

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, April 10, 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
Bruce Dawson
Dave Abedon
Mike Sullivan, DEM
Donald Gomez

STAFF PRESENT

Grover Fugate, CRMC Executive Director

Janet Freedman, CRMC Geologist
Ken Anderson, CRMC Senior Engineer

Brian Goldman, Legal Counsel

1. Chair Tikoian called the meeting to order at 6:15 p.m.

Ms. Field read a brief statement of clarification on the council's permitting process.

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

Mr. Coia, seconded by Mr. Abedon moved approval of the minutes of the March 27, 2007 meeting. The motion was carried on a unanimous voice vote.

3. **STAFF REPORTS**

There were no staff reports.

4. **SUBCOMMITTEE REPORTS**

There were no subcommittee reports.

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

6. **CONTINUANCES:**

2005-09-014 CHARLES FABER – Rehearing due to Public Re-Notice. Construct and maintain: a residential boating facility consisting of a 4' x 110' fixed timber pier, and two (2) tie-off piles. The proposal requests two variances: a 25' variance to RICRMP Section 300.4.E.3(k) (length), and a 105' variance to Section 300.4.E.3(l) (mooring field offset). Located at Plat 142, Lot 35; 45 Sauga Avenue, North Kingstown, RI

The applicant was not present. Chair Tikoian stated that the applicant requested a continuance within the proper time period. The continuance was granted and the application was continued.

2006-06-122 EVELYN FARGNOLI – Construct a new three bedroom dwelling to be serviced by public utilities and associated earthwork; Conduct roadway improvement including extension of road and waterline. Located at Lake and Wolfe Roads, Narragansett, RI.

The applicant was not present. Chair Tikoian stated that the applicant requested a continuance within the proper time period. The continuance was granted and the application was continued.

7. APPLICATION WHICH HAVE BEEN OUT TO NOTICE FOR 30 DAYS AND IS BEFORE THE FULL COUNCIL FOR DECISION:

2005-01-087 DARTMOUTH HOMES, INC. – To further subdivide “Lot 5” of a 5-lot subdivision granted final plat approval by the Town of Charlestown in January 2001 to create a sixth subdivision lot. Located at Plat 20, Lot 91; 30 Clarkin Pond Road, Charlestown, RI.

The applicant was not present. Mr. Fugate stated that the applicant had requested this specific date and time for a hearing. Mr. Coia asked if the applicant thought they had to be here at 7:00 p.m. after the council presentation listed on the agenda. Mr. Fugate replied that the applicant’s notice stated that the application would be heard at 6:30 p.m. The application was held.

8. PRESENTATION - Swimming Beaches – D. Burnett, DOH.

Chair Tikoian asked if Mr. Burnett was present. Mr. Burnett was not present. Mr. Fugate stated that Virginia Lee had arranged Mr. Burnett’s presentation.

**Introduction to Geological Concerns – G. Fugate, CRMC
Barrier Beaches, Sea Walls, Erosive Bluffs – J. Freedman, CRMC**

Mr. Fugate explained that Janet Freedman, CRMC Geologist would give a presentation on geological hazards and talk about barriers, eroding headlands, bluffs and shoreline protection structures. Ms. Freedman addressed barriers and stated that barriers are dynamic coastal features, unconsolidated sediments that are transported by waves and currents. Ms. Freedman explained that barriers are separated from the mainland by a coastal pond, tidal water body or coastal wetland. Ms. Freedman said morphology includes beach, and often foredune zone, back barrier flat. Ms. Freedman noted that barriers are important buffers against storms. Ms. Freedman showed a picture of the

Ninigret barrier after hurricane Carol as an exhibit. Ms. Freedman explained that overwash processes can occur in moderate storms. Ms. Freedman showed pictures of the East Beach, South Kingstown Town Beach, and Sapowet Point which have barriers in the bay. Ms. Freedman said there are barrier areas at McCorrie Point, Portsmouth, RI that have shifted northward. Ms. Freedman explained the CRMC barrier classification, which consists of developed barriers, moderately developed barriers and undeveloped barriers. Ms. Freedman said undeveloped barriers are essentially free of commercial or industrial buildings, houses, surface roads, shoreline projection structures and may have public utility lines. Ms. Freedman said that moderately developed are also free of commercial and industrial buildings, houses, but have surfaced roads, recreation structures and shoreline protection structures. Ms. Freedman stated that developed barriers have structures and contain commercial/industrial buildings, houses, surfaced roads and shoreline protection structures.

Chair Tikoian stopped Ms. Freedman's presentation to begin the hearing on Dartmouth Homes application, as Director Sullivan needed to leave by 6:45 p.m. to attend a meeting in Portsmouth. Chair Tikoian thanked Ms. Freedman for her presentation.

8. APPLICATION WHICH HAVE BEEN OUT TO NOTICE FOR 30 DAYS AND IS BEFORE THE FULL COUNCIL FOR DECISION:

2005-01-087 DARTMOUTH HOMES, INC. – To further subdivide “Lot 5” of a 5-lot subdivision granted final plat approval by the Town of Charlestown in January 2001 to create a sixth subdivision lot. Located at Plat 20, Lot 91; 30 Clarkin Pond Road, Charlestown, RI.

Evelyn Smith, the applicant was present. Margaret Hogan, the applicant's attorney was present on behalf of the applicant. Doug Harris, Charlestown Indian Tribe, an objector was also present. Mr. Anderson gave council members a brief summary on the application. Mr. Anderson stated that the application was continued from October 25, 2005. Mr. Anderson explained that the applicant wanted to subdivide one lot within a 5-lot subdivision, which triggered the SAMP plan regulations. Mr. Anderson stated that the application meets the SAMP Plan density requirements and staff had no objection to the application. Mr. Anderson said there were issues to be resolved between the applicant and the objectors and that this is why the application is back before the council. Chair Tikoian asked if the applicant and the objector worked out their issues. Ms. Hogan replied no they did not resolve them. Ms. Hogan said they met in the parking lot after the last hearing to try to resolve the issue. Ms. Hogan said the tribe wanted to purchase a portion of the property, they had a purchase and sales agreement and Indian tribe applied for a USDA loan but the time period to get the loan would take too long. Ms. Hogan stated that the applicant wanted to maintain the existing dwelling on the property for family use and a sale to the Indian tribe was not possible. Ms. Hogan stated that she had tried on numerous occasions to contact the tribe to offer some type of conveyance to the tribe but received no response. Ms. Hogan described the property. Ms. Hogan explained that the area in pink on the map included the pond and wetland which would be put in a conserved area with passage for the applicant by non-motorized craft. Ms. Hogan said they would submit a proposed conservation easement and restrictions on this and said there would be no disturbance in this area. Ms. Hogan felt this addressed the tribe's concerns. Ms. Hogan said there was a question as to whether the home to the left on lot 5 was pre-existing. Ms. Hogan said it was. Ms. Hogan stated that the proposal was for lot 6 which is the furthest away from the coastal feature. Mr. Fugate asked if they were proposing a restriction for a conservation easement. Ms. Hogan

replied yes and there would be no public access. Ms. Hogan felt this would satisfy both CRMC and tribe concerns. Ms. Hogan said the technical issues were met per staff. Ms. Hogan requested council approval for the subdivision of lot 5 and 6.

OBJECTORS.

Timothy Daudelin, an abutter, stated that he was opposed to the application. Mr. Daudelin stated that the Historical Preservation Commission recommended a Phase I archeological study of the property and felt this was not done. Mr. Daudelin agreed with the Indian tribe that this was a historical site. Mr. Daudelin did not agree with the conservation easement and noted that no variances had been approved by the town. Vice Chair Lemont asked if you looked at the map where his property was on the lot. Mr. Daudelin replied Lot 91-7 and that his home was built by Dartmouth Homes. Mr. Daudelin noted that he had his own test done for artifacts and that none were found. Vice Chair Lemont asked how far his home was away from this area. Mr. Daudelin replied that his property abuts this property and was about 113-120 feet away from this area. Doug Harris, Senior Deputy Narragansett Indian Tribal Historic Preservation Officer, an objector, said he never seen a draft purchase and sales agreement which they needed for the funding agency. Mr. Harris stated that the reason he did not respond to the applicant was because they felt the letter was an insult. Mr. Harris said they did have a discussion with the Evelyn Smith and her attorney in the parking lot after the last meeting regarding the protection of Clarkin Pond. Mr. Harris stated that the February 19th letter referred to a conservation lot and felt this was a shame. Mr. Harris said they had loan approval to purchase the lot and felt the applicant jeopardized their funding status. Mr. Harris noted that lot 5 is on the market and there is a sign on the property. Mr. Harris requested that CRMC send the application back to the Town of Charlestown to make a determination on the viability of lot 5 as a cultural conservation lot for the sake of historical preservation. Mr. Fugate asked if the funding was coming from the USDA Rhode Island office or Washington office. Mr. Harris replied the RI office. Chair Tikoian asked if the cultural conservation lot would be determined by the Town or the tribe. Mr. Harris replied that this was a reference in one of Ms. Hogan's letters. Mr. Fugate noted that CRMC staff and legal counsel have not seen the conservation easement. Ms. Hogan felt that the letter sent out to the tribe was not an insult. Ms. Hogan stated that they have preliminary approval from the town pending CRMC approval. Chair Tikoian asked if the offer was still out there to sell the land to the tried or \$700,000. Ms. Hogan replied no. Ms. Smith explained that the For Sale sign on the property was a sign left behind by the realtor and that the property was not for sale and there were no pending sales agreement or listing agreement. Mr. Fugate asked what the zoning requirements were for the land. Ms. Hogan replied the property is zoned R3A and that you need three-acres of land to build. Mr. Fugate asked if they cut the land out for the proposed conservation easement as a separate lot would they meet the zoning requirements. Ms. Hogan replied yes. Director Sullivan noted that he had to be in Portsmouth at 7:00 p.m. for a hearing and that it was his recollection from the minutes of the October 25, 2005 meeting there was dialog about construction on lot 6. Ms. Hogan explained that there is a house on lot 5 and that there is nothing constructed on lot 6. Ms. Hogan stated that there is storm erosion installed on lot 6. Mr. Fugate asked Mr. Harris if he had seen the conservation easement proposed and does it include the area of their concern. Mr. Harris replied yes. Cynthia Giles, Conservation Law Foundation, stated that she was opposed to the application because of a precedent it would set. Ms. Giles noted that a 5-lot subdivision is not under CRMC jurisdiction but a 6-lot subdivision would be and they would need to meet original rules and regulations. Ms. Giles felt there was not adequate storm water system for 6 lots instead of 5 lots. Ms. Giles felt an archeological survey should have been done. Ms. Giles felt the council

should apply the rules as they apply. Ms. Giles urged the council to deny the application. Mr. Abedon asked how staff determined the storm water review. Ms. Giles responded that the staff report said that this was not what they would have asked for but it was adequate. Wendy Wallik, Save the Bay, an objector, stated that they were opposed based on the regulatory process. Ms. Wallik felt the application should have falling under SAMP Section 960.B.1 and required HPC review. Ms. Wallik stated that only lot 6 was reviewed. Ms. Wallik urged the council follow the rules of the council. Ms. Hogan stated that it was suggested that the regulations had not been met and felt that they had met and complied with the CRMC regulations and the HPC compliance. Ms. Hogan noted that all homes on the original 5-lot subdivision had been built without any problems. Ms. Hogan felt they met the requirements for stormwater treatment by staff. Ms. Hogan submitted letters of communications with the objectors as exhibits. Ms. Hogan felt the application fully complied with the CRMC regulations. Director Sullivan agreed with comments of Ms. Hogan before the council and also agreed with the two objectors regarding the CRMC rules. Director Sullivan said if the application was approved the council was not doing what it was suppose to do. Director Sullivan stated that he would vote in opposition to the application at this time. Chair Tikoian agreed with Director Sullivan. Chair Tikoian offered them time to come to an agreement and have Director Fugate assist in the sale of the property and with the USDA funding. Mr. Gomez noted that Mr. Reis report stated that the storm water treatment was slightly variant and stated that he supplied the applicant with a copy of the conservation easement template to use in their conservation easement. Mr. Goldman stated the he had not seen the proposed conservation easement from the applicant. Mr. Fugate suggested that the council continue the application 60 days to see if USDA funds were an option, check with the HPC on the archeological phase study and check on the storm water rules and regulations as they apply to the application. Mr. Coia, seconded by Vice Chair Lemont moved to continue the application 60 days to see if USDA funds were an option, check with the HPC on the archeological phase study and check on the storm water rules and regulations as they apply to the application. Mr. Dawson noted that the property was not for sale. Ms. Hogan stated that there was an objection on the procedural process. Mr. Fugate replied when they brought the 6 lot into the 5-lot subdivision they need to meet the new regulations. Vice Chair Lemont withdrew his second. Mr. Coia withdrew his motion. Vice Chair Lemont, seconded by Director moved to continue the application 60 days to make sure the application was consistent with the rules and to look at lot 6 to see what rules and regulations apply. The motion was carried on a unanimous voice vote.

9. **Category "A" List**

There were none held.

There being no further business to discuss, Vice Chair Lemont, seconded by Mr. Coia moved to adjourn the meeting. The meeting was adjourned at 7:30 p.m.

Respectfully submitted,

Grover Fugate, Executive Director

Reported by Lori A. Field