

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, September 26, 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
Ray Coia
Joe Shekarchi
Tom Ricci
Jerry Zarrella
Dave Abedon
Bruce Dawson
Neill Gray
Dir. Michael Sullivan
Tom Ricci

STAFF PRESENT

Grover Fugate, CRMC Executive Director

Jeff Willis, CRMC Deputy Director
Ken Anderson, CRMC Senior Engineer
Dave Alves, CRMC Dredge Coordinator
Janet Freedman, CRMC Coastal Geologist
Tracy Silvia, CRMC Engineer

Brian Goldman, Legal Counsel
John Longo, Deputy Legal Council

1. Chair Tikoian called the meeting to order at 6:04 p.m.

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

2. **READING OF THE MINUTES OF THE PREVIOUS MEETING:**

Chair Tikoian noted that there were two sets of minutes in front of council members, one for the meeting of August 8th and one for the meeting of September 19th. Chair Tikoian requested that the minutes of September 19th be held, as he had not had a chance to read them. Mr. Coia, seconded by Dawson moved approval of the minutes of the August 8, 2006 meeting. The motion was carried on a unanimous voice vote.

3. **SUBCOMMITTEE REPORTS**

There were no subcommittee reports.

4. **STAFF REPORTS**

Mr. Fugate announced that the Council is sponsoring a low-impact development technical training tomorrow at Save the Bay. Mr. Fugate said the training is for all the consultants who are going to be preparing plans that might come before the council under the new urban coastal programs. Council members were invited to attend if they were interested.

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

6. **CONTINUANCES:**

1973-08-015 NANCY GILBANE – To alter the design of the floating dockage at an existing residential boating facility. As initially permitted in 1994 the floating dock consisted of a 200 square foot (20' x 10') float that extended 35 +/- feet seaward of the fixed pier. In 2004 the design was modified to allow the use of a 33' x 4' access float which extended 40 +/- feet seaward of the fixed pier and which was used to access a 20' x 6' float and a 20' x 4' float (total SF 200 SF). The applicant now seeks permission to alter the float design as shown on the attached plans. The design calls for the installation of two 20' x 5' floating docks and a 26' x 6' float for a total terminal float SF of 356 SF. The new float arrangement will extend 40' +/- feet seaward of the fixed pier and 75' +/- beyond MLW. The proposed design is variant to RICRMP Standard 300.4.E.3.d by 206 square feet. Project location: plat 26, lot 20; 140 Adams Point Road, Barrington, RI.

The applicant was not present. Chair Tikoian stated that the applicant had requested a continuance on the application and it was submitted at the property time within the 24-hour rule period. The application was continued.

7. **APPLICATIONS REQUESTING AN EXTENSION OF EXISTING ASSENT:**

1993-03-041 PICERNE PROPERTIES – Extension of existing coastal assent; 2nd full Council extension request. Project location: 172 Ocean Road, Narragansett.

Michael Hennessey, the applicant was present. Sean Coffey, the applicant's attorney was also present on behalf of the applicant. Fugate stated that the application had enforcement review and there were no problems. Mr. Fugate said the applicant was before the council for their second full request and they would be eligible for one more extension after this. Mr. Fugate stated that the applicant was also applying for a slight modification but that has not yet come before the council. Mr. Coffey explained that the assent modification is to design some lot lines within the subdivision and to also provide for footprints essentially for the building envelopes which construction can be done in the future for any homes that are built without the necessity of coming back for repeated extensions of the original subdivision. Mr. Coffey said the matter is pending and they hope to have it acted on soon but in the meantime they needed another extension. Mr. Sahagian, seconded by Mr. Coia moved for approval of the request for extension. The motion was carried on a unanimous voice vote.

8. **POLICY DISCUSSIONS – PRESENTATION ON COASTAL EROSION**

Chair Tikoian stated that this was the second phase of the policy on coastal erosion. Janet Freedman, CRMC Coastal Geologist gave a presentation on coastal erosion following up on the presentation given last week on the coastal process and the effect on our shorelines. Ms. Freedman talked about the current policy, the hazards policy, what we have right now, why we have different policy issues and look at some of the areas that are missing and have gaps and how they can strengthen the policy.

Virginia Lee, URI Coastal Resources Center, RI Sea Grant, passed out copies of the presentations given last week by Dr. Boothroyd and Pam for council members binders. Director Sullivan noted that Dr. Boothroyd hinted at disagreement with the council regarding fast tracking or allowing communities to go back and re-excavate roads in terms of sand depths and implied it as a policy matter would be better to leave it in place and reconstruct from there. Director Sullivan wanted to know when they would discuss the policy issues. Chair Tikoian replied that he had spoken with the Executive Director on this and decided the best way to start this phase-in of policy suggestion here was to enlighten council members on the issues and have technical people present the issues to see what is happening in Rhode Island and review what's happening in certain areas and look at the contrast to our present policy. Chair Tikoian said once they get through this phase they can get to the policies themselves and see if they need to be change and start the discussion process on our present policies versus what they are recommending and how they think they should be tweaked, altered or changed. Mr. Fugate stated that there are three major issues that the Council is going to face at some point: 1) post-storm events/ hurricanes they are inundated with requests to put in structural shoreline protection; 2) they are facing a lot of development that exists today getting squeezed; and 3) many municipalities want to rush in with sewer lines and infrastructure to deal with what they perceive as a health issue.

Ms. Lee gave a brief presentation on the increasing coastal population in Rhode Island and the CRMC permitting process.

Chair Tikoian thanked Ms. Lee and Dr. Boothroyd for their presentations. Chair Tikoian stated as the council gets into this more it will make more sense as they get into some of the policy decision making.

9. PUBLIC HEARING ON CHANGES TO THE RHODE ISLAND COASTAL RESOURCES MANAGEMENT PROGRAM AND MANAGEMENT

RICRMP

1. Revise Section 300.4.B.13. Policies

Chair Tikoian opened the public hearing on Revisions to Section 300.4.B.13 Policies. Mr. Fugate explained what this provision does is the Council would be adopting a new set of regulations that allow the towns that have harbor management plans to permit or undertake the permit of outhauls up to a certain number of outhauls per lot. Mr. Fugate said this would also allow the municipalities to grandfather in certain outhaul locations that exceed that number but not allow new ones. Chair Tikoian called for public comment. There was none. Mr. Zarrella stated that when the Red Book was written, the board consisted of legislators and when the Red Book was redone their were legislators on the council. Mr. Zarrella was concerned with making policy changes when the Supreme Court has not ruled on who the appointing authority is going to be to the board and felt it would be wrong to pass over some of the powers that the board has to cities

and town. Mr. Zarrella wanted to hold off on making any policy changes until the Supreme Court made a decision on who has the appointing authority. Chair Tikoian disagreed. Chair Tikoian asked legal counsel if this body was suited to vote on policy changes. Mr. Goldman said yes the statute is still enacted. Mr. Zarrella said this was not what he asked he knows they can vote a change but wanted to wait to find out who the appointing authority was. Director Sullivan had a question on the language on the third line regarding grandfathering and contiguous use. Mr. Fugate explained that the way he read it was that the contiguous property owner was going to in writing agree that should a residential property apply and be successful in putting in a residential boating facility they would remove the outhaul. Director Sullivan suggested changing the language “ such location since 2004 and the contiguous property owner(s) agree in writing to such, however, such “grandfathering” is extinguished ...” to “such location since 2004 and the contiguous property owner have not objected to the evidence in existence. However, any such “grandfathering” is extinguished...” Director Sullivan, seconded by Mr. Shekachi moved to accept the revisions to Section 300.4.B.13 Polices as amended. The motion carried. Chair Tikoian and Mr. Zarrella were opposed. Director Sullivan seconded by Chair Tikoian moved to accept the revisions to Section 300.4.B.13. The motion carried.

2. Revise Section 300.4.E.3. Standards

Chair Tikoian opened the public hearing. Mr. Fugate stated that this change establishes a standard depth for docks. Mr. Fugate said they currently have a minimum depth of 18-inches and this would put it at a maximum depth of three feet. Mr. Fugate said the council and several members had raised the issue a number of times about docks being designed to boats meaning that whatever the boat draws they push the dock length out and the boat seems to be driving the dock size rather than the standard. Mr. Fugate said this standard would set a maximum depth so that it gives greater predictability for the process. Mr. Sahagian asked if someone has a dock that extends out 75 and uses 4 feet of water. Mr. Fugate said the boat would have to be cut back to 3 feet depth or request a variance. Mr. Sahagian said if a dock is 50 feet and they have a 4' depth they would have to apply for a variance. Mr. Fugate replied yes. Mr. Sahagian felt this did not make sense. Mr. Gray was concerned with changing the depth down to a minimum of 18 inches. Mr. Gray asked what the council's goal was here are they looking at docks being used for dinghies to get to boats or looking at docks able to deal with boats. Mr. Fugate said most residential docks are designed to accommodate a boat and not as touch-and-go facilities. Mr. Gray was concerned with this rule change. Mr. Zarrella was concerned with this regulation change and felt that should not regulate someone's boat but look at each application individually. Several council members raised concerns about this regulations change. Chair Tikoian suggested that they send this back to policy and planning and have council members write their concerns and send them to him.

3. Add New Section 300.14.B.9. Standards

4. Revise Section 300.4 Recreational Boating Facilities

5. Urban Coastal Greenways/Providence Harbor SAMP

Vice Chair Lemont, seconded by Director Sullivan moved to defer the remaining three items until the next meeting. The motion carried.

NOTE: Vice Chair Lemont, Mr. Ricci and Mr. Zarrella left the meeting at 7:35 p.m. The quorum was still intact.

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

2004-12-015 CAPITOL CONSTRUCTION EXCHANGE – for a State of Rhode Island Assent to construct and maintain: Modification of existing approved residential timber pier consisting of 21.7' seaward extension of approved design resulting in new dimensions of: 4'x 165.6' fixed timber pier including 4' x 20' "L" at terminus and tie-off pile. Facility extends a maximum of 124.7' seaward of MLW requiring a 99.7' variance from section 300.4.E.3.(k). Located at plat 12, lot 25B, 94 Washington Street, Newport, RI.

Turner Scott, attorney for the applicant 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 a modification of an existing approved residential boating facility and the modification is to add 21.7 feet of fixed pier section. Mr. Reis said this would make the dock length 165.6 feet which would extend the dock 124.7 feet beyond mean low water requiring a 74.7 variance to the length standards. Mr. Reis stated that the prior variance length approval was for 53 feet beyond mean low water for a total of 103 feet beyond mean low water. Mr. Reis said the application would also be moving a tie-off pile to the north and changing the access stairs to the north. Mr. Reis said this application was heard by the council back in June 2006 and there were some concerns regarding the staff stipulations and they had met with the applicant and had reached an agreement on the stipulations. Mr. Reis said staff has no objection to the application but was deferring to the council on the length variance. Mr. Reis stated that currently the dock has a depth of minus 9 feet at mean low water and the additional extension and variance will extend the dock at minus 6 feet at mean low water. Mr. Scott said they agreed with the staff stipulations. Mr. Scott stated that the applicant needed the additional depth to use the dock for a touch and go for his 30' sailboat, which has a 5' draft to bring the boat in and drop off and pick up people. Mr. Scott stated that this was not only a benefit for the applicant but also for the people who are there. Mr. Scott felt they reached an accommodation with staff that is acceptable to them and requested council approval with those stipulations. Mr. Sahagian had a question on the correspondence handed out from the City of Newport with a corrected date of 2/28/06 and noted that the incorrect one was not in his packet and asked if it was in anyone else's packet. Mr. Gray said he did not know why the corrected date was on the letter but that he spoke with the City of Newport because he was looking for the letter in the packet and the correct date is February 28, 2006 and did not know who put corrected there. Mr. Sahagian did not want the City of Newport to come here at the last minute to try to object. Mr. Gray said they are not coming here at the last minute it was in the file. Mr. Reis noted that the packet had been abbreviated because the application had already been before the council. Mr. Sahagian, seconded by Director Sullivan moved approval of the application with all staff stipulations and the variance. Mr. Dawson had a question on one of the conditions

recommended by the City of Newport regarding seaward pilings or moorings and asked if the tie-off piling here was considered seaward. Mr. Scott replied that it is not seaward of the terminus of the dock. Mr. Dawson just wanted to make sure there wasn't a conflict. Mr. Gray asked if the motion included the City of Newport conditions. Mr. Sahagian replied no. Mr. Gray and Director Sullivan wanted to include the City of Newport conditions. Director Sullivan withdrew his second to the motion. Mr. Sahagian seconded by Director Sullivan moved approval of the application with all staff stipulations, the variance and the City of Newport conditions. The motion was carried on a unanimous voice vote.

2006-03-007 WATER'S EDGE, INC – Construct re-subdivision of 36 commercial lots, into one lot equaling (114,587 square feet) into five (5) residential house lots. The project will include removal of four (4) commercial storage buildings, as (asphalt) paved parking lot, the formation of five (5) residential house lots and associated utilities and a 50-foot planted buffer zone and 75-foot setback. Buffer zone variance required. Located at plat 21, lot 159; Park Avenue, Portsmouth, RI.

Kristin Sherman, attorney for the applicant was present. Scott Rabideau, the applicants' biologist was also present on behalf of the applicant. Mr. Reis gave council members a brief summary on the application. Mr. Reis said originally the property consisted of 36 commercial lots and through the local zoning process they combined them into one lot which is approximately 3 acres in size. Mr. Reis said they then applied to CRMC to subdivide the lot into five residential house lots. Mr. Reis stated that the project will include removal of four commercial buildings existing on the property, asphalt and paved parking lots for the construction of the five homes. Mr. Reis said the applicant proposed a 50-foot planted buffer zone with a 75-foot setback and the council requires a 150' buff and a 175' setback therefore the application requires a 100' setback variance and a 100' buffer variance. Mr. Reis explained page 8 of the packet indicated the original lot layout which was 36 small lots, page 9 it depicted the property as one large lot and page 10 shows the subdivision of the property into five lots. Mr. Reis said staff did a preliminary determination on the application and worked with the application to get more of a buffer and setback. Mr. Reis said the applicant originally proposed a 6-lot subdivision and reduced it to a 5-lot subdivision. Mr. Reis said the staff biologist does not object to the application and the staff engineer was deferring to the council on the variance. Mr. Reis felt the applicant made a reasonable attempt to minimize the variances. Chair Tikoian said when he said a 50' buffer zone and a 75' setback are proposed he interpreted the setback to include the buffer. Mr. Reis said it does. Mr. Reis said the first 50' of the setback is a 50' planted buffer. Mr. Gray asked about the staff engineer's stipulation on page 5 and said this would mean they would have to come back before the counsel because the plans are only to a certain point and not conclusive. Mr. Reis said yes these individual lots are within the 200' of the shoreline and need to come back for individual permits to demonstrate compliance within the subdivision. Mr. Abedon asked staff by the biologist signing off on this she is saying there will be no consequences as a result of this. Mr. Reis replied that are constraints on the property and a large part of the property is paved which is being removed and a buffer is being restored currently where there is no buffer and felt this was a suitable variance and the environmental conditions would not be degraded. Ms. Sherman explained the application and said they reduced this from a 6-lot subdivision to 5-lot subdivision. Ms. Sherman said the lots are 20,000 s.f. or more but the local zoning only requires 10,000 s.f. Ms. Sherman said they have tried to locate everything as far back as they can. She said there construction would be significantly further back then some of the existing structures on either side. Ms. Sherman said if they had to have the full buffer and setback they would not be able to

develop. Chair Tikoian had a question on the lot setback variance and asked if these were hockey stick lots. Mr. Rabideau replied they were. Chair Tikoian said when you look up at the handle of the hockey stick there is anywhere from 174' to 191' and asked why the houses could not go back. Mr. Rabideau said they did push everything back but they have limited frontage. Mr. Rabideau said they are proposing buffer restoration of 50' and a setback of 25' where there is none now. Mr. Rabideau said the structures being built are reasonable size 28'x36' and 30'x40'. Mr. Shekarchi noted that they are asking for a lot of variance from the regulations and said they went from a 6-lot subdivision to a 5-lot subdivision and if they go down to a 4-lot subdivision would they need less of a buffer relief. Mr. Rabideau replied no they would need the same amount of buffer. Mr. Rabideau felt they made a good faith effort to get some reasonable use of the property. Mr. Shekarchi asked again if the lots were reduced would they still need the same request for buffer relief. Mr. Rabideau replied yes on one of the lots but the standard is not for all of them but they still would need buffer relief. Mr. Shekarchi asked about zone change from the Town. Ms. Sherman replied that all local approvals are in place. Mr. Gray noted that in page 13 of the staff report it showed one of the lots needed a different setback than what was being requested and asked if all the lots are now requesting the same 75' buffer and if the lots can handle the 75' buffer. Mr. Rabideau replied the proposed buffer zone is 50' off the coastal feature which is the standard right across the entire property. Director Sullivan noted that Mr. Rabideau said this would be a family compound and asked if there would be a single entrance or is each going to have an individual driveway. Mr. Rabideau replied each has its own access point. Mr. Gray, seconded by Mr. Coia moved approval of the application with all staff stipulations and the variance.

2005-10-054 DAVID WHITE – The project will include construction of a residential dock that is 108' long, 9' beyond MLW with a 5' x 30' floating dock. The project also consists of 480 cubic yards of dredging to accommodate the float. Located at plat 1, lot 263; 10 Sheldon Street, Cranston, RI.

David White, the applicant was present. Richard St. Jean, the applicant's engineer was also present on behalf of the applicant. Mr. Goulet gave council members a brief summary on the application. Mr. Goulet application is for a new dock and new dredging. Mr. Goulet said the dock is 87 ½ feet long, 4' wide with a 125 s.f. float. Mr. Goulet said that there is 140 c.y. of dredging to bring it down to minus four mean low water. Mr. Goulet noted that there was significant input on this application from DEM, National Fish & Wildlife Service concerning the location, impacts to navigation, impacts to fisheries and impacts to subtidal habitat and this proposal is a result of significant negotiating and all the agencies felt this was an appropriate use of this area. Mr. Goulet said it was the minimum necessary to access the water from this area. Mr. Gray asked about the NOAA concerns on page 31. Mr. Goulet replied that Mr. Ludwig from NOAA was very instrumental in negotiating this particular dredge, his concerns with the subtidal habit and also the location adjacent to the channel. Mr. Goulet also noted that they did some negotiating with the Army Corps to get them to relax a little in order to adjust the angle on the floats so they could minimize the dredging. Mr. Gray said the dredging is basically from the Federal Channel four feet. Mr. Goulet replied six feet. Mr. Gray had a question on the lots owned by Mr. White. Mr. St. Jean explained that the applicant lives on Lots 287 and 378 which are combined lines and Lot 263 owned by the applicant is across the street but there is no dwelling on that lot. Mr. Gray asked about tying the lots together. Mr. Goldman said if the application was approved, the lots would have to be tied together. Director Sullivan noted that it was a stipulation. Mr. White said he had no problem with tying the lots together. Mr. Gray asked about the lateral access and

noted that the dock elevation was 4 ½ feet and asked if there was any discussion about trying to raise the dock to a minimum of 5 feet. Mr. Goulet said this area was challenging to access this via pedestrian. Mr. Gray asked what the physical conditions were at low tide. Mr. Goulet said this is a flat area. Mr. Abedon asked if you would sink down. Mr. Goulet said yes up to your waist. Mr. Abedon wanted to make sure the staff had no problem with the navigation being 50 feet away. Mr. Goulet replied no there are no problems. James Crawshaw, an abutter stated that he was in favor of the council granting the application. Louise Fairfield, an abutter stated that she was opposed to the council granting the application because she felt the cove was saturated with boats and docks and marinas and did not feel there needed to be more docks. Ms. Fairfield was also concerned with the impact to wildlife. Mr. Shekarchi, seconded by Mr. Abedon moved approval of the application with all staff stipulations and a stipulation tying the lots together. Mr. Abedon stated that he knew this area well and it's a shame that anything is there at all. Mr. Abedon said this was lovely body of water and its full now and that this is only a tiny drop in the bucket. Mr. Abedon said its one of those places that you wish you could start planning over but you can't. Mr. Dawson was concerned with letters from Save the Bay and others concerning the habitat that were in the packet. Chair Tikoian noted that the Save the Bay letter referred to dredging. Mr. Dawson noted that the winter habitat is not affected much. Mr. Goulet explained the dredge window period to Mr. Dawson and that it would not have an effect on the habitat and the applicant is held to the dredge window period. Mr. Goulet also explained that the volume of dredge could be monitored because they have to pay to go into the CAD cell and a fee is collected. Director Sullivan said that this was also part of the DEM water quality certification both for the dredging window and the essential habitat protection. Mr. Dawson said he felt the way Mr. Abedon does and will vote against application. Director Sullivan believed the project was one he could support with the stipulations of both CRMC and DEM water quality certification and infusion of the lots. The motion carried. Chair Tikoian and Mr. Dawson were opposed.

Chair Tikoian called for a recess at 8:17 p.m. Chair Tikoian called the meeting back to order at 8:22 p.m.

2006-06-033 PETER BROWN – Establish a 2-acre aquaculture farm to culture the American Oyster. Located in the East Passage of Narragansett Bay, Portsmouth, RI.

Peter Brown, the applicant was present. Mr. Fugate gave council members a brief summary on application. Mr. Fugate stated that the application was for a two-acre aquaculture to culture American Oyster. Mr. Fugate said both the Marine Fisheries Council and DEM signed off on the application. Mr. Fugate said there is no staff objection to the application and staff recommends approval of the application. Mr. Coia, seconded by Mr. Gray moved approval of the application with all staff stipulations. The motion was carried on a unanimous voice vote.

2005-02-018 RICHARD and JANE HENDRICKS -- Construct a one-bedroom addition with garage onto a single-family residence, to be serviced by existing well and recently

installed ISDS. Location: 27 Fire Lane 3, South Kingstown (Site 18 in Jerry Brown Farm), AP 82-1, Lot 1- 04

Richard Hendricks, the applicant was present. Amy Saunder, Eastern Docks & Associates, the applicant's septic designer and land surveyor was also present. Ms. Silvia gave council members a brief summary on the application. Ms. Silvia stated that the application was for an addition to single-family residence. Ms. Silvia said there were three components to the application. Ms. Silvia said staff did not have any objection to the application itself. She said the applicant provided a buffer zone, agreed to stop cutting on the bank for the 50' erosion setback. Ms. Silvia said when they asked for information about the ISDS it was discovered that in 2004 an ISDS had been installed without a CRMC permit. Ms. Silvia said the system is located outside the 200' jurisdiction but it's the council's policy if any portion of the project is within CRMC jurisdiction the entire project is subject to review. Ms. Silvia said the type of ISDS became an issue as it falls under the Salt Pond SAMP regulations and must meet the density requirements and new and altered ISDS requires denitrification technology, which the applicant has not installed on this system. Ms. Silvia said staff recommended denial of the application. Ms. Silvia stated that the applicant did not feel he needs the denitrification technology and staff disagrees. Chair Tikoian asked Mr. Goldman to brief the council on the legal process of this matter. Mr. Goldman explained that there had been some litigation on this case. Mr. Goldman said the applicant felt the council did not have jurisdiction at all over the ISDS because the bulk of it was outside of the 200 feet however there are components of the ISDS system to the dwelling. Mr. Goldman said they went to court and sought a declaratory ruling that CRMC did not have jurisdiction. Mr. Goldman said the court dismissed this on his motion to dismiss the case and ordered that the matter be presented to CRMC because they failed to exhaust their administrative remedies. Mr. Goldman noted there was a question on whether this was a replatted lot and pre-existed the formation of the SAM plan that it would need a variance and not a special exception unless they prevail on their argument that the ISDS is out of CRMC jurisdiction. Mr. Shekarchi asked if the council was being asked to rule on the variance and whether or not they can keep their regular system or denitrification system. Mr. Goldman said no, the application is for the house and the situation was raised about the fact that they believe the ISDS is out of CRMC jurisdiction. Mr. Fugate explained that in review of the house there were questions about the ISDS and it revealed that the ISDS had been applied for and approved by DEM sometime before and that the ISDS had been installed. Mr. Fugate said the problem is that the ISDS should have come in as a separate application and had it come in as a repair and they kept the structure the same size they would have been eligible to keep a standard ISDS but it came in as an alteration because they were expanding the structure over 100 percent of the existing footprint so it was an alteration to the system. Mr. Fugate said when alterations occur in the salt ponds the council requires them to put in denitrification technology. Mr. Fugate said there are severe problems with nitrogen input and that ISDS's are the major contributor to the nitrogen in the salt ponds. Mr. Fugate said the applicant was asked to consider putting in a denitrification system, a retrofit system which you can put in rather than tearing up the whole system and putting in a new denitrification system but the applicant said no because they felt CRMC did not have jurisdiction and DEM had already issued the ISDS permit. Mr. Fugate said the council does have concurrent jurisdiction and felt that applicant required a denitrification system but the applicant does not feel he should have to put one in. Mr. Shekarchi asked if DEM and CRMC ISDS permits are concurrent. Mr. Fugate replied usually and DEM generally stamps the permit that they need CRMC approval. Mr. Sahagian asked if this was a one-bedroom dwelling, three-bedroom dwelling or a four-bedroom dwelling as the

ISDS is for four-bedroom. Mr. Hendricks replied four. Ms. Silvia said it's a three-bedroom going into a four-bedroom. Mr. Sahagian noted that the agenda indicated to construct a one-bedroom addition. Ms. Silvia replied that the new addition is permitted to a four-bedroom as an alteration from a three bedroom. Mr. Hendricks stated that his house is currently a two-bedroom house and going to be a three-bedroom house with this proposal. Mr. Hendricks felt that CRMC staff thought they were trying to pull a fast one to get a permit and they are not that type of people. Mr. Hendricks stated that Amy Saunder designed their septic system and wanted her to tell the council why she felt they did not need to seek CRMC approval for the ISDS. Mr. Hendricks also noted that the DEM ISDS permit was not stamped saying they needed CRMC approval. Ms. Saunder explained that she designed the applicant's septic system and his addition. Ms. Saunder said they knew they were going to put an addition in at some point so they were following the procedures they thought were appropriate. Ms. Saunder felt under the review of Coastal and DEM that if they kept the septic system leaching and septic tank outside of their jurisdiction that no pretreatment was needed. Ms. Saunder said there was substantial room on the other side of the road to put the leaching field to stay as far away from the coastal feature as possible. Ms. Saunder said in RI you do not need a building permit to put in a septic system and it never triggered it to go to CRMC. She said there was no red stamp saying CRMC was required for the application and the septic system was installed and conformed to DEM. Ms. Saunder said when the applicant filed an application for his addition it was triggered that they needed pre-treatment. Ms. Saunder said they could put a pre-treatment now, which could retrofit with special permission from DEM. Ms. Saunder said the pipe that CRMC is saying is within their 200-foot jurisdiction would have no benefit to anything within 200 feet of the coastal feature. Mr. Sahagian asked her to point out where the pipe was on the map. Mr. Sahagian asked how many feet of the pipe was within the 200 feet. Ms. Saunder replied approximately 50 feet of the pipe was in the coastal jurisdiction. Ms. Silvia said the 200-foot jurisdiction was from the actual coastal feature, which is not the higher watermark shown on the plan and is where the existing well is. Ms. Saunder addressed the setback and look at the top of the bank there would be approximately 105 l.f. of pipe in the coastal feature. Mr. Shekarchi asked if the applicant ever asked for a preliminary determination and asked if they thought they needed one. Ms. Saunder replied no. Mr. Shekarchi said they applied for an ISDS and asked if they got a variance or if this was a standard application. Ms. Saunder replied it was a standard application. Mr. Shekarchi stated that DEM inspects the building process as it goes along and then they issue a certificate of conformance. Ms. Saunder replied correct and they have their certificate of conformance from DEM. Mr. Shekarchi asked her to address what harm to the environment there would be if you left the conventional system there instead of a denitrification system. Ms. Saunder said there is approximately 300 feet from the pond and there is a substantial amount of leaching going into the well prior to reaching the pond. Mr. Shekarchi stated that the council has rules and regulations to follow but maybe they should get someone who could say on the record with a degree of certainty that this particular system installed was not going to harm the environment. Mr. Shekarchi said the reason we have rules and regulations for denitrification is to make sure that it doesn't harm the environment. Ms. Saunder said they do not feel that they fall under that rule and regulation. Mr. Fugate wanted to clear a few things up regarding the plans and said if you were DEM reading that plan and saw the 200' mark you would be under the impression that the system is probably out of jurisdiction too. Mr. Fugate said the Council now permits all septic tank repairs and there are various stipulations that should an alteration occur to this system that a denitrification would be required. Mr. Fugate said they have met with DEM relative to this whole issue of denitrification because the ponds are continuing to degrade and said within the next six months DEM

is going to require denitrification within the entire watershed of salt ponds for all developments including repairs. Mr. Fugate stated that they have to look at the house and the septic system as one unit and cannot separate them. Mr. Fugate noted that the sediments in this area are very coarse. Mr. Fugate said staff felt a denitrification was an appropriate environment for this house and if Mr. Hendricks agreed to the denitrification the application would not be before the council. Director Sullivan asked if Ms. Saunder had done design work in the Jerry Brown Farm area or if this was the first one. Ms. Saunder replied that she has done two others. Director Sullivan asked if she was familiar with Jerry Farm being in the Special Area Management Plan zone. Ms. Saunder replied that previous two designs were done 10-12 years ago and that it did not come up. Director Sullivan asked if she understood the adverse impacts of nitrate on coastal ponds. Director Sullivan felt this posed more of an adverse impact than is necessary and a denitrification system would be a minimum requirement and urged that staff's recommendation be accepted. Mr. Shekarchi asked if they were looking for a whole new system or the retrofit. Director Sullivan replied that staff's recommendation was to deny as proposed. Mr. Sahagian asked staff where they would put the septic system, is there an alternative and what septic system they would advocate. Ms. Silvia replied that there is a minimum of 50' setback so landward of the dwelling probably right where the conventional system is. Mr. Sahagian said they would still have the same pipe in question approaching CRMC jurisdiction approximately 105 feet and asked what the benefit was. Director Sullivan replied you would get reduced nitrogen output from the septic system even though you would have the additional structure of the denitrification capacity. Mr. Sahagian noted that the location of the septic system would be the same. Mr. Medeiros explained that it is not the location of the septic they could intercept the line at any point and put in and retrofit the system. Mr. Medeiros said the reason the pipe is of interest is because that is what put the project into jurisdiction. Mr. Sahagian asked Ms. Saunder if she could design a denitrification septic system that would be closer to the house and approved by DEM. Ms. Saunder replied yes. Mr. Sahagian asked what was better getting a denitrification system 175' back from the feature or a conventional system 350 feet away with 128' of pipe. Director Sullivan said both are less than 8' from the saturated zone which is flowing horizontally to the coastal feature. Mr. Sahagian said his point was that a denitrification system could be approved by DEM much closer to the coastal feature than the conventional system they approved. Mr. Medeiros said that it was pretty easy to retrofit this and do what you need to do. Mr. Hendricks stated that he has already spent \$10,000 on his septic system and it would cost him another \$13,000 on top of that to put in the retrofit. Chair Tikoian explained that because of the situation the applicant is in that he would either have to make a change to rectify this or the council would have to vote this up or down based on what is presented. Mr. Hendricks asked Director Sullivan why his staff did not stamp the plan or application that they needed coastal review and if they had done that he would not be here today. Director Sullivan said he was sympathetic to Mr. Hendricks comments but prior to April of last year they were not his staff and said it shouldn't have happened. Director Sullivan did feel that denitrification was in order here. Chair Tikoian said the council's options were to vote the application up or vote it down or to continue the application. Chair Tikoian explained that if the application was voted down the applicant still has the remedy to come back and say he wants to put in a denitrification system and if he does this it could be done as a Category A. Mr. Goldman informed council members if they vote to deny the application there had to be some order as to the removal or modification of the existing septic system. Mr. Gray asked if this had started out with a denitrification system up front what was the cost difference. Ms. Saunder replied that it would have cost \$17,000 to put in the denitrification system. Mr. Gray said were dealing with some financial difference of \$17,000 versus \$23,000. Ms. Saunder

replied yes there is some substantial difference. Mr. Shekarchi said both people made a mistake and said the applicant and his consultant should have known and DEM shouldn't have assented out without the stamp. Mr. Sahagian asked if the applicant has given some thought to retrofitting. Mr. Hendricks replied no because he feels that he is outside the CRMC 200' jurisdiction. Director Sullivan, seconded by Vice Chair Lemont to accept the recommendation of staff to deny the application. The motion carried. Mr. Shekarchi, Mr. Sahagian and Mr. Coia were opposed.

11. Enforcement Report – August 2006

There were none held.

12. Category “A” List

There were none held.

There being no further business, the meeting adjourned at 9:12

Respectfully submitted,

Grover Fugate, Executive Director

Reported by Lori A. Field