should not be construed for granting permit. Director Sullivan said in his opinion the applicant has not avoided, minimized or mitigated the impact to the wetland. Director Sullivan said he could support something different than this. Director Sullivan said as proposed there was a loss of wetland and there was no restriction on another shed in the area. Director Sullivan found it difficult to accept the project as proposed. Mr. Shekarchi disagreed with Director Sullivan and felt that DEM ISDS, water quality certification and local approval mean a lot as well as weighing the staff reports and recommendation. Mr. Shekarchi felt the Narragansett vote did not weight in. Mr. Shekarchi moved approval of the application with all staff stipulations and that the southwest shed be part of the conservation easement. There was no second. Chair Tikoian was concerned with the cumulative impact, saving the conservation easement and the impact to the Sakonnet River. Mr. Reis felt there was minimal impact and this was a small percentage of area. Mr. Reis said if this was another wetland and it had a domino effect he would be concerned. Director Sullivan asked if Mr. Reis agreed that including the existing shed in the southwest corner would be a good thing to protect the wetland. Mr. Reis replied yes. Mr. Gray said the questions is have they gone far enough to avoid, minimize and mitigate. Mr. Gray asked the applicant if they could come up with a better plan and come back to the council with a less intrusive plan.

Chair Tikoian called for a recess at 9:34 p.m. to allow Mr. Boehnert to speak with the applicant. Chair Tikoian called the meeting back to order at 9:40 p.m.

Director Sullivan asked for legal counsel advice and asked if the council rejects the application as is and the applicant comes back with a different proposal would the application fall under the new regulations. Mr. Goldman replied yes if this was the final agency action, a new application would fall under the new rules. Director Sullivan asked if the applicant asked for a continuance to modify the application would it fall under the new rules. Mr. Goldman replied if the application was held open at CRMC it would fall under the old rules. Mr. Boehnert said he would like the opportunity to work with CRMC on a new footprint. Chair Tikoian asked how long the applicant would need 30, 60, or 90 days. Mr. Boehnert replied 30 days. Director Sullivan, seconded by Mr. Ricci moved to continue the application 30 days to allow the applicant to work with staff. The motion was carried on a unanimous voice vote. Mr. Zarrella, Mr. Coia and Director Sullivan wanted to visit the site. Mr. Zarrella asked if there was any objection to them visiting the site. There was none.

Chair Tikoian left at 9:43 p.m. Vice Chair Lemont presided over the remainder of the meeting.

2005-06-003 MICHAEL & MAUREEN ANTONELLIS – Raze and remove existing dwelling; Construct new dwelling, ISDS, permeable driveway (relocate drainage); serviced by town water; with a planted buffer. Located at plat 40, lot 30-A; 312 Prospect Lane, Portsmouth, RI.

Sean Coffey, attorney for the applicants was present on behalf of the applicants. Eric Offenberg, the applicants' engineer and Scott Rabiodeau, the applicants' wetland biologist were also present on behalf of the applicants. Ms. Silva gave council members a brief summary on the application. Ms. Silva explained that the application was for new construction on property in Portsmouth. Ms. Silva stated that there was an uninhabited shack on the property with a new dwelling. Ms. Silva noted that the application falls under the coastal and freshwater wetland jurisdiction which requires a 50' buffer zone and a 100' buffer from the wetland under CRMC jurisdiction. Ms. Silva said the applicant is requesting an 18' variance to the coastal buffer and a 100' buffer variance to the wetland buffer. Ms. Silva said she met with the applicant numerous times and worked on the application. Ms. Silva said staff had no objection to the application. Vice Chair Lemont noted that no staff objection to the 100' buffer variance was unique. Ms. Silva replied yes but this was to eliminate no fill between the house and the stream. Mr. Coffey stated that there was extensive staff review of the application. Mr. Coffey said the applicant has ISDS approval. Mr. Coffey said the house was within 100' of the stream and this was the maximum setback to the coastal feature. Mr. Coffey stated that this was a two-bedroom house and that there would be grading for the ISDS. Mr. Coffey explained that they would restore the areas adjacent to the coastal feature and make improvements to the buffer area. Mr. Coffey said they reviewed the staff biologist and engineer reports. Mr. Coffey stated that the applicants' have done all they can to move the project away from the coastal feature. Mr. Coffey said the biologist reduced the variances and anticipated the impacts to the maximum extent possible. Mr. Coffey said they agreed to the staff stipulations. Ms. Silva noted that the plan on page p9 in the packet was different than the plan they reviewed and approved. Vice Chair Lemont, as well as, Mr. Gray and Mr. Shekarchi objected to not having the correct plan in the packet. Mr. Offenberg stated that there was not change in the ISDS but that they moved the house further away. Ms. Silva said the plan in the packet was not the same plan reviewed by staff. Vice Chair Lemont explained that the packets are sent to council members 5 days in advance for council members to review. Vice Chair Lemont said

council members did not have the correct plan to review to base their decision on. Vice Chair Lemont polled the council to see who wanted to move forward on the application:

Mr. Shekarchi	Yes	Mr. Gray	No
Mr. Ricci	No	Mr. Zarrella	Yes
Mr. Dawson	No	Mr. Coia	Yes
Dir. Sullivan	No	Vice Chair Lemont	No
Mr. Abedon	No		

3 Affirmative 6 Negative 0 Absentation.

The application was continued. Mr. Coffey requested that the application be continued to the April 25th hearing. Mr. Gray asked if the 100' freshwater wetland on the property was a variance. Mr. Silva replied it was not a variance. Mr. Gray said he was not seeing 100% variance. Mr. Fugate explained that they are typically coastal variances. Mr. Dawson requested that any additional in the plan be outlined so that council members are aware of them. Mr. Shekarchi stated that he did not see the objectors' letter in the packet and wanted it in the file. Ms. Silva noted that the objectors' letter was not in the packet. Mr. Abedon wanted a larger scale for the photographs. The application was continued.

7. Enforcement Report – February 2006

There were none held.

8. Category "A" List

There were no Category A's held.

There being no further business before the council the meeting, the council adjourned at 10:00 p.m.

Respectfully submitted,

Grover Fugate
Executive Director CRMC

Reported by Lori A. Field