

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, April 11, 2006 at 6:00 PM at the Narragansett Bay Commission Boardroom – One Service Road, Providence, RI.

MEMBERS

Paul Lemont, Vice Chair
Ray Coia
Jerry Sahagian
Jerry Zarrella
Dave Abedon
Bruce Dawson
Bob Ballou (Representing Director Sullivan)

STAFF PRESENT

Grover Fugate, CRMC Executive Director

Brian Goldman, Legal Counsel

1. Vice Chair Lemont called the meeting to order at 6:10 P.M. Vice Chair Lemont stated that Chair Tikoian was out of town and that he would be presiding over the hearing. Vice Chair Lemont noted that they just had a quorum, 7 council members. Vice Chair Lemont said that on one of the issues, which he said a lot of people were here on, that Mr. Zarrella has to recuse himself and that would leave 6 council members and therefore, the council could not take any action on it. Vice Chair Lemont said that issue is entitled public changes to the Salt Ponds Special Area Management Plan and the Narrow River Special Area Management Plan. Vice Chair Lemont said if anyone is present solely for this, his advice is that they need not stay because when they come to this item they will not have an quorum and will have to put it off to another date. A woman in the audience asked if another council member was expected to show up. Vice Chair Lemont replied no they polled the regular council members and they knew they would only have seven members. Vice Chair Lemont said they did speak to Mr. Zarrella about this and the reason he has to recuse himself is because he is represented by legal counsel who is present and it was questionable about whether he could act and the advice of CRMC legal counsel and himself is that he cannot.

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

Vice Chair Lemont read through the agenda to see which applicants/attorneys were present.

2. **CONTINUANCES:**

1995-07-232 ARCHES PROPERTY OWNERS -- Modification of existing Assent by removal of existing 3' x 10' fixed pier, 3' x 10' ramp and three 4' x 10' floats as assented (A1995-07-232). Construct a fixed timber pier 4' x 65'. The new facility will extend 15' beyond the existing facility (65' beyond mean low water). A variance to RICRMP 300.4.E.3(j) is required (the facility is 6' from the west property line extension and 4' from

the east property line extension, standard distance is 25'). A variance to RICRMP 300.4.E.3(k) is required (proposed length is 65' beyond mean low water, standard is 50' beyond mean low water). Located at plat 10, lot 4; 3 Arches Road, Charlestown, RI.

The applicant was not present. Mr. Fugate explained that both objectors requested a continuance of the application as they could not make the meeting. Mr. Fugate stated that the request for a continuance was made within the allotted time and a continuance had been granted. The application was continued at the objectors' request.

3. Minutes

Mr. Coia, seconded by Mr. Sahagian moved approval of the minutes of March 28, 2006. Mr. Zarrella stated that the minutes of March 28th did not reflect his personal point of privilege but that the Chair's persona privilege was there and requested that it be put in the minutes. The motion and the second were withdrawn. The minutes of March 28th were held to the next meeting.

4. SUBCOMMITTEE REPORTS

There were no subcommittee reports.

5. STAFF REPORTS

Mr. Fugate announced that the Annual Aquaculture Report had been produced and will be sent to council members. Mr. Fugate said that aquaculture production over the last year grew by 30 percent and its been averaging over the last 4-5 years growing 20 percent per year and now just about over the \$1 million mark for farm gate value and growing every year which is great to see.

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

2005-08-116 TUSCAN REALTY – Construct a residential boating facility to consist of a 4'x 154-foot fixed pier with a 4' 20' lower access pier. The terminus of the pier will extend to 75-feet beyond mean low water (MLW), requiring a 25-foot length variance from the 50-feet beyond MLW standard. Located at Plat 5, Lot 73; 89 Narragansett Boulevard, Portsmouth, RI.

Turner Scott, attorney for the applicant and Warren Hall, the applicant's engineer were present on behalf of the applicant. Elizabeth and Timothy Conrad, the objectors were also present. Mr. Fugate gave council members a brief summary on the application. Mr. Fugate stated that the application was to construct a residential boating facility to consist of a 4'x 154-foot fixed pier with a 4' 20' lower access pier. Mr. Fugate said the terminus of the pier will extend to 75-feet beyond mean low water (MLW), requiring a 25-foot length variance from the 50-feet beyond MLW standard. Mr. Fugate said staff recommended approval of the application. Mr. Scott stated that he read the objections to the petition and noted that the staff recommended approval of application and felt the objectors objections had been answered. Mr. Scott said he had an updated plan, which showed the mooring in question, and the dock. Mr. Scott stated that the mooring was 50 feet away from the dock. Mr. Scott noted that the plan was done after the objection was received. Vice Chair Lemont asked if the staff had seen the plan. Mr. Scott replied no. Mr. Zarrella asked where staff was tonight. Mr. Fugate replied that the staff engineer

was at a wake for a close family friend, the biologist was on vacation, the deputy director was unavailable and the application coordinator was on vacation. Vice Chair Lemont requested that the applicants put on their case. The council recognized Warren Hall as an expert in engineering. Mr. Hall stated that he prepared the plans for the application and that he did the plan and survey. Mr. Hall said he read the objections and that he prepared the plan, which showed the mooring on the plan after the objection, was received. Mr. Scott submitted the plan to the council as an exhibit. Vice Chair Lemont said he was hesitant on accepting the plan without staff seeing the plan. Vice Chair Lemont asked if the plan addressed the objectors' concerns. Mr. Hall replied yes. Mr. Hall said he did research on the property, looked at the plat plans, warranty deeds, etc... Mr. Hall described the property and the plan. Mr. Scott said staff answered the objectors' objections regarding the tie-off piling not being part of the structure and the scenic value. Mr. Dawson asked what size boat was on the mooring. Mr. Hall did not know. Mr. Dawson said if the mooring field measuring on the outside of the mooring field and not the mooring and there is a wind change and depending on the scope could this effect the dock. Mr. Hall said you could not put a 50' boat on the mooring. Mr. Scott asked Mr. Hall if the Portsmouth GIS showed moorings at this site. Mr. Hall replied no. Mr. Dawson asked if the tie-off pilings were at the end of the "L" because a boat on the dock would require tie-off. Mr. Hall said yes but not necessarily. Mr. Dawson said this would make for a large boat on the dock. Mr. Abedon asked if this was a town mooring. Mr. Scott replied no it was a private mooring. Mr. Zarrella asked about the Portsmouth mooring field. Mr. Scott replied there was no GIS sites for town moorings at this site and that the Town of Portsmouth had no defined mooring field at this site. Mr. Zarrella asked if a 50' boat was out there would the town lose a mooring. Mr. Hall said no he wouldn't think so there is a 50' radius. Mr. Hall said if there was a boat on the mooring there would be 35 feet from the mooring to the dock. Mr. Zarrella asked if they checked to see what size boat would be on the mooring. Mr. Scott replied that they did check with the town but that the town does not keep a record of this. Vice Chair Lemont asked if it was the intention of the dock owner to put a boat at the outside face of the tie-offs. Mr. Hall replied yes. Vice Chair Lemont said at the bottom of the new dock and tie-off pilings, the radius might hold a 50' boat bow out and tie stern at ramp. Mr. Hall said they would have a problem with the water depth at the "L" section and that they need a 3' depth. Mr. Scott noted that there was a pier to the north which they had no objection to. Mr. Scott said there was a maneuvering problem because they only had 25 feet between the docks.

OBJECTORS.

Timothy and Betsy Conrad, the objectors, the abutters to the south were opposed to the application. Mr. Conrad referred to the definitions in the CRMC Red Book regarding moorings and said that if there are 5 or more moorings in an area you needed to take them into consideration and also the scenic value. Mr. Conrad said there are 5 or more moorings south of Brewers Marina. Mr. Conrad said he owns the mooring they are talking about. Vice Chair Lemont said the mooring was not within their property line. Mr. Conrad replied correct. Vice Chair Lemont asked if there was any mooring within their property lines. Mrs. Conrad replied no and said they plan to get a boat this summer and put it on the mooring. Mrs. Conrad said they are not objecting because of the mooring. Vice Chair Lemont asked why they are objecting. Mrs. Conrad replied she is not objecting because of the mooring. Mrs. Conrad said if she sits on her beach the property line does not go straight it goes sideways and that dock will go diagonally across her property. Mrs. Conrad said she was concerned with the size of the dock being huge and having a large boat on it especially when there is a marina next door or that they could put their boat on a mooring. Mrs. Conrad wanted the dock moved over.

She said the applicant has a double lot and she only has a single lot. Mrs. Conrad said if the dock was moved over it would not be such an eye sore. Mrs. Conrad said the council could take aesthetic value into consideration. Vice Chair Lemont had a question of legal counsel and asked if the property line extends parallel to the dock and it runs with the line of the property line from a legal standing is there any problem with that. Mr. Goldman said they do not determine riparian lines and explained how riparian lines are determined. Mr. Goldman said the regulations say property line extensions for a dock application with an off set from property lines. Mr. Zarrella said the objectors say the council can take aesthetic value into play and asked what the regulations say about this. Mr. Fugate said Section 330 addressed general scenic values for public and there were no variance required to this section. Mr. Conrad referred to Section 110 and felt that it would not only affect the scenic value but that there would also be recreational impact. Mr. Goldman said a variance for the dock would be needed if it was 50 feet away from an approved mooring field. Mr. Goldman noted that there was no approved harbor management plan for the Town of Portsmouth so there are no mooring field. Mr. Conrad felt that did have a mooring field. Mr. Sahagian asked how far from the dock to the mooring and that he was measuring 62 feet. Mr. Hall said this was correct. Mr. Sahagian addressed Mrs. Conrad's statement that there was a marina next door and the applicant could use the marina. Mr. Sahagian noted that this was type 3 waters and that marinas are a priority use and that the applicant could apply for a marina. Mr. Scott said that there are very few moorings in this area and if the objectors are concerned about the mooring they could move there mooring in front of their property. Mr. Zarrella talked about finger turns and if they moved the boat there then there would be a conflict. Mr. Scott said they are not doing that. Mr. Scott said the boat would be laid upside. Mr. Scott said to resolve the conflict the objectors would have to move the mooring 15 feet over or move it in front of their property. Mr. Conrad said it would cost him too much to move the mooring. Vice Chair Lemont said the cost of moving the mooring was not a council concern. Mr. Fugate explained the structural footprint and said the piles need a length variance of 33 feet, 25' variance for the fixed pier and 44' variance for the tie-off pilings. Mr. Conrad had copies of the town map with a north arrow which showed the property lines all parallel. Mr. Conrad wanted to know why the plan showed the property lines point 10 degrees south off of the east. Mr. Hall explained that on the town map it has an arrow which points north to give guidance when looking at the map. Mr. Scott submitted a copy of the assessor's map as an exhibit. Mr. Hall explained that the north arrow is for general purposes just to determine the location of the property and that you need to look at the deeds to see where the property lines are. Mr. Zarrella said the assessors map is just a picture and it has no angles or boundaries. Mr. Zarrella said it was dangerous to use an assessor's map when looking at property lines. Mrs. Conrad said they can move their mooring over 15 feet but that they wanted the applicant to move their dock over because they have a double lot. Mr. Ballou asked why the dock was designed where it is and not angled from the stairs to the beach. Mr. Scott replied to request the minimum variances necessary. Mr. Scott said if they moved the dock they would need more variances and that this was the minimum variance necessary. Mr. Ballou asked about the concern with the issues of the tie-off piles. Mr. Scott said they need the tie-offs and it was the safest way to the dock. Mr. Dawson noted that on page 21 in the packet there is a boat drawn on the plan and asked if they had drawn the boat on the plan. Mr. Scott replied that they did not draw the boat in. Mr. Dawson said it would be more helpful if he could see the adjacent properties. Mr. Scott asked if he was talking about the objectors' property. Mr. Dawson replied yes. Mrs. Conrad asked if the applicant could move the dock over and straighten it out. Mr. Zarrella said if he was voting with his heart he would vote to deny the application. Mr. Zarrella, seconded by

Mr. Sahagian moved approval of the application with all staff stipulations and the variance. The motion carried. Mr. Dawson was opposed.

2005—9-113 DENISE D'AMICO – Construct and maintain a residential boating facility consisting of a stairway leading down to the coastal bank to a 4' wide by 120 foot long fixed timber pier supported on piles and on 4 rock filled timber cribs. The fixed pier leads to a ramp that leads to a 150 square foot terminal float. The proposed structure extends 100 feet seaward of the cited mean low water mark, and the applicant seeks a 50 foot variance to RICRMP standard 300.4.E.3.k. Located at Plat Y-1, Lot 9; 78 Harbour Island Road, Narragansett, RI.

Denise and Peter D'Amico, the applicants was present. Mr. Fugate gave council members a brief summary on the application. Mr. Fugate stated that the application was to construct and maintain a residential boating facility consisting of a stairway leading down to the coastal bank to a 4' wide by 120 foot long fixed timber pier supported on piles and on 4 rock filled timber cribs. He said the fixed pier leads to a ramp that leads to a 150 square foot terminal float. Mr. Fugate stated that the application requires a 50' variance. Vice Chair Lemont noted that there were no objectors present. Mr. Fugate stated that staff recommended approval of the application if the council approved the variance. Ms. D'Amico said she put the dock in front of her cottage so that they could swim off the dock. Mr. Sahagian asked how much water there was at the end of the dock. Mr. D'Amico said they have 26-30" of water at the end of the dock at mean low tide. Mr. D'Amico said they have to go out 100' to get this depth to use the dock. Mr. Abedon said that on page 11 and 13 in the packet it show the mean low water depth at 48" variables. Mr. Sahagian replied that this was lateral access. Mr. Dawson noted that on page 8 there is a mooring 30' from the end of the dock and asked who owned the mooring. Mr. D'Amico replied that their engineer, Ernie George, contacted the harbor master and they said they would move the mooring if it interfered with the dock. Mr. D'Amico said they have never seen a boat on the mooring. Mr. Ballou asked what the council standard was for water depth and how much depth was needed at low water for a dock to obtain. Mr. Fugate explained that there was no council standard there was a minimum depth of 18" and in past practices the council used a 3' standard depth. Mr. Zarrella, seconded by Mr. Dawson moved approval of the application with all staff stipulations and the variance. The motion was carried on a unanimous voice vote.

7. Category "A" List

There were no Category A's held.

There being no further business before the council the meeting, the council adjourned at 7:11 p.m.

Respectfully submitted,

Grover Fugate
Executive Director CRMC

Reported by Lori A. Field