

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, January 23, 2007 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 Zarrella
Bruce Dawson
Joe Shekarchi
Dave Abedon
Neill Gray
Mike Sullivan, DEM
Donald Gomez

STAFF PRESENT

Grover Fugate, CRMC Executive Director

Jeff Willis, CRMC Deputy Director
Dave Reis, CRMC Environmental Scientist

Brian Goldman, Legal Counsel

1. Chair Tikoian called the meeting to order at 6:00 p.m.

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

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

Vice Chair Lemont, seconded by Director Sullivan moved approval of the minutes of the December 9, 2006 meeting. The motion was carried on a unanimous voice vote.

Chair Tikoian welcomed new council member Donald Gomez to the council.

3. **SUBCOMMITTEE REPORTS**

Vice Chair Lemont reported that the P&P subcommittee met and recommended changes to the shoreline maps and that they revise the maps to cover Watch Hill to Point Judith and to include the eastern shoreline of Little Compton and Southeastern Massachusetts; revise Section 140.C; table 2 delete setbacks not needed; table 1b regarding inland activities; and revise Section 320 and 325 to exclude sewer lines in SAMP Plans. Chair Tikoian requested that these changes be accepted and sent out to 30-day public notice and come before the council for further action.

4. **STAFF REPORTS**

Chair Tikoian informed council members that at the second meeting of each month there will be an executive directors report which the executive director will report on the prior 30-day activities.

5. PRESENTATION - Ethics

- **Speaker: Jason Gramitt, RI Ethics Commission**
- **Open meetings, open records, gift reporting, recusals, ex parte communications**

Jason Gramitt gave council members a presentation on ethics. Mr. Gramitt explained that the commission has nine members. Mr. Gramitt stated that he was going to address open meetings, open records, gift reporting, recusals and ex parte communications. Mr. Gramitt explained conflict of interest and recusal and stated that you must recuse yourself if there is a financial impact or detriment to yourself or a family member. Mr. Shekarchi asked if there was a conflict if a relative who is a professional appearing before the council. Mr. Gramitt replied yes. Mr. Zarrella asked who files a complaint and what the process is. Mr. Gramitt explained that anyone can file a complaint and that the commission determines if the complaint is valid and if the complaint is valid, they have a hearing on the complaint to determine what action should be taken. Mr. Gramitt explained that if you recuse yourself from participating you must fill out a conflict of interest form and send a copy to the Ethics Commission. Mr. Gramitt noted that recusing is out of an abundance of caution if there is a potential conflict or there is some type of appearance of impropriety and that it is perfectly all right to recuse yourself. Mr. Gramitt explained the gift rules and noted that council members could not accept any gift over \$25 or up to \$75 per year. Mr. Abedon asked about the sections A & B on the conflict of interest form and what they were. Mr. Gramitt explained that section B states that you are not recusing yourself but are acknowledging a relationship with the party. Mr. Gramitt stated that section B is all most never used. Chair Tikoian stated that Mr. Gramitt presentation was very informative to council members and thanked Mr. Gramitt for his presentation.

VICE CHAIR LEMONT LEFT THE MEETING AT 6:45 P.M.

6. Coastal Habitat Restoration Trust Fund Applications Before the Full Council for Review and Decision:

- **Jacob's Point, Warren**
- **Atlantic Mills, Providence**
- **Stillhouse Cove, Cranston**
- **Town Pond, DEM, Portsmouth**
- **Gooseneck Marsh, Newport**
- **Low Ground Pressure Vehicle, DEM**
- **NE Rare Plant Society**
- **RI-OGRE (oyster gardening)**
- **3rd Beach/Norman Bird Sanctuary**

Mr. Willis gave council members a brief summary on the Coastal Habitat Restoration Trust Fund applications. Mr. Willis explained that the legislature appropriates \$250,000 in the OSPAR account for habitat restoration. Mr. Willis noted that they recommended approval of nine applications. Mr. Willis stated that they had received 17 proposals for

habitat restoration and 11 groups were requested to submit full proposals. Mr. Willis said the TAC committee recommended approval of nine of the 11 proposals submitted. Mr. Willis explained that the actual amount was \$225,000 not \$250,000 as 10 percent is given to the administration. Mr. Willis stated that 34 projects have been awarded since the funding began for a total of \$975,000. Mr. Willis explained that Catherine Chafee had been hired at the beginning of the proposal process in October and got all the packets together and did an outstanding job. Mr. Coia, seconded by Mr. Zarrella moved approval of the nine coastal habitat restoration projects recommended by the TAC committee. The motion was carried on a unanimous voice vote.

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

8. **CONTINUANCES:**

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 swales. Located at Plat N-S, Lot 113, 114; Lake and Wolfe Roads, Narragansett, RI.

The applicant was not present. Chair Tikoian stated that the applicant requested a continuance within the 24-hour period and that a continuance had been granted. The application was continued at the applicant's request.

9. **APPLICATIONS REQUESTING EXTENSION OF EXISTING ASSENT:**

1992-01-046 ROBERT SETTIPANE – Applicant requesting 2nd Full Council Extension. Project location 21 & 23 White Avenue, East Providence, RI.

Robert Settipane, the applicant was present. Mr. Fugate gave council members a brief summary on the application. Mr. Fugate noted that the application went through the enforcement review process and that there were no enforcement actions. Mr. Fugate stated that this was the applicant's second full council request for an extension. Mr. Gray asked why so long since the application had been granted. Mr. Fugate explained that the extensions were the old process before the new extension regulations were in place. Mr. Gray asked when the extension regulations began. Mr. Goldman replied that they became effective in 2001. Mr. Coia, seconded by Mr. Shekarchi moved approval of the 2nd full council extension request. The motion was carried on a unanimous voice vote.

1998-07-052 TOWER HILL GROUP, LP – Applicant requesting 3rd Full Council Extension. Project location Plat 50, Lot 2; Plat 50-2, Lot 1; Tower Hill Road, South Kingstown, RI.

Sean Coffey, the applicant's attorney was present on behalf of the applicant. Mr. Fugate explained that the application had enforcement review and there were no violations. Mr. Fugate noted that this was the third full council extension and the last council extension. Chair Tikoian asked if the applicant was aware that this was the last extension. Mr. Coffey replied yes. Mr. Shekarchi, seconded by Mr. Coia and Mr. Zarrella moved approval of the final extension of the assent. Mr. Shekarchi asked what happens if the work was not completed. Chair Tikoian replied that there is a minimum that the

applicant must do within the next year to keep the assent engaged. Mr. Fugate explained that the foundation, shell and ISDS needed to be done and that no extension was needed for the internal work. Mr. Fugate said the road and sewers had to be completed as part of the extension. The motion was carried on a unanimous voice vote.

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

2005-11-049 RICHARD CATALDI – Construct and maintain riprap (stone) revetment, landward of Mean High Water (MHW) per plans, approx. 250 linear feet, total. Located at Plat 377, Lot 153; 275 Paine Street, Warwick, RI.

Richard Cataldi, the applicant was present. Mr. Fugate gave council members a brief summary on the application. Mr. Fugate stated that the application was to construct 250 l.f. of riprap shoreline protection on a residential lot in Warwick adjacent to a coastal bluff. Mr. Fugate said staff recommended approval of the application with conditions listed in the staff report on page four in the packet and with staff stipulations. Mr. Gray said this does not include any roadway. Mr. Fugate replied correct. Director Sullivan, seconded by Mr. Coia moved approval of the application with all staff stipulations and conditions. The motion was carried on unanimous voice vote.

CHAIR TIKOIAN CALLED FOR A RECESS AT 7:10 P.M. CHAIR TIKOIAN CALLED THE MEETING BACK TO ORDER AT 7:14 P.M.

2005-08-015 RICHARD & PATRICIA DELUCA – Construct and maintain; a residential boating facility consisting of a 4' x 118' fixed timber pier, 3' x 20' ramp, and 8' x 18.75' float. The application requires a variance to RICRMP Standard 300.4.E.3.(s) to terminate float at water depth of 14 inches (18 inches required) (Float stops to be provided to maintain 18 inch bottom clearance). A variance is also required from standard 300.4.E.3.(j) of 22' to construct within 3' of south property line extension. Located at Plat 117, Lot 8; 29 Esmond Avenue, North Kingstown, RI.

Chair Tikoian and Director Sullivan recused themselves.

Mr. Gray presided over the application.

Richard DeLuca, the applicant was present. Joseph DeAngelis, the applicants' attorney and Herb Sirois, the applicants' engineer were also present on behalf of the applicants. Daryl Paquette, attorney for the objectors was present. John Reiner, Director of Planning for the Town of North Kingstown, an objector and Representative Lawrence Ehrhardt, an objector were also present. Mr. Reis gave council members a brief summary on the application. Mr. Reis stated that the application was to construct and maintain a residential boating facility next to an existing bulkhead. Mr. Reis stated that the application extends 57' beyond the MLW water and requires a 7' variance. Mr. Reis said a 22' variance to Section 300.4.E.j was requested because the dock would be 3' within the property line extension and a 4" variance to the 18" minimum water depth. Mr. Reis stated that staff recommended approval of the application. Mr. DeAngelis stated that this was an unusual case. Mr. DeAngelis stated that the single issue was where the dock should be placed. Mr. DeAngelis noted that the dock is placed on the property as recommended by the by PGP and it was within 3' of the property line extension. Mr. DeAngelis said the abutter wanted the applicant to put the dock in the middle of the property. Mr. Shekarchi asked what PGP was. Mr. Fugate replied Program General

Permit process which consists of CRMC, Army Corps and DEM. Mr. Fugate said the Corps agrees with the location as recommended by Mr. Reis. Mr. Fugate explained that if the application was not approved by CRMC the Army Corps could rule on their own. Mr. Zarrella and Mr. Abedon said there were no objections by the other agencies. Mr. Fugate replied that they were all in agreement. Mr. Coia, seconded by Mr. Abedon moved to accept Herb Sirois as an expert in engineering. The motion was carried on a unanimous voice vote. Mr. Sirois stated that he was hired in 2005 and did the work on the application. Mr. Sirois said the dock was located in a different location on the original application 25' from the southern property line and 25' from the northern property line and that no variances had been required. Mr. Sirois stated that the plans had changed as the Army Corps and CRMC recommended that the dock be moved closer to the southern property line next to the bulkhead for less of an environmental impact near a salt marsh. Mr. Abedon asked if the current plan was on page 13 in the packet. Mr. Sirois explained that they needed a 22' variance from the southern property line and a 7' variance for the length of the dock to get a water depth of 14 inches at the end of the float. Mr. Sirois said they needed a 4" variance on the water depth of the 18" minimum depth. Mr. Sirois said 14" was the maximum water depth they can get without going out an additional 40' and that by extending the float they would not get any additional water depth. Mr. DeAngelis asked what kind of boat would be on the dock. Mr. Sirois replied a whaler or small sailboat that draws 12" of water. Mr. Sirois stated that he felt they met the criteria of Section 120 and that the alternative and variances conformed with the criteria. Mr. Sirois stated that if the variances were granted there would be no adverse impact or use conflict. Mr. Sirois stated that due to the site conditions this was the minimum variance necessary to allow use of the property for a residential dock. Mr. Sirois said the hardship was not caused by the applicant and that it would cause an undue hardship to the applicant if the applicant were not allowed to build a dock. Mr. Shekarchi said the location of the dock tonight was because of the PGP regulatory approval. Mr. Sirois replied yes. Mr. Zarrella asked if they met with the objectors on this. Mr. DeAngelis replied that he had spoken with Mr. Paquette but there was no resolution. Mr. Dawson said he had been on the harbor commission and they objected to the application. Mr. Shekarchi asked if they objected to the location of the dock and site. Mr. Dawson replied to the location of the dock and side because of the encroachment on the setbacks. Mr. Paquette, attorney for Gary Smith, the abutter and objector, said that a majority of the fixed pier extended 3' from the southern abutter's bulkhead. Mr. Sirois replied yes three feet from the property line. Mr. Paquette asked if the dock was approved if they could do repair work on the north side of the bulkhead. Mr. Sirois said if the dock was this close that it could cause difficulty to repair. Mr. DeLuca, the applicant, said that he owns a 14' sailboat which draws 10" of water. Mr. DeLuca said staff recommended location of the dock and that he would go with whatever the council decides. Mr. Abedon asked whose property the bulkhead was on that they were talking about. Mr. DeLuca replied that it is on the abutter's property. Mr. Zarrella asked if had tried to work this out with Mr. Smith. Mr. DeLuca replied yes. Mr. Zarrella asked if there was a problem with the bulkhead and report work was difficult to do if there was damage to the dock if they would waive damage repair. Mr. Paquette replied that they are not concerned with damage to the applicant's dock but the 3' distance to do repairs. Mr. Reis noted that if they needed to do repairs they could do them within 1 feet. Mr. Reis said they cannot put cranes in the water because of the salt marsh and would have to do repairs upland and not in the water. Mr. Gray asked what the bottom of the water was like. Mr. Reis said it was a silky bottom and that the salt marsh had been filled in over the years. Mr. Reis noted that they were trying to protect the salt marsh. Mr. Gray asked under the proposed float if they were concerned with bottom ecologically. Mr. Reis replied there was a lot of boat traffic in the cove. Mr. Gray asked about the use of

the dock and noted that the property was rented out a lot and there may be a lot of different users. Mr. DeLuca relied that they rent out the property during the summer but that they plan to use the property as their residence in the future. Mr. Zarrella asked what the location of the Johnson Boatyard was. Mr. DeLuca replied Mr. Smith's property was between Johnson Boatyard and his property. Mr. Zarrella asked if a portion of the dock could be removed if they needed to work on the bulkhead. Mr. Sirois replied they probably could if they needed to work on the bulkhead but any work would have to be done upland. Mr. Paquette asked if the applicant would object if the council recommended that the dock be moved to the original location. Mr. DeLuca replied no. Mr. Paquette asked if the applicant had a cost estimate on the current dock location. Mr. DeLuca replied no only on the original dock proposal.

OBJECTORS

Mr. Paquette stated that the abutter objected to the location of the dock. Mr. Paquette stated that the applicant had no problem with moving the dock. Mr. Paquette said they had environmental concerns. Mr. Paquette stated that the abutter had no objection to the dock being built just the location of the dock. Mr. Paquette asked staff if the current location of the dock recommended after the PGP Meeting. Mr. Reis replied yes and that he inspected the site with staff engineer Mr. Anderson and the recommendation was based on what council has approved in the past on sites like this. Mr. Smith, the abutter and objector, stated that he has lived on his property since 1994. Mr. Smith said he spoke with the applicant regarding the location of the dock. Mr. Smith stated that he attended town and commission meetings. Mr. Smith said he had seen the proposed dock and felt there would be impact on the trees in the area which now separates the two properties. Mr. Paquette submitted three (3) photographs of the site taken in July 2006 by the applicant of the trees taken 25' from the edge of the property as exhibits. Mr. Smith stated that the trees between the properties project his privacy. Mr. Smith stated that the 3' setback from his property would put people in his backyard. Mr. Smith was concerned with the aesthetics of the dock and the impact on his aesthetic view. Mr. Smith felt that a straight dock was better than an angled dock. Mr. Smith felt that boats would run aground because of the water depth in the cove and that the water depth is very diseasing. Mr. Smith said there was 0-6 inches of water at low tide and this was a mud flap area. Mr. Paquette submitted a photograph taken at ½ tide in the fall of October 2006 which depicts the water level to the council as an exhibit. Mr. Smith felt the variance was not necessary. Mr. DeAngelis asked if looking at the first photograph how far the trees were from Mr. DeLuca's dock would be required to be moved to save the trees. Mr. Smith said to the middle of property 20 feet away. Mr. DeAngelis noted the remnants of the previous dock and asked if the dock was built in the current location if this would save the trees. Mr. Smith replied yes. Mr. Zarrella asked if the bulkhead was in the lower right hand corner of the photo. Mr. Smith replied yes you could see the wooden edge of the bulkhead. Mr. Zarrella asked if the first photo was taken at low tide. Mr. Smith replied yes. Mr. Zarrella asked if the dock was moved to the middle of the property if it would effect the PGP approval and if they could reverse their decision. Mr. Reis replied yes. Mr. DeAngelis stated that he was unfamiliar with Christopher Mason, the objector's coastal wetland scientist. Mr. Paquette qualified Mr. Mason as an expert coastal wetland scientist. Mr. Shekarchi, seconded by Mr. Coia moved to accept Mr. Mason as an expert coastal wetland scientist. The motion was carried on a unanimous voice vote. Mr. DeAngelis had no objection. Mr. Mason stated that he had reviewed portions of the CRMC application and there were three alternative dock designs by the applicant in 2005 – July, October and December. Mr. Mason said he visited the site at low tide on Sunday, January 21st and took photographs of the site. Mr. Paquette submitted Mr. Mason's CV and photographs taken by Mr. Mason on January 21, 2007

as exhibits to the council. Mr. Paquette also submitted a Mr. Mason's letter of opinion to the council as an exhibit. Mr. Goldman stated that under the CRMC rules this should have been submitted 5 days prior to the meeting to allow the applicants and staff time to review them. Mr. Reis explained the plat maps on page 17 of the packet and stated that Johnson Boatyard were lots 2, 3, 4, 5 and 6. Mr. Reis said there was a lot of development in the cove and that the salt marsh had been filled. Mr. Reis said the objector's lot was lot number 7 and lots 8,9,10 and 11 were salt marsh. Mr. Reis noted that a dock had been approved on Lot 15 last year and that staff had recommended denial of the application because of the crossing of the salt marsh but that the council had requested they move the dock closer to the bulkhead to protect the salt marsh and that this was the same design as this dock proposal. Mr. Reis said staff tries to be consistent on applications and follow the rules of the council. Mr. Reis said he discussed this with PGP members and they felt the same way. Mr. Reis stated that the dock location was to protect the marsh and habitat in the area. Mr. Reis said the other option was to recommended denial of application because of the crossing of the salt marsh. Mr. Reis said they understand the objectors concerns and did consider the town's objection which was to the variance not the environmental benefit or use conflicts noted. Mr. Gray asked if there was a dock application for lot 10 what staff's recommendation would be. Mr. Reis replied that the dock would be in the center of the marsh and he would not recommend approval. Mr. Reis also noted that there as no residence on lot 10 and a dock would not be allowed. Mr. Reis explained that Lot 10 had a preliminary determination and they could not have a residence because of the buffer setback. Mr. Gray asked if the sideline or bulkhead was not there would he be opposed to a dock on lot 8. Mr. Reis replied yes. Mr. Zarrella referred to Lot 15, the Johnson approval and noted that it was almost denied but referred back to staff and the council approved the application. Mr. Zarrella said Mr. Reis was trying to be consistent with the council's past practices. Mr. Dawson said he was concerned with the 3' distance between the properties and setting a precedent. Mr. Dawson was concerned with Lot 10 if they put a house on the property and then wanted a dock. Mr. Dawson was concerned with allowing a dock and setting a precedent and felt the council needed to say no. Mr. Paquette asked staff if there had been an objection to the Johnson application. Mr. Reis replied he did not believe there was an objection. Mr. Paquette said there was parking lot next to the Johnson lot. Mr. Reis replied yes. Mr. Paquette asked staff if they were aware that lots 10,11, and 12 had been joined under a new owner and there was an application pending before CRMC. Mr. Reis replied no

Mr. Gray called for a recess at 8:28 p.m. Mr. Gray called the meeting back to order at 8:33 p.m.

Mr. Paquette submitted five (5) photographs in a packet as exhibits to the council. Mr. Mason stated that he visited the site on Sunday, January 21st and took the photographs. Mr. Mason said the photographs depicted aerial photographs taken in 2004, a large-scale photo and detailed view of the site. Mr. Mason said he viewed the property from Mr. Smith's property and felt there would be ecological impacts of the dock as proposed. Mr. Mason said there would be impact to the salt marsh and the mud flaps. Mr. Mason explained there would be 632 vs. of direct impact to the salt marsh -- 318 s.f. to the salt marsh and 314 s.f. to the mud flap. Mr. Mason said if the dock was in the center of the property there would be 593 s.f. impact to the salt marsh – 344 s.f. to the salt marsh and 249 s.f. to the mud flap. Mr. Mason felt this would be significantly less impact than the proposal. Mr. Mason felt the current proposal had 40% more impact than the original proposal. Mr. Mason said it was his opinion the ecological impact had greater impact with the structure at the proposed location than the further location to the north. Mr.

Mason said the difference between the locations was 3' or 19' which was not significant. Mr. Paquette asked if there was potential development on lots 10, 11 and 12 what the impact to the salt marsh would be. Mr. DeAngelis objected as it was not relevant to this lot. Acting Chair Gray agreed and asked Mr. Paquette to stick to the applicant's property. Mr. Mason suggested the council reconsider the dock location in the original application. Mr. Mason said he noticed rock deposit in the area. Mr. Zarrella stated that Mr. Reis had given alternatives to the application and asked what he was in favor of. Mr. Mason replied he was in favor of moving the dock to the center of the property but said there would still be impacts to the salt marsh whether it was in the middle of the lot or where proposed next to the bulkhead. Mr. Abedon noted that Mr. Mason was in favor of moving the dock to the middle of the property and Mr. Reis recommended the dock 3' from the bulkhead. Mr. Abedon asked if there was any middle ground on the location of the dock. Mr. Mason replied 19' feet away from the abutter's property. Mr. DeAngelis stated that there was only a 16' difference from the proposed dock location at 3' from the bulkhead or at 19' from the bulkhead. Mr. DeAngelis had no problem with moving the dock somewhere between the 3' or the 19' of the bulkhead. Mr. Mason said they had a problem with the 3' distance and no problem with the 19' distance but he was not sure what the threshold for the distance between the two was. Mr. DeAngelis asked if the council recommended the applicant move the dock between the 3' and 19' distance if his decision would change. Mr. Mason replied that he did not look at an alternate location and if the council recommended a change in the distance, he would have to look at the difference in the salt marsh areas. Mr. Gray asked when the photographs were taken. Mr. Mason replied photo C was taken at low tide around 1:30 p.m. and photos D & E were taken at around 3:30 p.m. Mr. Dawson noted that in photo 3 the dock is not at the current configuration only the temporary location. Mr. Smith replied yes, the temporary location because of the dredging of the channel. Mr. Paquette referred to photograph B and asked staff what the Johnson dock was next to. Mr. Reis replied a parking lot. John Reiner, Director of Planning for the Town of North Kingstown, an objector stated that the North Kingstown Town Council, Conservation Commission and North Kingstown Harbor Commission had reviewed both applications and recommended denial of the application and said their primary concern were the setbacks. Mr. Reiner said the question was raised whether the property could sustain a dock. Mr. Reiner requested that the council deny the application. Mr. Shekarchi asked if the town had the same position on the Johnson application. Mr. Reiner said he was not sure. Mr. Fugate explained that staff had recommended denial of the Johnson application and that the council had remanded the application back to staff and recommended they follow the existing line of the bulkhead as it was a disturbed area already. Mr. Fugate said the applicant did not seek modification of the application and that the town did not object to the original application. Mr. Shekarchi asked Mr. Reiner to address the town's environmental concerns and the setbacks requested. Mr. Reiner said the town was concerned with the setbacks and the environmental impacts but that they did not look at the environmental impacts. Mr. Shekarchi asked if the town's concerns were with the setbacks or the environment. Mr. Reiner said the town was concerned with both the environmental impacts and the setbacks. Mr. Zarrella asked if they considered moving the dock to the center or deny the application what they were in favor of. Mr. Dawson stated that he was on the Harbor Commission when the dock was on the agenda and they recommended denial of the original application and objected to the dock 3' off the bulkhead. Mr. Dawson said the North Kingstown Harbor Commission recommended 85% approval of docks before them and that CRMC approved docks that the North Kingstown Harbor Commission recommended denial of. Mr. DeAngelis referred to a letter of January 10, 2007 signed by the North Kingstown interim manager and asked if he offered any personal opinions on the application. Mr. Reiner replied no. Mr. Reiner said he was present to note the

town's objection to the application. Representative Larry Erhardt, District 32, said he was testifying in support of Mr. Smith's objection to the application. Rep. Erhardt said he was concerned with the council weight of three town agencies who recommended denial of the application. Rep. Erhardt stated that the summary of the application was a variance to bring the dock within 3' of the southern property extension line which was 3' away from a neighbor's property. Rep. Erhardt felt this would be an intrusion on Mr. Smith's property. Rep. Erhardt supported Mr. Smith's objection and requested that the council approve the original site for the dock in the middle of the property. Mr. Reis noted that the 25' setback was put in place for navigation to and from docks. Acting Chair Gray had a question on Mr. Smith's environmental pictures and asked what happens to the wetland. Acting Chair Gray was concerned with what happens to the wetland. Acting Chair Gray said he was concerned with the amount of water under the dock and that the dock looks to be in a mud flap area. Mr. Reis noted that moon low tide is lower than mean low tide which is 1' lower than normal. Acting Chair Gray said there may be times the applicant cannot use their dock during mean low tide and wanted to make sure the applicant would not come back to the council to seeking relief. Mr. DeLuca replied that he would not be coming back to the council to seek further use and that there may be times they would have to put their boat on a mooring at problematic times and he accepts this. Mr. Gomez had a question of staff on the mud flap and asked how often dredging occurred. Mr. Reis replied he believes the mud flap is stable and settles out and can be maintained with dredging. Mr. Paquette asked staff if the location of the float in the original application and the new application were the same location. Mr. Reis replied similar locations. Mr. DeAngelis stated that there were three options in the staff report and stated that they recommended that the environmental impacts do not warrant denial of the application. Mr. DeAngelis said staff did not recommend denial of the application. Mr. Reis replied that the application before the council is recommended for approval as modified. Mr. Fugate explained that the approval carries the approval of Army Corps and the resource agencies and if the location is changed, they would want to review the application and can deny the application approved by the council. Mr. DeAngelis gave a closing statement to the council and stated that this was a unique case and that the applicant can live with whatever the council decided. Mr. DeAngelis stated that no one came forward with any environmental objection to the application and the only concern is between the 3' and 19' distance between the properties. Mr. DeAngelis said they could compromise on the distance between the properties. Mr. DeAngelis requested that the council make a fair decision somewhere between the 3' and 19' distance. Mr. Paquette gave closing a statement to the council and stated that there was environmental testimony on the impact of the dock whether is was no greater than 3' or 19' location on the lot. Mr. Paquette said the 25' setback was not from the property line extension but 3' off a neighbor's property. Mr. Paquette felt the original proposal in the middle of the lot should be approved and that the council deny the proposed application. Mr. Dawson commended Mr. Reis on the application and said there were three alternatives by staff. Mr. Dawson was concerned with docks in this area. Mr. Dawson said his first choice was to deny the application, his second choice was to move the dock more than 3' away from the property line. Mr. Dawson said he was concerned with a dock being built there and would be voting against the dock application. Mr. Dawson felt this would set a precedent of docks in the area. Mr. Gomez said he heard the objector's hardship to repair the bulkhead at 3' away but the realty was that the view became the main concern. Mr. Gomez said the CRMC's concern is the environmental impact. Mr. Gomez said its was his opinion that they had to either deny the application or accept the application as proposed. Mr. Gomez felt there should not be a compromise. Mr. Zarrella stated that there was no evidence presented for denial of the application based on environmental concerns. Mr. Zarrella felt the council should

back staff and that you cannot tell staff to do it one way and then tell them to do it another way. Mr. Coia stated that if the council approved the application as is all the other agencies agree. Mr. Coia said if they propose a compromise and the other agencies say no to the compromise what happens. Mr. Fugate said the application would be considered denied. Mr. Fugate stated that the other agencies were comfortable with the location. Mr. Abedon felt that staff gives him guidance on what to do. Mr. Abedon said they could approve the application. Mr. Abedon was in favor to deny the 3' distance and having a compromise. Mr. Coia said they would be arbitrarily picking a number on the distance it should be. Mr. Abedon said they could pick a number. Acting Chair Gray was concerned with the environmental issues on the marsh. Acting Chair Gray felt if they moved it away from the bulkhead there would be impact. Acting Chair Gray said this would be saying that more docks could be put across a wetland and that they could not deny other docks. Acting Chair Gray said staff was not saying that the application be denied. Acting Chair Gray was concerned with the applicant need a variance on the 18" minimum water depth and having less than 18" water depth. Acting Chair Gray said he was not going to support an application based on a salt marsh and intrusion of the abutter by the structure. Acting Chair Gray supported denial of the application.

Mr. Gomez, seconded by Mr. Dawson moved denial of the application as submitted. Mr. Gray called for a roll call vote on the motion:

On the motion to deny the application:

Mr. Abedon	Yes	Mr. Coia	No
Mr. Shekarchi	No	Mr. Gomez	Yes
Mr. Zarrella	No	Mr. Gray	Yes
Mr. Dawson	Yes		

4 Affirmative 3 Negative 0 Absentation

The application was denied.

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

A. MANAGEMENT PROCECURES

▪ Revise Section 2 – Meetings

Chair Tikoian opened the public hearing on Management Procedures revision to Section 2 – Meetings. Mr. Fugate explained that the policy and planning had addressed the concerns of council member absences and disruption of state business. Mr. Fugate said this change would allow council members three absences within a 12-month period and that the Chair would be authorized to contact the appointing authority to seek removal of a council member after three absences. Mr. Fugate said this change was to prevent further absences and interruption of state business. Mr. Shekarchi asked if the revisions to Section 2.5 iwas legal to seek removal of a council member. Chair Tikoian noted that council members would have to call in before a meeting to say they would be absent. Mr. Shekarchi asked if they could pass this regulation change under the CRMC statute. Mr. Goldman replied yes, there is no legal impediment and that the Chair would only be sending a letter to the appointing authority regarding their appointment's absences. Mr. Shekarchi wanted to continue this change one month to make a decision on this as Mr. Ricci was not present and he had some comments and concerns on this.

Chair Tikoian noted that Mr. Ricci had said he was coming to the meeting tonight. Director Sullivan said that this would authorize the Chair to seek appointment of an active member. Mr. Gray asked if the 12-month period was a rolling 12-month period or a calendar year. Mr. Dawson said a rolling 12 month period. Mr. Gray wanted clarification on “unexcused” and what the definition of unexcused was. Chair Tikoian said they were not judging what a valid excuse was. Mr. Shekarchi suggested using “without proper notice” instead of “unexcused”. Mr. Gray noted that this regulation change was not unusual to have. Mr. Zarrella was concerned with who the appointing authority was because they were caught between the separation of powers. Mr. Zarrella said it was not determined who the appointing authority was as they wanted to give advice and consent back to the Governor or Senate. Mr. Zarrella asked what an unexcused absence was. Mr. Zarrella asked when they are notified of the meeting or within 24 hours of the meeting. Mr. Zarrella wanted to put off the vote on this. Mr. Zarrella did not feel the council had the authority to make this change. Director Sullivan asked that they pick a date for the one meeting in July and August either the 2nd or the 4th Tuesday to be consistent with the 2nd and 4th Tuesday September thru June. Chair Tikoian stated that the July and August meetings would be on the second Tuesday. Director Sullivan recommended that they delete “seek their removal from the Council” in Section 2.5 with “seek an active member”. Director Sullivan, seconded by Mr. Abedon moved approval of the revisions to Section 2 Meeting with the amendments. The motion was carried on unanimous voice vote.

B. RICRMP

1. Revise Section 300.11.C.1 Aquaculture/Prerequisites

2. Revise Section 300.11.F.1 Aquaculture/Standards

3. Revise Section 300.11.G Aquaculture/Guidelines for Marine Aquaculture

Chair Tikoian opened the public hearing. Mr. Fugate stated that this change was recommended by the aquaculture coordinator to deal with aquacultures in tidal waters and this clarifies the language. Chair Tikoian called for public comment. There was no public comment. Chair Tikoian closed the public hearing. Mr. Gray, seconded by Mr. Shekarchi and Mr. Coia moved approval of the revisions to Section 300.1.C.1, Section 300.11.F.1 and Section 300.11.G. The motion was carried on a unanimous voice vote.

12. Category “A” List

There were none held.

There being no further business to discuss, the meeting was adjourned at 10:07 p.m.

Respectfully submitted,

Grover Fugate, Executive Director

Reported by Lori A. Field

