

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Monday, July 2, 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
Director Michael Sullivan
Donald Gomez
Neill Gray
Joe Shekarchi

MEMBERS ABSENT

Jerry Zarrella
Tom Ricci

STAFF PRESENT

Grover Fugate, CRMC Executive Director

Dan Goulet, CRMC Dredge Coordinator
Ken Anderson, CRMC Senior Engineer

Brian Goldman, CRMC Legal Counsel

1. Chair Tikoian called the meeting to order at 6:08 p.m.

Chair Tikoian thanked council members for coming to the meeting and changing to their schedule to accommodate the applicants.

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

Mr. Coia, seconded by Vice Chair Lemont moved to dispense with the reading of the minutes of the May 8, 2007 meeting and accept them as presented. The motion was carried on a unanimous voice vote.

3. **SUBCOMMITTEE REPORTS**

Vice Chair Lemont reported that the Policy & Planning Subcommittee met on April 25th and May 15th and talked about proposed changes to Section 310 – Alteration of a Freshwater Wetland; Providence Harbor SAMP – Metro Bay technical revisions; Narragansett & Salt SAMP – remove outdated text and add nitrification language; and Water Change Type in Providence Harbor from Type 6 to Type 4 at Fields Point. Chair Tikoian requested that the proposed program changes be accepted and put out to 30-day public notice and placed on the next agenda.

4. **STAFF REPORTS**

Chair Tikoian asked for volunteers for a new subcommittee to review the progress of the MRDP and requested that 3 to 5 council members serve on the subcommittee. Vice Chair Lemont, Director Sullivan, and Mr. Dawson volunteered for the subcommittee. Director Sullivan asked what the time frame was for the subcommittee. Chair Tikoian responded the subcommittee should be finished before the next general assembly session.

Director Sullivan noted that the members report had not yet been placed on an agenda and requested that it be placed on an agenda. Director Sullivan felt the council needed to address the issue of CRMC's primary jurisdiction on aquaculture applications.

5. **Presentation:** Marinas Dan Goulet, CRMC

Mr. Goulet, the CRMC Dredge Coordinator gave a brief presentation on marinas, marina perimeters and marina status and trends. Mr. Goulet showed council members pictures of marinas around the state. Mr. Goulet stated that Section 300.4 – Residential Boating Facilities addressed most of the requirements of marinas. Mr. Goulet said they added new definitions to marinas and marina limits: destination harbor, alteration, significant expansion, transient berthing, boat/vessel count and marina perimeter limits. Mr. Goulet talked about the policy and standard sections and the prerequisites for new marinas and expansions. Mr. Goulet said they now require a preliminary determination. Mr. Goulet said the biggest change to the standards for marinas was the trends and future policy issues such as cumulative impact. Mr. Goulet stated that after years of waiting lists for boat slips there is a surplus of slips in the bay. Mr. Shekarchi asked how parking was being handled for marinas. Mr. Goulet replied that they need local zoning approval for parking. Mr. Shekarchi asked if there was any relief giving on the parking requirements. Mr. Fugate explained that most cities/towns mimic the CRMC parking standard requirements. Mr. Gomez asked if dry stack establishes a certain number of units and if there is a cap on dry stack. Mr. Goulet replied that it depends on the location. Mr. Goulet stated that in type 2 waters you can expand by 25 percent. Chair Tikoian thanked Mr. Goulet for his presentation.

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

7. **APPLICATION SENT TO SUBCOMMITTEE:**

2002-06-054 ROCCO D'ANGELO – Construct single-family dwelling served by Town water and sewer service. Located at Plat N-E, Lots 3, 4, 5; Circuit Drive, Narragansett, RI.

Chair Tikoian recused himself.

Joseph DeAngelis, attorney for the applicant was present. Vice Chair Lemont requested that the application be sent to a subcommittee due to the lengthy history of the application and staff's recommendation for denial of the application. Vice Chair Lemont, seconded by Mr. Shekarchi, Mr. Abedon and Mr. Coia moved to refer the application to a subcommittee.

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

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

2005-12-069 TOWN OF BRISTOL -- Construct and maintain transient dockage, additional wave fence and additional permanent dockage at the Church Street Marina. The applicant proposes to construct approx 97 LF of transient dockage and to install approx 108 LF of wave fence. The applicant proposes to install additional float docks that will increase the permanent boat capacity of the marina from 49 to 52 boats. The Marina Perimeter Limit is to be expanded to bound the improvements. Located at plat 10, lot 70, 84; Church Street, Bristol.

Joe Cabral, the Bristol Harbormaster, was present on behalf of the applicant. Mr. Anderson gave council members a brief summary on the application. Mr. Anderson stated that the application was to modify a marina and add 3 additional floats. Mr. Anderson stated that staff had no objection to the application and recommended approval. Mr. Shekarchi, seconded by Vice Chair Lemont moved approval of the application with all staff stipulations. The motion was carried on a unanimous voice vote.

2007-02-009 CITY OF NEWPORT – construct and maintain: A public water shuttle facility. To become one stop of the Newport Harbor marine passenger shuttle service. Facility to add to north of existing shuttle facility, and to include a new finger pier (approx 18' x 20'), two (2) concrete floats (20' x 55', and 20' x 80'), and two (2) ADA compliant ramps. Located at plat 24, lot 348; America's Cup Avenue, Newport, RI.

Paige Bronck, City of Newport, was present on behalf of the applicant. Susan Cooper and Michelle Gallant, were also present on behalf of the applicant. Mr. Anderson gave council members a brief summary on the application. Mr. Anderson stated that the application was to extend and add to an existing water shuttle in Newport harbor. Mr. Anderson said staff thoroughly reviewed the application and recommended approval. Mr. Anderson stated that no water quality certification was required. Vice Chair Lemont, seconded by Mr. Shekarchi moved approval of the application with all staff stipulations. Chair Tikoian asked if the applicant had any comments to add to the application. They had none. The motion was carried on a unanimous voice vote.

1994-09-150 JAMES and REBECCA DURKIN -- to alter the design of a previous authorized residential boating facility, to reflect as-built conditions and to allow for the installation of two tie-off piles as shown on the plans. The current as-built structure for which approval is sought, consist of a 6' x 110' fixed timber pier supported by both piles and cribs, a 3' x 20' ramp and 8' x 48' of terminal floats. The facility extends 126 feet seaward of the cited MLW mark. The two proposed tie-off piles are to be set 22 feet south of the terminal floats. Located at plat Y-1, lots 111, 112, 113; 36 Cedar Island Road, Narragansett, RI.

John Garrahy, attorney for the applicants was present on behalf of the applicants. Mr. Anderson gave council members a brief summary on the application. Mr. Anderson stated that the project description had been omitted. Mr. Anderson stated that the application was to legalize and authorize and as built dock. Mr. Anderson said the dock site was longer than permitted. Mr. Anderson said staff recommended approval of the application with stipulations. Mr. Shekarchi, seconded by Mr. Coia moved approval of the application with all staff stipulations. Mr. Gray noted that staff recommended items be removed. Mr. Anderson replied staff recommended that a small craft and a ramp on the

the property be removed. Mr. Garrahy explained that there was a ramp going down into the wetland and they had no objection to removing the ramp. Mr. Garrahy said the dock width extends out for a small craft and they wanted to be able to keep it. Mr. Gray asked if this was on the dock itself and was not sure what they were asking the applicant to remove. Mr. Garrahy replied that they were asking that the 10-15 feet over tidal waters be removed. Mr. Anderson said it was somewhere near the stairs. Mr. Gray asked why this was not shown on the plan by the engineer. Mr. Gray said it was hard for him to do his job without seeing what was on the plan and it did not show the existing conditions. Chair Tikoian asked if staff went out to the site and looked at this. Mr. Anderson replied yes and they looked to have them removed. Mr. Garrahy withdrew his request to leave the small craft. Mr. Dawson noted that its a requirement that an engineer verify what is done in compliance with what the council is approving. Chair Tikoian asked what the timetable the applicant needed to remove these items. Mr. Garrahy replied two weeks to a month and that he would have an engineer verify what was taken out. Director Sullivan asked if "as built" had to be on written documents before CRMC. Mr. Gray stated that the plan on page 16 is the only plan that they have as the as built plan. Mr. Anderson explained that staff has a plan to scale and photos in the packet. Mr. Anderson said the structures are small and over hang. Mr. Gray requested that they add to the motion that the applicant verify items to be removed. Mr. Shekarchi agreed. The motion was carried on a unanimous voice vote.

10. APPLICATIONS REQUESTING EXTENSION OF ASSENT:

1996-02-044 ROBERT FROST – Project located at plat 13D, lot 324; 15 Read Avenue, Warren, RI.

Robert Frost, the applicant's son was present on behalf of the applicant. Margaret Hogan, attorney for the objectors, Kickicuit River Council "KRC" was present on behalf of the objectors. Chair Tikoian asked the executive director to give council members the background on the application, legal counsel to give the legal background on the application, and the enforcement team to give background on the enforcement action on the application. Mr. Fugate explained that the application started with the Harbors Division before CRMC in 1967 and was transferred to the council in 1971. Mr. Fugate explained that in the early 1990's the General Assembly passed legislation for eligibility for a grandfather permit if an applicant could show the dock existed before 1985. Mr. Fugate stated that Mr. Frost applied for a grandfather dock permit in 1996 and that staff requested that the new plan meet the current standards and requested that the application be modified. Mr. Fugate stated that the application was before the council tonight for an extension of the assent. Mr. Goldman gave council members the legal background on the application and stated that the litigation on this application began in 1973. Mr. Goldman stated that a dredge dock was prohibited. Mr. Goldman said the applicant was permitted to do boat repair, construction, storage, sale of boats and accessories and other related services, which was issued in the 1976 Superior Court order. Mr. Goldman stated that CRMC never issued a decision in 1973 on the Frost case and the court dismissed the case. Mr. Goldman recommended to the council that they bring the assent into compliance with the Superior Court Order for the boat repair, construction, storage, sale of boats and accessories and other related services and that the dredging issues are prohibited to correct the assent and clarify the assent. Mr. Goldman also recommended that whatever enforcement issues be part of the actions taken by the council. Mr. Fugate added that they clarify that the commercial dock is very limited use and no marina can emanate from this property. That this is not considered a

marina and there can be no further expansions. Mr. Goldman noted that the dock was limited to four (4) boats or less which was considered a residential dock. Brian Harrington and Laura Miguel, CRMC Enforcement Staff passed out six – 8” x 11 ½” and four smaller photographs of the site to council members. Ms. Hogan had no objection to the photographs being submitted. Mr. Harrington explained that on June 12th they visited the site and there were three areas of concern: 1) north of the dock there was material next to the salt marsh to be removed (photograph #1); 2) south of the dock there was an unauthorized riprap revetment area which exceeded the scope of the permit and some of the rocks needed to be removed (photograph #2); and 3) the barge with prop dredging (photograph #4). Mr. Harrington stated that on June 13th C&D No. 07-00-55 was issued to the applicant and that on June 20th he met with the applicant, his sister and Laura to talk about the violations on the property. Mr. Harrington stated that they have been talking with the applicant to work out an acceptable plan. Vice Chair Lemont stated that they were talking about the possibility of removal of material in photograph #1, removal of spill over in photograph #2 and removal of the barge with prop dredging, which was out of compliance, be removed in photograph #4. Vice Chair Lemont asked about the shell on the ground in photograph #5, the large road out the dock in photographs #7 & 8 and the dilapidated barge photograph #10 and asked Mr. Harrington if this was removed. Mr. Fugate explained that staff was recommending that two areas be cleared, rocks be removed and removal of the barge. Vice Chair Lemont stated that if the areas are cleaned up and barge is removed they would only be here for the extension of the assent. Mr. Fugate replied yes. Director Sullivan asked what size the area was to be cleaned up. Mr. Harrington replied a 40-50 s.f. area on the southside in photograph #2. Chair Tikoian noted that picture #3 shows spill over into marsh greater than what is in photo #3. Mr. Harrington noted that photograph #9 was looking back towards the dock. Chair Tikoian asked in his review there was no more encroachment in the salt marsh. Mr. Harrington replied only what is in photograph #1. Vice Chair Lemont asked in photographs # 1, 7 and 8 there are stakes to side of the fill and asked who put them in. Ms. Miguel replied it was associated with the permit to resurface the road. Mr. Harrington replied he was not sure what the stakes are. Mr. Frost explained that the stakes were put in at the beginning of construction to keep it lined up. Mr. Frost stated that the rocks were up higher on the embankment and they use the rocks for support. Chair Tikoian asked what was the vessel in photograph #6 used for. Mr. Frost replied to take the boat out to the mooring. Chair Tikoian asked if he ever prop dredged with that. Mr. Frost replied no. Mr. Shekarchi noted that there was a letter from Attorney Hogan stating that the KRC was asking CRMC to re-designate the dock as a residential dock with limited commercial activities in accordance with the zoning variance and the Superior Court’s 1976 decision. Mr. Frost stated that he had no problem if they used the exact wording of the Superior Court judgment. Director Sullivan asked if one of the floats with the mini-barge was used to maintain own moorings and if it had a hydraulic driven shift with propeller. Mr. Frost replied that it was a self-propelled. Director Sullivan asked how far the shift extended into the water. Mr. Frost replied 24 inches. Director Sullivan was concerned with the ranges of the propeller and wanted to know what the model number was so he can check the figures. Chair Tikoian asked if the mini-barge was used for moving moorings and what the weight of the moorings were. Mr. Frost replied that the moorings are 500-1000 lbs. and he can only lift about 700 lbs. Mr. Dawson asked how “other related services” was defined. Mr. Frost replied mooring work, commercial fishing and related services within reason. Mr. Goldman said the court would have to explain what it meant by “other related services”.

OJBECTORS

Ms. Hogan, representing the Kickicuit River Council, noted that Mr. Frost was representing his father and wanted to hear from Mr. Frost, the applicant, regarding the dredging. Ms. Hogan stated that the application was for an extension of the assent and that there are violations on record and requested that the council not approve the extension of the assent until the violations are corrected. Ms. Hogan stated that an extension could only be granted if the assent was in compliance. Ms. Hogan said the objectors are willing to come back after the violations are cleared up regarding the extension of the assent. Ms. Hogan noted that the first extension request was in September 2005 and that this is the first hearing on the extension request in two years. Ms. Hogan stated that there was a DEM notice to enforce in 2004 to the applicant and Mr. Frost stated that he did prop dredging. Ms. Hogan stated that in 1971 transfer of the assent the barge was suppose to be removed and has not. Ms. Hogan stated that the resolution to this would be to "re-designate dock as residential dock, with limited commercial activities in accordance with the zoning variance and the Superior Court permanent injunction ("boat repair, construction, storage, sale of boats and accessories and other related services"). Ms. Hogan stated that "other related services" need to have zoning certification from Warren. Ms. Hogan noted that staff was working with the applicant on the plan to clear up the violations and wanted to know what the hang up was to get the violations cleared up. Mr. Harrington replied that the applicant is afraid to pull the rocks without stabilizing the area and is requesting a modification to the application. Ms. Hogan urged the council not to make a decision on the application and get the violations cleared up and get a full plan on what they have on site. Chair Tikoian stated that he was concerned with the prop dredging if the father, Mr. Frost, admitted this to DEM and wanted the truth of that. Chair Tikoian was also concerned with requesting an extension of the assent with violations pending. Chair Tikoian wanted to know what the time frame was to correct the violations. Mr. Frost replied that the remark made by his father about dredging was a sarcastic remark and that his father had been hurt and could not be present tonight. Mr. Frost stated that he was not prepared to defend the barge issue. Chair Tikoian asked when the C&D had been issued. Mr. Harrington replied June 13, 2007. Chair Tikoian asked what had been done to fix the violation. Mr. Frost replied he had met with staff on June 20th and that he was trying to work with staff to correct the violations. Chair Tikoian asked when the rocks were placed there. Mr. Frost replied in 2004 according to his engineer's report. Chair Tikoian asked how many staff enforcement visits there had been to the site. Ms. Miguel replied a dozen or so since 2001 when they started receiving phone calls. Vice Chair Lemont asked what the phone calls were complaining to. Ms. Miguel replied signs on the marsh, prop dredging, etc... Mr. Harrington stated that a violation had been issued for lobster pots in the marsh. Ms. Miguel stated that the applicant notifies CRMC of their activities just incase CRMC received a complaint. Vice Chair Lemont, seconded by Mr. Abedon moved that the applicant correct the violations before the extension of the assent be considered, extend the application 30 days with the express requirement that the violations cited be corrected within 30 days. Chair Tikoian requested that the staff engineer review the plan to check what the requirements of the dock is and if the rocks are there improperly that they be removed. Director Sullivan wanted to know what scale of the plans on page 2 were in the packet.

Mr. Abedon asked why the upland uses were permitted by the town and not CRMC and wanted this clarified. Mr. Goldman explained that the upland area was the Town's jurisdiction to MHW and the only activities allowed are what the Superior Court ruled. Mr. Shekarchi asked Ms. Hogan if the applicant agreed to the recommendation #1 in her 5/31/07 letter if this would satisfy the objectors. Ms. Hogan replied yes, recommendation

#1 was there preference. Mr. Shekarchi asked if she filed a complaint with the town regarding the other unrelated activities taken place. Ms. Hogan replied yes and they found no problems. Mr. Shekarchi stated that when the application comes back before the council it will be limited to the extension of the assent. Chair Tikoian replied yes. Jean McCabe, an objector, addressed the violations issue and felt the 20-ton crane contributed to the contribution of rocks during a storm surge and wanted to have the 20-ton crane removed. Mr. Goldman replied that the Superior Court had allowed the small crane on site and that this was an issue to be handled by either the Town of Warren or the Superior Court and was not a CRMC issue. Ms. McCabe stated that she was opposed to a commercial dock and in favor of a residential dock. Dennis Lemois, the applicant's son-in-law, stated he was in the construction business and that this is the smallest crane used in the construction business. Kenneth Morrill, an objector wanted to speak on the application. Chair Tikoian noted that the application was being continued 30 days to address the violation issues and that he would have the opportunity to speak at the next hearing on the extension of the assent. Ann Morrill, Kickicut River Council, wanted to pass out copies of all the C&D's issued to the applicant. Director Sullivan requested that the issue of the relationship of the upland lots and marsh lots be addressed. The motion was carried on a unanimous voice vote.

11. **Other**

Vice Chair Lemont announced that Director Sullivan, Mr. Shekarchi, Mr. Dawson and himself will serve on the subcommittee on the Rocco D'Angelo application and that Mr. Dawson will serve as the chair.

12. **Enforcement Report – April and May 2007**

There were none held.

13. **Category "A" List**

There were none held.

There being no further business to discuss. The meeting was adjourned at 8:23 p.m.

Respectfully submitted,

Grover Fugate, Executive Director

Reported by Lori A. Field