

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

STAFF PRESENT

Grover Fugate, CRMC Executive Director

Dave Reis, CRMC Environmental Scientist

Brian Goldman, Legal Council

1. Chair Tikoian called the meeting to order at 6:05 p.m.

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

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

Mr. Abedon requested that on page 3 and 5 that Laura "Myers" named be corrected to "Meyerson". Vice Chair Lemont requested that under Subcommittee Reports the sentence "There were no subcommittee reports" be deleted on page 1 and on page 5 " under #8 "Beachfrton" be changed to "Beachfront". Mr. Coia, seconded by Mr. Gray moved approval of the minutes of the October 24^h meeting as amended. The motion was carried on a unanimous voice vote.

3. **SUBCOMMITTEE REPORTS**

There were no subcommittee reports.

4. **STAFF REPORTS**

There were no staff reports.

5. **POLICY DISCUSSIONS – PRESENTATION**

**CRMC responsibility for Public Trust and Public Access – G. Fugate, CRMC
Public Trust and Takings – Michael Rubin, Esq.; RIAG**

Mr. Fugate introduced Michael Rubin, attorney for the Attorney General's office and stated that he would be giving a presentation on public trust and takings. Mr. Fugate noted that this has an impact on decisions made by the council. Mr. Fugate stated that Mr. Rubin has argued most of the taking cases. Mr. Rubin gave a presentation on the public trust doctrine. Mr. Rubin said it states the use of land for public interest and the courts held what constitutes public interest or navigation, fisheries and commercial. Mr. Rubin said the General Assembly can decide and give land away if it serves the public interest. Mr. Rubin said the General Assembly can delegate this responsibility to a body to do this. Mr. Rubin noted that they give 50 year leases on the public trust land and do not give land away. Mr. Zarrella asked if he was saying that this body was an arm of the legislature. Mr. Rubin replied no but that the General Assembly can delegate authority to CRMC, DEM, DOT, etc... Mr. Rubin discussed takings and noted that takings are already public property and no private party can claim state property as theirs and cannot claim a taking. Mr. Rubin explained the Constitution Amendment #5 which stated that private property cannot be taken for public use without just compensation. Mr. Rubin explained that the public trusts land begin at the mean high water line boundary. Mr. Rubin noted that taken "by government" is understood even though it is not written. Mr. Rubin explained that legal protection of private property against government action in a flowchart: **"The Law"** – **US Constitution** (Equal Protection Clause), (Due Process Clause – "Procedural Due Process" and "Substantive Due Process", (Taking Clause – Constitution-Amend #5) – **Statute** – (Property Right Statutes) and **Common Law** – (Tort Law). Mr. Rubin noted that other sources of law to protect private property owners is in the State Constitution – Article 1 – Sections 16 and 17. Mr. Rubin said that formal takings are eminent domain taken for condemnation. Mr. Rubin stated that there are two other areas that fall under takings – inadverse takings and in facta takings. Mr. Rubin explained that one is the governments encroachment on land by physical encroaching. For example if the government built a dam with the lack foresight or with foresight and the water backed up on your land the government would owe the owner for the taking. Mr. Rubin said if it was an intentional act that the government would owe the owner for the taking. Mr. Rubin said there is the regulatory taking – inadverse taking, in facta taking and constructive takings. Mr. Rubin said this is when the government does not acknowledge a taking has happened in the beginning. He said a determination is made whether there was a taking and how much compensation is due. Also, whether they have gone too far for the public benefit or harm to a private party. Mr. Zarrella asked about economic taking and asked if an applicant applied for a four-bedroom home and the council ask that it be reduced to a two-bedroom home are they taking property. Mr. Rubin replied no, the burden has to be extreme. Mr. Rubin said the applicant can sell the land, use the land or buy another piece of land to suit their use. Mr. Shekarchi asked if the court takes into consideration the price of the property. Mr. Rubin said no. Mr. Zarrella said if CRMC and DEM determine whether a lot is buildable and the applicant needs to get an engineer, biologist, soil expert and said the lot has been in the family for years are they obligated to give the applicant legal or expert service. Mr. Rubin said no. Mr. Abedon asked if Rhode Island was effected by the Kelow situation in Connecticut. Mr. Rubin replied no.

Chair Tikoian thanked Mr. Rubin for his presentation and said the council will see him again in the future. Chair Tikoian noted that taking cases are handled together by Mr. Goldman and Mr. Ruben from the AG's office.

Mr. Zarrella left the meeting at 7:00 p.m.

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

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

1990-10-040 PAUL & CATHERINE NEVILLE (originally Water Street Realty Trust) – Applicant requesting 2nd Full Council approval extension. Project location of plat 21, lot 4; Sakonnet Estates, Portsmouth, RI.

The applicant was not present. Turner Scott, the applicant's attorney was present on behalf of the applicant. Mr. Fugate stated that there was no outstanding enforcement against the applicant and that this was the applicant's second council extension. Vice Chair Lemont noted that this was a 1990 case and if the applicant intends to built in the future. Mr. Fugate explained that the application falls under the new extension request regulations and that old applications had come in for numerous extensions before the new extension regulations. Mr. Fugate stated that under the new regulations that applicant's are allow one administrative extension and three one-year full council extensions and them permission will seize. Mr. Fugate stated that the applicant would only be entitled to one one-year extension if this extension was granted. Mr. Sahagian, seconded by Vice Chair Lemont moved approval of a one-year extension of the assent. The motion was carried on a unanimous voice vote.

8. **RIGHTS OF WAY DELINEATIONS THAT HAVE HAD A PUBIC HEARING AND ARE BEFORE THE COUNCIL FOR FINAL DECISION:**

2005-03-013 CITY OF WARWICK Alger Avenue and John Wicks Avenue – Chepiwanoxet Point. Vacant lots form a peninsula of land that begins at the eastern ends of Alger Avenue and John Wickes Avenue and extends into Greenwich Bay by the entrance to Greenwich Cove. Located on lots 94 and possibly 36, Warwick, RI.

Chair Tikoian opened the public hearing. Mr. Goldman stated that these were 2 out of 12 potential rights-of-ways in Warwick that came out of the Right-of-Way Subcommittee. Mr. Goldman said there was no opposition and that the City of Warwick supported the two rights-of-ways. Mr. Goldman said the other 10 were not ready and the City had concerns with them. Mr. Goldman said the record is in the file and they will have a polling of the record. Chair Tikoian called for public comment. There was no public comment. Chair Tikoian closed the public hearing. Chair Tikoian called for a roll call vote:

On the reading of the record.

Dir. Sullivan	Yes	Mr. Dawson	Yes
Mr. Gray	Yes	Mr. Coia	Yes
Mr. Abedon	Yes	Vice Chair Lemont	Yes
Mr. Sahagian	Yes	Chair Tikoian	Yes
Mr. Shekarchi	Yes		

9 Affirmative 0 Negative 0 Absentation

Vice Chair Lemont, seconded by Mr. Coia moved to accept Alger Avenue and John Wicks Avenue as a public right-of-way. The motion was carried on a unanimous voice vote.

2005-03-015 CITY OF WARWICK Bradford Avenue – Potowomut. Vacant land between lots 34 and 122 on southern end of Bradford Avenue. It runs next to 27 Bradford Street from the street east to Narragansett Bay at the mouth of Greenwich Bay.

Chair Tikoian opened the public hearing. Mr. Goldman said this was the same as above. Mr. Goldman noted that this was deeded as a right-of-way and recorded in the land evidence records. Chair Tikoian called for public comment. There was no public comment. Chair Tikoian closed the public hearing. Chair Tikoian called for a roll call vote on the reading of the record:

On the reading of the record.

Dir. Sullivan	Yes	Mr. Dawson	Yes
Mr. Gray	Yes	Mr. Coia	Yes
Mr. Abedon	Yes	Vice Chair Lemont	Yes
Mr. Sahagian	No	Chair Tikoian	Yes
Mr. Shekarchi	Yes		

8 Affirmative 1 Negative 0 Absentation

Mr. Shekarchi, seconded by Mr. Coia moved to accept Bradford Avenue as a public right-of-way. The motion carried. Mr. Sahagian abstained.

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

2006-04-103 ELIZABETH PERIK – Construct and maintain a residential boating facility to consist of a 4' x 132' fixed timber pier with a 4' x 22' access landing (L) section. The terminus of the proposed dock extends to 92-feet beyond mean low water (MLW) requiring a 42-foot length variance and a 2-foot width variance for landing from the RI-CRMP Section 300.4 Standards. Located at plat 9, lot 380; 10 High Street, Jamestown, RI.

Elizabeth Perik, the applicant was present. Elizabeth Noonan, the applicant's attorney and Scott Rabideau, the applicant's biologist were also 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 residential boating facility in East Passage in Narragansett Bay. Mr. Reis stated that the dock was a 4'x 132' fixed timber pier with a 4'x 22' access landing. Mr. Reis said the dock extends 92' beyond mean low water (mlw) requiring a 42' length variance and a 2' length variance for the landing. Mr. Reis said staff had no objection to the application. Mr. Reis noted that the dock was over eelgrass and they used the Burdick and Short method to design the dock and the dock had a depth of -5' at mean low water. Mr. Shekarchi asked if there were other docks in this area and if this dock was consistent with them. Mr. Reis replied yes. Mr. Gray noted that in the staff report it stated that long term docking of a boat was prohibited and asked what was considered long-term docking. Mr. Reis stated that policy and planning was working on the definition of long term docking. Mr. Reis stated that they were

looking at docking over a weekend, washing the boat and then putting it on a mooring. Mr. Reis said the boat would not be dock on the dock. Mr. Sahagian asked if the applicant had reviewed the staff stipulations and agreed to them. Ms. Perik replied yes. Mr. Sahagian, seconded by Vice Chair Lemont moved approval of the application with all staff stipulations. The motion was carried on a unanimous voice vote.

2005-09-096 BRADLEY T. CHASE – Construct and maintain a residential boating facility consisting of a 4' x 132' fixed timber pier, ramp, and 6' x32' float. The facility will extend 129' seaward of mean low water (MLW) which requires a variance of 79' from RICRMP standard 300.4.E.3(k). The facility requires a variance from Section 300.4.E.3(d) which limits float area to 150 sq. ft. (192 sq. ft. proposed). Located at Plat 1, Lot 176; 40 Seaview Avenue, Cranston, RI

Bradley Chase, the applicant was present. Richard St. Jean, the applicant's engineer was also 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 residential boating facility 4'x132', ramp and a 6'x32' float. Mr. Reis stated that the dock will extend 129' requiring a 79' length variance. Mr. Reis said the application also requires a float variance. Mr. Gray had a question on the lateral access and said the engineer mentioned lateral access on page 15 of 6' 6" for lateral access and on page 7 of the plan it shows lateral access at 18' and asked which was correct. Mr. St. Jean replied that there is 6' 6" of lateral access at the mean tide line. Mr. Gray said the first clearance was at the wall. Mr. St. Jean replied that he took the measurement for lateral access at the top of the seawall to access the dock and there is 5' ½" at the top of the wall for lateral access at the high tide mark. Mr. Gray said on page 12 and 13 of the commentary the goals of the application extend the facility to 129'. Mr. Gray said if you look at the plan there is 4' at mlw and the variance can be 59' instead of 79'. Mr. Gray asked why they were extending the facility another 20' for a variance. Mr. St. Jean replied because of a girth in the water. Mr. Gray said he is seeing a larger variance than what is needed. Mr. St. Jean stated that they were requesting the variance to get a 4' depth of water. Mr. Gray replied that they would have more than a 4' depth with the variance. Mr. Gray noted that on page 13 regarding the size of the float variance that they are requesting a larger float because of the wind blowing and the fetch. Mr. Gray questioned whether this was a proper area for a dock and whether there should only be a fixed pier with no floating dock. Mr. St. Jean submitted photographs of the area for ID purposes only. Mr. Chase stated that he made copies of these pictures that were hanging on the wall in Camden's Pharmacy but could not authenticate the pictures. Mr. Gray said he could not approve the variance for the float. Mr. Gray felt the 6'x30' float could be cut back to a 6'x25 float. Mr. Gray had a question of staff regarding the storage of the floats on the pier and said he saw nothing in the packet on this. Mr. Reis replied that typically they allow floats to be stored on the pier or raised. Mr. Gray asked if this was going to cause a problem with visual impact. Mr. Reis replied yes. Mr. Reis noted that floats are stored horizontally and on top of the dock. Mr. Gray asked if staff helped the applicant to store the floats so they are not instructive. Mr. Reis replied no there is nothing in the regulations for this. Mr. Shekarchi asked if there is another dock in this area and does it have the same length. Mr. Reis said he was not familiar with the area but the length of the dock was driven by the size of the boat. Mr. Dawson was concerned with the length of the dock and asked if the abutters know about the length of the dock and the storage of the floats on the dock. Mr. St. Jean replied that the abutters reviewed the design of the dock but did not know about the storage of the floats on the pier. Mr. St. Jean stated that there were other alternatives to store the floats. Mr. Dawson asked if this was a touch and go facility. Mr. Chase replied that he will have a

42' boat on the dock and store his boat on land in the winter. Mr. Reis noted that a touch and go facility was for SAV and there was no SAV here. Mr. Sahagian asked why they could not stipulate to store the floats on the dock. Mr. Goldman said they can but that they normally do not do this. Vice Chair Lemont was familiar with the area and asked if this would be the first dock on this shoreline and asked why that was. Mr. St. Jean said because of the storms and that is why they designed the dock this way. Chair Tikoian noted that on page 20 it says there is no eelgrass. Chair Tikoian was concerned whether a dock should be in this area. Mr. Gray questioned whether this was a good site for floats. Director Sullivan said that he shared some of the same concerns regarding the dock and floats. Director Sullivan asked at what point does the council say no on a resource basis. Mr. Gray had a question on the dock storage on page 2 in the second paragraph and asked how they envisioned this to happen. Mr. St. Jean replied they look at having a barge put the floats on the dock or another outside entity. Mr. Gray, seconded by Mr. Coia moved approval of the application with the following stipulations: that lateral access be at the bulkhead under the pier with a minimum of 5', requested that the terminal float be reduced to a 150 s.f. float (5'x30'), that the total length variance be brought back to a 4' contour line on plan and reduce the length variance 20', all staff stipulations and that the floats be stored off site. Director Sullivan said this was a problematic one for him and he could not support the application. Mr. Dawson said he was against the application. Vice Chair Lemont shared Director Sullivan's concerns and was against the application. Mr. Abedon noted that there were no other docks in this area and if the regulations say a dock can be built here. Mr. Fugate replied yes. Mr. Shekarchi said he had the same concerns and agreed with Mr. Gray and said he could live with the modifications to the application and would support the application. Mr. Shekarchi noted that the area is not prohibited by docks and the rules and regulations say they can have a dock. Mr. Abedon said the area said can have a dock. Mr. Goldman replied yes but it was up to the council's discretion. Chair Tikoian called for a roll call vote on the motion:

On the motion to approve with modifications:

Dir. Sullivan	No	Mr. Dawson	No
Mr. Gray	Yes	Mr. Coia	Yes
Mr. Abedon	Yes	Vice Chair Lemont	No
Mr. Sahagian	Yes	Chair Tikoian	No
Mr. Shekarchi	Yes		

5 Affirmative 4 Negative 0 Absentation

The motion carried

10. ADMINISTRATIVE APPLICATION BEFORE THE COUNCIL FOR DECISION:

2006-06-122 EVELYN FARGNOLI – Construct and maintain a three bedroom dwelling serviced by public utilities; extension of water line and roadway improvements; including stormwater treatment swale. Located at Plat N-S, Lot 113, 114; Lake and Wolfe Roads, Narragansett, RI

Evelyn Fargnoli, the applicant was present. John Abbonte, the applicant's attorney, Scott Rabideau, the applicant's biologist and Craig Carrigan, the applicant's engineer were also present on behalf of the applicant. Mr. Fugate gave council members a brief summary on the application. Mr. Fugate stated that the application is to construct a 3-bedroom dwelling serviced by public utilities, extension of the water line and roadway. Mr. Fugate stated that the structure is 20'x 36' near a freshwater wetland. Mr. Fugate said the application requires three variances for an 88% buffer variance, a 79% buffer variance and a 100% variance for road construction. Mr. Fugate said staff deferred to the council on the variances. Mr. Fugate noted that a preliminary determination had been made on the application. Mr. Abbonte stated the applicant has owned the property since 1970. Mr. Abbonte explained that they are tied to public utilities approved by the town. Mr. Abbonte said they received zoning board approval for the road construction for the public safety purposes. Mr. Carrigan described the road construction. Mr. Carrigan submitted an architectural footprint of the site and explained that the first floor is elevated and there would be no basement. Mr. Carrigan said there was a minimum yard area of 8' on the western side of the site. Mr. Gray asked about the three variances for the buffer, setback, 100% variances for the roadway. Mr. Gray asked if the 100% variances was on Lake Road. Mr. Reis replied yes and on page 5 of the packet this was indicated. Mr. Gray asked if the road was owned by the applicant or the town. Mr. Carrigan replied that the road is owned by the town. Mr. Gray asked if the town was on the application as a co-applicant as they own the road. Mr. Reis replied no that the town requires owners to upgrade to the town standards and authorized the applicant to do the work on behalf of the town. Mr. Gray asked if the town had to be a co-applicant and sign the application. Mr. Fugate replied yes and that he would check the file to see if the town signed the application. Mr. Carrigan stated that the relief requested is the minimum necessary. Mr. Carrigan said the only use for the property is for a residential single family dwelling. Mr. Carrigan said they cannot build on the property without the variance and it would be an undue hardship to the applicant if the variance were not granted because they would not be able to build a structure. Director Sullivan asked if they had ever looked at a smaller footprint. Mr. Carrigan replied yes. Mr. Gray noted that on page 5 it stated that there would be no filling. Mr. Gray also noted there was a contour line of 10 and another contour line indicated an elevation change. Mr. Carrigan said there would be no filling. Chair Tikoian stated that the Town had not signed on to the application. Mr. Gray said they then cannot vote on the third variance for the road tonight. Mr. Abbonte asked if they could have discussion on the application pending the town signing on to the application. Mr. Gray stated that they cannot proceed on the application without the roadway and suggested that the application be continued to the next meeting to get this take care of so that the application was properly before the council. Mr. Shekarchi agreed with Mr. Gray and felt the application needed to be complete. Mr. Shekarchi, seconded by Vice Chair Lemont moved to continue the application to the next available meeting. Mr. Carrigan asked if the town had to sign on to this application or they needed a separate application. Mr. Fugate replied that the town needed to sign-off on for the variance for the roadway. Director Sullivan suggested that they look at a smaller footprint for the dwelling in order to reduce the 88% buffer and 79% setback variances. Director Sullivan stated that he did not feel good about this. Director Sullivan said they may want to come back with a smaller proposal. Mr. Abedon agreed. The application was continued.

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

- 1. Add New Section 300.14.B.9 Standards**
- 2. Add Section 210.7 (Dunes): within the 50 Foot Dune Setback Zone**

Chair Tikoian opened the public hearing on Section 210.7 Dunes and Section 300.14.B.9. Chair Tikoian noted that the executive director made changes to Section 300.14.B.9 and Section 210.7 as recommended. Chair Tikoian called for public comment. There was no public comment. Chair Tikoian closed the public hearing. Mr. Fugate explained that the changes made clarified the language underlined in the table. Mr. Fugate stated that Save the Bay had signed off on the clarified language. Mr. Shekarchi, seconded by Vice Chair Lemont moved to close the public hearing. The motion was carried on a unanimous voice vote. Mr. Shekarchi, seconded by Mr. Coia moved approval of adding new Section 300.14.B.9 and Section 210.7 (Dunes). The motion was carried on a unanimous voice vote.

12. Category “A” List

There were none held.

13. New Business

Director Sullivan requested that the float storage issue be addressed by the Policy and Planning Subcommittee. Mr. Abedon also requested that docks in high fetch areas be addressed by the Policy and Planning Subcommittee.

There being no further business, the meeting adjourned at 8:05 p.m.

Respectfully submitted,

Grover Fugate, Executive Director

Reported by Lori A. Field