

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, February 14, 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 Sahagian
Tom Ricci
Neill Gray
Dave Abedon
Michael Sullivan

STAFF PRESENT

Grover Fugate, CRMC Executive Director

Jeff Willis, CRMC Deputy Director
Dave Reis, CRMC Environmental Scientist
Megan Higgins, CRMC Policy Analyst
Kevin Cute, CRMC Coastal Marine Resources Specialist

Brian Goldman, Legal Counsel

1. Chair Tikoian called the meeting to order at 6:08 P.M.

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

Director Sullivan stated that there was a question as to the public access on the Carnegie Abbey application that it was limited to the citizens of Portsmouth. Director Sullivan stated that it was his belief that this was unrestricted public access. Director Sullivan requested that the minutes regarding the motion on Carnegie Abbey application reflect that public access is open to the public and not limited to the citizens of Portsmouth. Mr. Ricci requested that the January 24th minutes be amended to show that he was present at the meeting. Vice Chair Lemont, seconded by Mr. Ricci moved approval of the January 24, 2006 minutes as amended. The motion was carried on a unanimous voice vote.

2. **STAFF REPORTS**

There were no staff reports.

3. **SUBCOMMITTEE REPORTS**

Mr. Fugate informed council members that a letter of complaint had been received regarding the CRMC filings with the Secretary of State's office. Mr. Fugate stated that the Secretary of State had sent a letter to CRMC dated October 30, 2003 which detailed the requirements for filing. Mr. Fugate stated that the letter had been sent to the finance section of CRMC and was filed. Mr. Fugate said a staff member found the letter and that is how they found out about the filing requirements. Mr. Fugate said the Deputy Director had taken action prior to the complaint being filed. Mr. Fugate explained that they

worked with the Secretary of State's office on the required filings and that they have been filed with the Secretary of State's office. Mr. Fugate stated that in review of the Secretary of State's website that there were other agencies, not just CRMC, that were not in compliance. Mr. Fugate explained that they are required to file annual agendas and meeting dates with the Secretary of State's office. Mr. Fugate stated that they called the Secretary of State's office and they came down and went through with staff and the deputy director to show them what needed to be done and they are now up-to-date on the filings and they have trained the clerical staff to do this. Mr. Fugate stated that they are in compliance and up to snuff at this point. Chair Tikoian asked if CRMC was 100% in compliance with the open meetings law at this date. Mr. Fugate replied yes. Director Sullivan explained that the coordinating team has set up an email memo that the postings have to be done and they notify the commissioners that the filings have been done. Director Sullivan asked if it was something CRMC could do. Mr. Abedon asked if that meant the complaint goes away. Mr. Goldman replied no that they had to file their response with the Attorney General's office and it was up to the Attorney General's office to decide what action to take. Vice Chair Lemont noted that the article in the newspaper stated that the Secretary of State's office said this was the only agency that was not in compliance. Vice Chair Lemont asked if there was any mechanism that the Secretary of State could notify an agency that the filings are not done. Mr. Fugate said they went to the website and each agency filed an agenda of upcoming meeting for the year and they noticed several agencies did not file theirs. Chair Tikoian thanked the executive director for acting on this quickly and correcting this by acting on his letter.

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

5. **Bristol Harbor Management Plan**

Ken Cute gave council members a brief summary on the Bristol Harbor Management Plan and also passed out a memo which outlined five points that needed to be addressed by the town and reported that the five points have been addressed by the town. Mr. Cute stated that three pieces of correspondence were needed from DEM – Water Quality Certification, Statewide Planning and the Army Corps of Engineers and those they had been received. Mr. Cute said staff recommended five-year approval of the Bristol Harbor Management Plan. Chair Tikoian asked if the plan would be approved 5 years from today. Mr. Cute replied yes. Dianne Williams, Bristol Director of Development, requested approval of their harbor management plan. Chair Tikoian complimented Mr. Cute and the Bristol officials who worked on this. Chair Tikoian stated that it was CRMC's plan get these harbor management plans done. Mr. Sahagian, seconded by Mr. Ricci and Mr. Gray moved five-year approval of the Bristol Harbor Management Plan. The motion was carried on a unanimous voice vote.

6. **Coastal Habitat Restoration Trust Fund Applications before the Council for Review and Decision:**

- **Wakefield Fishway Slide Gate**
- **Gilbert Stuart Fish Barrier**
- **Rising Sun Mill Fish Passage**
- **Wonasquatucket River Dyerville Dam**
- **Shannock Village Dams Fish Passage Project**
- **Pawtuxet River Anadromous Fish Restoration**
- **Little Mussachuck Creek Salt Marsh Restoration**
- **Rhode Island Wetlands Inventory**

- **NWR Invasive Species Control/Wetland Restoration**
- **Modifications to Low Ground Pressure Excavator**
- **Continuing Support for the RI Habitat Restoration Portal**

Megan Higgins thanked the project managers for their restoration projects. Ms. Higgins stated that there were 11 projects recommended for approval by the Technical Advisory Committee and that they totaled out the grant money in the amount \$250,000. Ms. Higgins explained all 11 projects to council members. Chair Tikoian noted that this was the third year for this program. Ms. Higgins replied yes. Chair Tikoian stated that they received \$750,000 of state funds for this. Ms. Higgins replied yes. Chair Tikoian thanked Megan and the committee for distributing the funds to eight communities. Chair Tikoian also thanked the House and Senate members, Rep. Malik, Rep. Naughton, Senator Paiva Weed and Senator Felag. Chair Tikoian stated that he could see why these projects were approved. Chair Tikoian asked if the grant applications not approved received a letter why they were not approved. Ms. Higgins replied not yet they were waiting for the council to decide on these projects first. Ms. Higgins said they would send letters to the grant applicants that were not approved and outline the requirements for the grant and what requirements they did not meet. Vice Chair Lemont seconded by Mr. Abedon moved approval of the 11-habitat restoration grant applications listed above. The motion carried. Director Sullivan abstained.

7. APPLICATIONS REQUESTING EXTENSIONS OF EXISTING ASSENT:

Mr. Fugate stated that the next five applications had been granted a one-year administrative extension and this was their first council extension request. Mr. Fugate stated that all applications had been checked out by the enforcement staff and that there was no enforcement action on any of the applications. Mr. Gray noted the years on the applications vary and some are older than 7 years. Mr. Fugate explained that some of these applications were prior to the regulation change and at that time there was no limit on the number of extensions an applicant could get. Mr. Fugate said all the applications now fall under the new rules for extension requests. Mr. Gray asked when the rule change was made. Mr. Fugate replied 2-3 years ago. Mr. Fugate explained the rule change which allowed for a one one-year administrative extension of the assent and three council one-year extensions of the assent.

1998-06-026 STEPHEN TURRISI & POLLY BARRY – Extension of Assent for two bedroom single family dwelling serviced by Town Water and DEM approved composting toilet system and grey water only ISDS. Located at plat 155, lot 61 and part of 59; Atlantic Avenue, Westerly, RI.

Polly Barry, the applicant was present. Mr. Fugate explained that one one-year administrative extension had been granted and that this was the first council extension request. Mr. Sahagian, seconded by Mr. Ricci moved approval of a one-year extension of the assent. Ms. Barry asked if the extension was one-year from today. Chair Tikoian replied yes. The motion was carried on a unanimous voice vote.

1998-07-052 CASTLE FARMS INVESTMENT/TOWER HILL GROUP – Extension (#5) of Assent for 34 Single House lots with open Space. Located at plat 50, lot 2 and plat 50-1, lot 1; Tower Hill Road, South Kingstown, RI.

The applicant was not present. Chair Tikoian continued the application.

1999-08-084 NATALE PELLEGRINO REVOCABLE TRUST & MARY S. PELLEGRINO REVOCABLE TRUST -- Extension of assent for construction of dwelling and ISDS. Located at plat 156, lot 4; 631 Atlantic Avenue, Westerly, RI.

Natale Pellegrino, the applicant was present. Mr. Fugate explained that one one-year administrative extension had been granted and that this was the first council extension request. Vice Chair Lemont, seconded by Mr. Ricci moved approval of a one-year extension of the assent. The motion was carried on a unanimous voice vote.

2000-09-038 COSMO HARALAMBIDIS & DESPINA STEFANOPOULOS – Extension of existing permit to build dwelling and ISDS. Located at plat 19, lot 76; Cottrell Road, North Kingstown, RI.

The applicant was not present. Chair Tikoian continued the application.

2001-04-066 JANE PERRY – Extension of existing permit to build residential boating facility. Located at plat 157, lot 159; 68 Chapman Road, Westerly, RI.

Jane Perry, the applicant was present. Mr. Fugate explained that one one-year administrative extension had been granted and that this was the first council extension request. Mr. Gray stated that he did not see where the application was near a water earthlink. Ms. Perry replied that they were on the pond. Mr. Abedon, seconded by Mr. Gray moved approval of a one-year extension of the assent. The motion was carried on a unanimous voice vote.

8. APPLICATION REQUESTING A MODIFICATION OF EXISTING CRMC ASSENT BEFORE THE COUNCIL FOR DECISION:

2005-09-105 BRISTOL COUNTY WATER AUTHORITY – Construct and maintain a 32-foot long concrete Denil fish ladder with a 31-foot long concrete entranceway and 10-foot plunge pool at the Kickemuit Reservoir Dam. With the installation of a Denil fish ladder, 26+ acres of high quality spawning and nursery habitat in the Kickemuit River will become available to anadromous fish species, primarily alewife, restoring an historic anadromous fish run on the Kickemuit River. Located at plat 13B, Rte 103 Kickemuit Fish Ladder, Warren, RI.

Joseph Bachand, Bristol County Water Authority, was present on behalf of the applicant. Mr. Reis gave council members a brief summary on the application. Mr. Reis stated that the application was for a 32' long concrete Denil fish ladder with a 32-foot concrete entranceway and 10-foot plunge pool at the Kickemuit Reservoir Dam. With the installation of a Denil fish ladder, 26+ acres of high quality spawning and nursery habitat in the Kickemuit River will become available to anadromous fish species, primarily alewife, restoring an historic anadromous fish run on the Kickemuit River. Mr. Reis said the staff biologist and engineer reviewed the application and they had no objections to the application. Mr. Reis also noted in 2005 this project had been funded by the CRMC habitat restoration program. Mr. Bachand said on May 1st construction would begin. Mr. Bachand thanked CRMC staff for their work on the application. Chair Tikoian noted that staff had put the 11 restoration projects on the next agenda after the committee had recommended approval. Chair Tikoian asked what a denil fish ladder was. Mr. Bachand explained that a denil fish ladder was a concrete structure with wooden boards with water falls which shoots jet water out and draws fish in and up the water fall to different pools and they continue up the ladder and spawn. Director Sullivan, seconded by Mr. Ricci moved approval of the application with all staff stipulations. The motion was carried on unanimous voice vote.

2005-09-125 MOTIVA ENTERPRISES -- Install and maintain two (2) new breasting dolphins, and four (4) new mooring dolphins (monopiles), per plans. Located at plat 55, lots 17 & 18; 520 Allens Avenue; Providence, RI.

The applicant was not present. Chair Tikoian continued the application

9. *Petition for Reconsideration of Regulation Change on Sections 920 of the Salt Ponds Region Special Area Management Plan and Narrow River Special Area Management Plan.

Mr. Goldman explained to council members that the Conservation Law Foundation filed a Petition to Reopen Rulemaking and Motion for Modification of Action of CRMC. Mr. Goldman explained that the council follows Roberts Rule of Law in their decision-making. Mr. Goldman said if they reconsider an action they need a motion to reconsider by a prevailing member of the voting. Cynthia Giles, Director of the Conservation Law Foundation, stated that they were not requesting the council to change their vote, they wanted the council to rescind their vote and open up the public comment period again. Ms. Giles stated that the public wanted to be allowed to have input. Ms. Giles said the public did not know what the rule change was or understand what effect the rule change would have. Ms. Giles stated that in 1999 density issues applied to a subdivision and that in 2003 the rule was amended and changed and did not know what the change was. Ms. Giles was concerned with projects being exempt from the density requirements. Ms. Giles felt the council did not disclose the rule change and what previous changes had been made to the regulations. Ms. Giles said the public did not know on January 24th what the change was and the record said there was no public comment. Ms. Giles felt the minutes were confusing and not clear. She said Mr. Goldman stated that this was a technical correction but that they felt that this was more than a technical correction. Ms. Giles said the public did not know who would benefit from this rule change and there was failure to explain the rule. Ms. Giles felt there was failure of public notice on the CRMC website until after the meeting and that the January 24th agenda was not posted prior to the 48-hour notice rule. Ms. Giles felt the public did not have an option to offer public comment. Ms. Giles requested that the council rescind its prior vote and reopen the public notice. Ms. Giles felt these violations could be remedied if the council reopened the public comment and gave the public a chance to respond to the rule change. Chair Tikoian noted that Mr. Willis has passed out a chronology of the rule making for public notice on this change. Chair Tikoian requested that Mr. Fugate explain the chronology on this rule change. Mr. Fugate stated that on August 16, 2005 the Policy and Planning Subcommittee held a hearing on the rule change; August 23, 2005 the Policy and Planning Subcommittee report was read-out at the Semi-monthly meeting; September 6, 2005 the public notice was prepared and sent out; September 13, 2005 the public notice was published in the *Providence Journal*; October 13, 2005 the semi-monthly meeting was cancelled and the hearing was rescheduled to November 22, 2005; at the November 22, 2005 semi-monthly meeting legal counsel recommended that the council remand the rule change back to the Policy and Planning subcommittee to address some issues; December 20, 2005 the Policy and Planning Subcommittee met and review the public comments; on December 21, 2005 another public notice was prepared and sent out for this meeting. Mr. Fugate noted that at the time of the rule change there were 15/16 substantially completed subdivisions which fell under the previous regulation requirements. Mr. Fugate noted that no public comment had been received during this whole process. Mr. Goldman explained at the Policy and Planning subcommittee hearing they talked about the density requirements. Mr. Goldman wanted to address some comments address at him that said he did not explain the purpose of the December 14th grandfather date and an insinuation in the

filings with the agency that he somehow had knowledge of an individual application that was coming before the council and said this was not true. Mr. Goldman said what he explained to the Policy and Planning Subcommittee and the council was that the December 14, 2004 date was set by statute by the general assembly in the affordable housing statute, in RIGL 45-53 set December 1, 2004 for the state housing appeals board to determine which projects would be substantially complete as defined by the general assembly and which of those were not. Mr. Goldman said if they were deemed to be substantially complete they were required to be treated by the rules in effect prior to the December 1, 2004. He said the Housing Appeals Board had a meeting on December 8th and not December 1st and the date of December 14th coincided with the Council's rule change date became effective. Mr. Goldman stated that Policy and Planning's desire was to bring our regulations in conformance with what the general assembly desired as it related to affordable housing. Mr. Goldman said in another review of what was reported out of Policy and Planning when the language went out to public notice and it became clear to him that the language did not accomplish what the general assembly intended and what Policy and Planning intended which was to make it in conformance with the general assembly's desire on affordable housing and the moratorium. Mr. Goldman said after further reflecting he suggested to the Chairman that rather than vote on that language which he felt could be tweaked a little further that he recommended that it be remanded back to policy and planning and he drafted language which was before the council at the January 24th meeting which he presented to the Policy and Planning Subcommittee on December 20th and that specifically referenced the statute 43-53. Mr. Goldman said he believed he referenced 10 projects that were grandfathered in at the last meeting but that he did not have all his notes with him but they had grandfathered in 15 or 16 application and there were 7 or 8 that they declined to determine if they were substantially complete. Mr. Goldman did not know at that time which applications affected the coastal area. Mr. Goldman stated that he was asked by Mr. Coia at the January 24th meeting what was the significance of the December 14th date and he gave the same explanation that he gave tonight that it coincided when our rule change and the deadline set by the general assembly. Mr. Goldman felt this was a straightforward and simple charge that he had from policy and planning which was how do we set a grandfather date that coincides with that of the general assembly and that was what he did when he drafted the language. Mr. Goldman felt the language was very evident on what it was meant to do and he thinks policy and planning was clear on what it was meant to do. Mr. Goldman noted that Mr. Fugate had stated that the program change had gone out to notice. Mr. Goldman said because he feels that we need to comply with the Administrative Procedures Act and at the December 20th Policy and Planning Subcommittee meeting there was a discussion as to whether or not it should go out to public notice again and he was very adamant that he felt that it should go out to public notice even though it was meant to accomplish the same thing he felt out of an abundance of caution and to give people the opportunity for meaningful input that they re-advertise it for 30 days. Mr. Goldman said he does not know how else they could have done this and complied with the Administrative Procedures Act. Mr. Goldman said he thinks they did and he explained it as clearly and as best that he could and if he had been asked any questions he could have answered them. Mr. Goldman said it was very evident by the legislative intent that the legislature wanted the projects in the pipeline that were deemed substantially complete by the Housing Appeals Board that they fall under the old regulations and this was a discussion that they had in Policy and Planning and the policy decision was that we should comply with what the legislative directive or indirect direction to this agency was that if it was deemed substantially complete then it should be treated under the regulations in effect prior to December 1, 2004. Chair Tikoian asked if this was a rule change prompted by a council member. Mr. Fugate

replied no, there was a question on a loophole in the regulations and the general assembly had put a moratorium on these applications that were in the system the question became as to what regulations they would be treated under. Mr. Fugate said the general assembly, the administration, state planning were all concerned about the affordable housing issue and that this is one of the top social issues in this state in terms of providing affordable housing for Rhode Islanders. He said when the legislation came out it was discussed and felt that the council should not stand in the way of the general assembly's desires on this issue, hence the regulation change to grandfather in those applications that were substantially complete and that was the only ones that are grandfathered are condominiums and that subdivisions were caught under the density requirement. Chair Tikoian asked when he recommended these changes to policy and planning and the full council if he took into the facts of the allegations that they did not take into fact the sensitivity and any degradation to type of sewer runoff or things of this nature. Mr. Fugate replied that at looking at this that any application that did not meet the density requirements was subject to densification requirements. Mr. Goldman addressed a comment that was made that he suggested that this was a technical correction but what he said was a technical correction to the previous wording by the Policy and Planning subcommittee to tighten up the language and that it go out to public notice. Director Sullivan had a question on the date for substantive completion versus non-substantive completion and asked if this was a comfortable date, they felt comfortable with the Appeals Board having a date of December 1st and the council had a date of December 14th. Director Sullivan said a year and a month elapsed between when the appeals board took action and the council took action. Mr. Goldman stated that this came before the council in August 2005. Director Sullivan asked if there was any legal ramification if the council reconsiders this that another month of openness creates a problem. Mr. Goldman replied that it was up to the council to reconsider and that he was not making a recommendation as to whether or not the council should reconsider or not. Mr. Goldman said he was not sure what effect this would have. Mr. Goldman asked if he was asking if there was any harm that he knew of and if there was an application, it would effect there was none. Mr. Goldman he felt it was important for the council to reconsider it to air on the side of openness as you say and thinks its important that the record stress that they have complied with the Administrative Procedures Act and noticed it properly and did have a full and fair hearing on the views of this and the fact that people did not pay attention and the fact that people did not do their due diligence to understand the ramification of this act should not have dispersion on CRMC. Mr. Goldman said he wanted to be clear that he and Mr. Fugate did everything that they needed to do under the Administrative Procedures Act to make this valid and it was up to the council's discretion whether or not they want to reconsider it and whether they wish it to go out to public notice and accept any further public comment. Chair Tikoian said he had no problem with continuing this to air on the side of caution for public comment but agreed with Mr. Goldman to have allegations made against this body that they did not follow rules when this was publicized twice. Chair Tikoian said all the council's meetings are open and publicized and the public is aware of them. Chair Tikoian said in fairness of the populous public that wants to comment. Chair Tikoian said from his point of view and if council members want to open this up for a decision it should be done. Director Sullivan wanted to accept the public opinion and that he was inclined to ask the council to make a clear demonstrative effort to accept the public option and that this was already done. Mr. Goldman said he was happy to say that there was no agenda behind this rule change so he cannot tell him there was a compelling reason to do this. Mr. Goldman said they did this as any other rule change, feathered it out in Policy and Planning and it went out to notice like any other rule change and discussed it like any other rule change and there was no hidden agenda.

Chair Tikoian stated that there was no one council member that asked for this rule change that it was staff promulgated. Chair Tikoian stated that 99% of the program changes were staff driven. Director Sullivan felt that public creditability about the council's process was important and only on that basis is making the motion. Director Sullivan seconded by Vice Chair Lemont moved to reconsider and re-notice the rule change. Vice Chair Lemont wanted to make sure this would not set a precedent or practice for this body. Vice Chair did not want to sit on a body that every time a person did not read a newspaper properly that they can come in and say it was not fair and the record it clear that it was done and over done so he did not want to make it to be a practice or a precedent if a person came in and said they missed it and its not fair and wants to go back before the council. Vice Chair Lemont felt this was a good body and does things by the numbers and legally. Chair Tikoian stated that in the past when they have come up for public hearing on various policy changes and any individual had a specific concern on a policy and wanted to review it or sit with our staff, the council has always allowed them to discuss the issues with staff to try to reconcile those items. Chair Tikoian said to read a petition in the newspaper before they receive it is less than standard and unprofessional. Chair Tikoian said everyone knows that this body is very open and staff is open and accessible and that this was not the way that they operate. Chair Tikoian said they get along and go along and work with all bodies in Rhode Island and will continue to be that way. Chair Tikoian said he knows some parties wanted to make some comment but on the table was a motion to reconsider this motion and it comes back this body for a public comment. Chair Tikoian stated that the council was not going to talk about the actual policy and it would be reopened for public comment. Ruth Platner, Charlestown Planning Commission, stated it was not a comment on the petition but on the rule change. Mr. Goldman stated that this would go out to public notice for a 30 day notice public comment period for individuals to comment and the council is doing a procedural thing this evening the issue is whether to re-notice it. Chair Tikoian stated that the council could not discuss the rule change as it would be a violation of the public opening meetings law. Ms. Platner said she would not talk about the rule change. She said she knew the SAM plans and felt the council should care about them. Chair Tikoian stated that she was talking about the rule change and the SAM Plans and she could address this at the public hearing. The motion carried. Mr. Sahagian abstained.

10. Category "A" List

There were no Category A's held.

Chair Tikoian informed council members that the next council meeting, February 28th on the Champlin's application vote would be held at the Narragansett Town Hall at 6:00 p.m.

There being no further business before the council the meeting, the council adjourned at 7:33 p.m.

Respectfully submitted,

Grover Fugate
Executive Director CRMC

Reported by Lori A. Field

