

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, October 9, 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  
Neill Gray  
Don Gomez  
Ron Gagnon, DEM Representative  
Joe Shekarchi

**MEMBERS ABSENT**

Tom Ricci  
Jerry Zarrella

**STAFF PRESENT**

Grover Fugate, CRMC Deputy Director  
  
David Alves, CRMC Aquaculture Coordinator  
Tom Medeiros, CRMC Senior Engineer  
Brian Harrington, CRMC Enforcement  
Laura Miguel, CRMC Enforcement  
Tracy Silvia, CRMC  
  
Brian Goldman, Legal Counsel

1. Chair Tikoian called the meeting to order at 6:02 p.m.

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

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

Mr. Coia, seconded by Mr. Gray and Mr. Shekarchi moved to dispense with the reading of the minutes of the September 25, 2007 meeting and accept the minutes as presented. 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. **PRESENTATION: Sea Level Rise – John King, URI Graduate School of Oceanography**

Chair Tikoian noted that they had previously authorized the executive director to attend a workshop on sea level rise new regulations and changes. Chair Tikoian stated that John King of the URI Graduate School of Oceanography would give a presentation on sea level rise. Mr. King said his presentation would address “Global Warming and the Impact of Seal Level Rise in Rhode Island”. Mr. King stated that they needed to define the problem which include: indicators of human influence on the atmosphere such as carbon dioxide, methane, etc... and changes in the temperature, sea level, and Northern Hemisphere snow cover. Mr. King said rising temperatures would have significant global warming. Mr. King explained that these changes included: global and continental temperature changes; change in annual average temperature – change in the northeast; change in the sea surface temperature; and RI climate “mitigation”. Mr. King said there are four contributions to sea level rise: 1) thermal expansion of sea water; 2) melting of glaciers and ice caps; 3) ice sheet surface mass balance – snow fall melting; and 4) ice sheet surface dynamical – imbalance and increase flow rate. Mr. King described types of barrier islands, backgrounds and the way they work. Mr. King said the evolution of Barrier Island during Holocene caused sea level rise. Mr. King described sea levels observed and projected from 1993 to 2003 compared to 1961 to 2003 which projected the global average surface warming and sea level rise at the end of the 21<sup>st</sup> century. Mr. King explained the 2006 “IPCC estimates: 1) Thermal expansion of sea water was 28 cm; 2) glaciers was 12 cm; 3) mass balance was -3 cm; and 4) increased flow was +3 cm. This totaled 40 cm of sea level rise by 2100 with a range estimate of 18-59 cm. Mr. King talked about rising sea levels in Rhode Island and gave examples at a sea level rise of 3 feet and a sea level rise at 20 feet. Mr. King said the global impacts of climate changes the sea level rise. Mr. King said there is more coastal flooding each year. Mr. King said they need to look at the planning needs for the future which included: 1) Seamless digital terrain model for Rhode Island – LIDAR survey of the coastline and high resolution of coastal waters; and 2) Inundation Model – storm surge with wave regime superimposed, better understanding of coastal erosion style and rate and expanded RI sea level and coastal erosion monitoring programs. Mr. King said there are two programs at URI that monitor coastal erosion in southern RI. Vice Chair Lemont requested a copy of Mr. King’s presentation. Chair Tikoian thanked Mr. King for his presentation and noted that the presentation would be on the CRMC website. Director Sullivan asked Mr. King if he had an opinion on necessary behavioral changes in temperature and sea level. Mr. King replied they have 20-30 years to ratchet down green house gases and will have a certain amount of warming as gases are already in air. Chair Tikoian asked about the planning tools that he requested and asked if he had any recommendations to this body that it should implement. Mr. King suggested a statewide database for LIDAR because all communities are doing their own surveys and this would set the guidelines for communities. Mr. King said this would be a very good monitoring tool. Chair Tikoian stated that this is another example of how CRMC, URI and the Coastal Resource Center work well together. Mr. Fugate announced that he was meeting with Senator Reed’s staff to talk about LIDAR and said they already have funding at the state level for this.

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

7. **APPLICATIONS REQUESTING MODIFICATION OF ASSENT BEFORE THE FULL COUNCIL FOR DECISION:**

**2002-05-034 PERRY RASO – Modification of current aquaculture lease by expanding the lease by two acres. Lease located in Potters Pond, South Kingstown, RI.**

Perry Raso, the applicant was present. Mr. Alves gave the council members a brief summary on the application. Mr. Alves stated that this was an application for a 3.8-acre lease to be expanded by 3 acres. Mr. Alves noted that there were concerns in his memo but there were no staff objections to the application. Mr. Raso had nothing to add to the application. Vice Chair Lemont stated that the applicant was going from a 3.8-acre aquaculture to a 6.8-acre aquaculture and asked if this was the end of the expansion for this aquaculture. Mr. Alves replied that the applicant is restricted to expansion to the north and can expand to the south but it was limited. Vice Chair Lemont, seconded by Mr. Shekarchi moved approval of the application for modification with all staff stipulations. Director Sullivan noted that the application had been endorsed by the RI Marines Fisheries Association. The motion was carried on a unanimous voice vote.

**2002-10-038 DAVID ROEBUCK – Modification of current aquaculture lease by expanding the lease by 4.5 acres. Lease located in Point Judith Pond, Narragansett, RI.**

David Roebuck, the applicant was present. Mr. Alves gave the council members a brief summary on the application. Mr. Alves stated that this is a 17 acre aquaculture in Point Judith Pond and they were looking to expand by 4.5 acres. Mr. Alves noted that his concerns were address and there was no staff objection to the application. Vice Chair Lemont asked if there could be any further expansion of the aquaculture. Mr. Alves replied it was very limited. Vice Chair Lemont, seconded by Mr. Coia moved approval of the application for modification with all staff stipulations. Mr. Dawson asked about the buffer between the applicant's aquaculture and the Spatco aquaculture and asked if he agreed to the buffer. Mr. Roebuck replied yes. Director Sullivan noted that the application had been endorsed by the RI Marines Fisheries Association. The motion was carried on a unanimous voice vote.

**2004-05-024 SPATCO, LTD – Modification of current aquaculture lease by expanding the lease by 5 acres. Lease located in Point Judith Pond, Narragansett, RI.**

Robert Rheault, the applicant was present on behalf of the application. Mr. Alves gave the council members a brief summary on the application. Mr. Alves stated that the application was for a 10 acre aquaculture to be expanded by 7.5 acres. Mr. Alves stated that there was no staff objection to the application. Vice Chair Lemont asked if the aquaculture could be expanded. Mr. Alves replied expansion was very limited and there could be no further expansion. Vice Chair Lemont wanted to make sure aquacultures were not taking over the ponds. Mr. Alves replied that staff is watching and monitoring aquacultures. Mr. Alves stated that the total aquaculture in Point Judith Pond is 4 percent. Vice Chair Lemont, seconded by Mr. Coia moved approval of the application for modification with all staff stipulations. Mr. Shekarchi noted that there were two letters of objection in the file and asked if the objectors were present. The objectors were not present. Mr. Dawson asked about the buffer between the applicant's aquaculture and the Roebuck aquaculture and asked if he agreed to the buffer. Mr. Rheault replied yes. Director Sullivan noted that the application had been endorsed by the RI Marines Fisheries Association. The motion was carried on a unanimous voice vote. Chair Tikoian complimented aquaculture owners and working with CRMC.

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

**2005-08-101 KATHLEEN GALLANT** – As-built residential boating facility shown on the attached plans. The facility location relative to the property line extensions was not correctly shown on the plans previously approved by the CRMC. The facility actually extends over the southern property line extension, while the previous plans showed that the facility lay 16’ distant from the property line extension. Located at plat Y-1, lot 243; 26 Wheatfield Cove Road, Narragansett, RI.

**Chair Tikoian recused himself. Vice Chair Lemont presided over the application.**

Joseph DeAngelis, attorney for the applicant was present on behalf of the applicant. Mr. Rifkin, attorney for the Altrui’s, the objectors was also present. Mr. DeAngelis explained that the dock had been built in the wrong location and they noticed this when the survey was done. Mr. DeAngelis stated that after 6 months they have reached an agreement and requested a 90 day continuance to work out the details of the agreement. Mr. Ritkin concurred. Mr. DeAngelis noted that Mr. Altrui, the abutter would be filing an application for a dock. Mr. Gray had no problem with continuing the application but had a problem with the way the property lines were determined for docks and felt there should be a better way to do this. Mr. Fugate replied that the property line extensions have been in dispute and they are looking at this. Mr. Fugate noted that if the property lines are not disputed they can use the property lines to determine the location of the dock and that is why no survey is done.. Mr. Fugate said if there is a dispute a survey has to be done. Mr. Gray felt they should be required to do surveys and it would be a benefit to applicants. Mr. Coia, seconded by Mr. Gray moved to continue the application for 90 days as requested. The motion was carried on a unanimous voice vote.

**2006-05-133 LEE’S WHARF CONDO ASSOCIATION** – Establish a Marina Perimeter Limit (MPL) at existing (pre-1971) marina facility. The application includes request for “As-Built” (post 1971) floats (4’ x 80’ total area) along north side of northern pier, which were not subject to any prior CRMC/ACOE approvals. Total marina capacity reported as 45 slips, 65 boat maximum capacity. Located at plat 32, lot 275; Between Lee’s Wharf and West Howard Street, Newport, RI.

Jerry Shriver, Lee’s Wharf Condo Association was present. S. Paul Ryan, attorney for the applicant was also present on behalf of the applicants. Mr. Anderson gave council members a brief summary on the application. Mr. Anderson noted that Joe Paolino had sold the property in January and there was no conflict. Mr. Anderson stated that the application was for expansion of the marina perimeter limit around an existing marina. Mr. Anderson said there was no staff objection to the application. Mr. Anderson said the illegal float not assented by CRMC would be removed and had been removed voluntarily by the applicant. Mr. Anderson said there is no staff objection to the revised plan. Mr. Ryan stated that there had been an agreement reached with the objector. Mr. Gray asked about the agreement with the City. Mr. Ryan replied that they agreed to pull out the floats. Mr. Gray asked about the City Council’s recommendations on page 22 in the packet and asked if there was any change from the city. Mr. Ryan replied that the city was supposed to send a letter of no objection to the marina perimeter limit. Mr. Gray stated that the city council wanted to put this back on their docket. Mr. Gray stated as long as the floats are not back in the water and they intend to keep the illegal docks out there was no objection from the city. Mr. Fugate explained that the applicant was asking to extend the existing marina perimeter limit and any additional docks would cause enforcement action. Mr. Ryan stated that they agreed to the stipulation that no floats be added to the marina. Mr. Gray asked if there was any encroachment on the right-of-way or public access. Mr. Anderson replied no. Mr. Anderson said the plan revised the northern marina perimeter limit and it was 18” off the northern side and 5’ off the other area to the south. Mr. Anderson noted that the town wanted the marina perimeter limit to be 18” all around. Mr. Gray noted that the area is very tight here. Mr. Gray, seconded by Vice

Chair Lemont and Mr. Gomez moved approval of the application with all staff stipulations, the condition that there be no non-permitted floats on the marina and that the marina perimeter be 18” on the northern side. The motion was carried on a unanimous voice vote.

**CHAIR TIKOIAN CALLED FOR A RECESS AT 7:15 P.M. CHAIR TIKOIAN CALLED THE MEETING BACK TO ORDER AT 7:19 P.M.**

**2004-08-097 FREDERICK AND LOUISE WILLIAMS – construct and maintain: a single family dwelling, septic system (ISDS), individual well, detached shed and driveway. As proposed, the project will result in approximately 10,840 square feet of disturbance (loss) to jurisdictional wetlands of which approximately 3,800 square feet of disturbance will occur within the “swamp” itself. The affected wetland is regulated by CRMC’s Freshwater Wetlands in the Vicinity of the Coast Program. Located at plat 7, lot 8; West Main Road, Little Compton, RI.**

John Boehnert, attorney for the applicants was present on behalf of the applicant. Scott Rabideau, the applicant’s biologist was also present on behalf of the applicant. Cynthia Giles, Conservation Law Foundation and Wendy Wallik, Save the Bay, the objectors were also present. Chair Tikoian noted that this case had been continued from a previous hearing, there were 3 open items, and he believed they had been addressed. Mr. Fugate explained that the three items were: 1) the Director requested that the boiler point language between DEM and CRMC be reworked so the languages are the same; 2) the council requested that he send a letter to the building official regarding the Little Compton Conservation Commission recommendation which were adopted by the zoning board could never be met and asked for their position on this. Mr. Fugate noted that there were response letters from the town in the packet; and 3) a request for a full scale plan which had been provided to council members. Chair Tikoian asked if the letter received from the town addressed the concerns raised. Mr. Fugate replied that the town would not issue a building permit until CRMC approval is received. Mr. Fugate said the building official has not seen the issues and can not say if they had been addressed but would look at this after CRMC’s decision. Mr. Fugate noted that this is a local issue. Chair Tikoian asked if Mr. Reis had anything to add to the application. Mr. Reis replied that he had not change in his report since the last meeting and recommended approval of the application. Mr. Boehnert explained that the revised plans addressed the concerns raised by the council. Mr. Boehnert said they reduced the footprint of the house since the September 11<sup>th</sup> meeting from 30’ x48’ footprint to 24’x36’ footprint. Mr. Boehnert stated that the house is out of the wetland area. Mr. Boehnert said there would only be 375 s.f. of disturbance to the wetland for the ISDS. Mr. Rabideau stated that he prepared the application for the applicant and looked at the biological impacts. Mr. Rabideau described the alteration of the footprint and the impact on mitigation and wetlands. Mr. Rabideau stated that a full size site plan had been provided to council members for their review. Mr. Rabideau noted that there had been a reduction in the size of the house to 3800 s.f. and they reduced the alteration to the wetland to 375 s.f. for the well. Mr. Rabideau said they would allow the wetland to revegetate after the well is put in and leave it alone. Mr. Rabideau said alteration of the wetland had been reduced from 10,000 s.f. to 5, 000 s.f. Director Sullivan asked about the natural revegetation for the disturbance by the well and asked if they leave it alone or seed it. Mr. Rabideau replied they would loom and seed the area and put in some plant shrubs and let it revegetate naturally. Mr. Gomez asked about the new footprint and what the minimum distance was southwest of the dwelling to the flat of the upland wetland area. Mr. Scott replied there would be a 10’ minimum setback. Mr. Boehnert asked Mr. Rabideau if he reviewed the staff biologist report and recommendations and agreed to them. Mr. Rabideau replied yes. Mr. Boehnert asked if he felt the applicant met all the CRMC wetland requirements. Mr. Rabideau replied yes. Mr. Boehnert asked if Mr. Rabideau’s March 16, 2007 report had changed and if his

opinion was the same. Mr. Rabideau replied that his report had not changed and his opinion was the same.

#### IN FAVOR OF THE APPLICATION:

Sidney Clifford, a neighbor spoke in favor of the application. Frank Pardi, an abutter, was also in favor of the application.

#### OBJECTORS:

Cynthia Giles, Conservation Law Foundation, was opposed to the application. Ms. Giles noted that the applicant had reduced the impacts on the site. Ms. Giles felt that it was CRMC's job not to minimize but to protect the environment. Ms. Giles said the entire house is in the buffer wetland and felt that some lots cannot support a house. Ms. Giles felt that CRMC should say no to this application. Ms. Giles stated that the applicant was aware of the wetlands on the property when they purchased the property as this was in the purchase and sales agreement. Ms. Giles felt that if the application was approved it would set a bad precedent. Ms. Giles wanted the council to uphold its rules to protect wetlands and deny the application. Chair Tikoian asked Ms. Giles if she was familiar with the Bonnet Shores application which was a similar situation and asked if she objected to that application. Ms. Giles replied that she was not able to be present at that hearing and did not submit a letter of objection. Wendy Wallik, Save the Bay, stated that they were opposed to the application. Ms. Wallik said this was a biological wetland and the house was entirely in the buffer. Ms. Wallik urged the council to deny the application. Chair Tikoian asked if Save the Bay had objected to the Fargnoli application. Ms. Wallik replied yes they did object to the Fargnoli application. Chair Tikoian called for public comment. There was no public comment. Mr. Boehnert noted that there would be a conservation easement on the land that they could not build in the other area on property. Mr. Boehnert said the Williams did not know about the wetlands in this area to build but they knew about the other wetlands on the property. Mr. Boehnert said the applicants have been trying for over 20 years to get permits to build on this property. Mr. Boehnert stated that they had submitted a revised plan to address the council's concerns. Mr. Boehnert said they have done everything to make the lot buildable and to address the wetland regulations and alterations. Mr. Boehnert felt the applicant met the CRMC regulations for alteration of a wetland. Mr. Boehnert requested council approval of the application. Director Sullivan asked if they agreed to the conservation easement by the council and when they would file the conservation easement. Mr. Boehnert replied that they would file the conservation easement prior to the building permit. Mr. Gomez had questions of staff. Mr. Gomez stated that he had visited this site 3 times between May and June and the area where the house is proposed had 18" of water. Mr. Gomez said the fire department wanted a 20' buffer around the house and the applicant is only proposing a 10' buffer. Mr. Gomez asked if the addition of a 30' buffer was an issue by staff for safety reasons. Mr. Gomez felt the additional buffer was needed for safety, species and insect concerns. Mr. Gomez felt that the conservation issues could not be met. Mr. Gomez felt that the council should not grant the application. Mr. Gomez felt the application did not meet the CRMC regulations. Mr. Reis explained that it was DEM's requirement for a 10' setback from the wetland edge and that staff wanted a 25' setback. Mr. Reis stated that the policy and planning is looking at this change to address the concerns raised by Mr. Gomez. Mr. Reis said there are regulations in effect and that staff has to work with the regulations in place when reviewing an application. Mr. Reis noted that in this particular case they looked at all the factors and felt there was no significant impact to the wetland values. Mr. Reis said the impacts had been further minimized and they have a conservation easement on this property. Mr. Gomez said the rules allow for an additional 30' setback. Mr. Reis replied the regulations do not require a 30' setback, the applicant's attorney proposed a 30' setback and staff was opposed to that and did not agree to that. Mr. Abedon noted that they are trying to enforce the rules as they stand today. Mr. Reis replied yes and they are also looking at the overall picture. Director Sullivan addressed the conservation easement and stated that the Little Compton Land

Trust wanted to be added to the authority for the conservation easement along with CRMC. Mr. Boehnert replied that they had discussions on this during the zoning board process and said they would be granting authority on the conservation easement only to CRMC. Mr. Coia noted that another issue raised was that the zoning board granted conditional approval with the conservation commission's conditions. Mr. Coia said the Williams application also required a building permit and DEM permit for the septic system. Mr. Coia asked Grover if the letter from the building inspector satisfied the council's concerns that the conditions could be met. Mr. Fugate replied that building officials do not issue building permits without CRMC approval. Mr. Fugate said this was a local issue and the applicant would have to meet these conditions or get a variance. Mr. Fugate noted that the Little Compton Conservation comments were in a letter dated July 5, 2006 and the building official were holding their decision until the conditions are met. Mr. Coia said the applicant does not have to have local zoning approval before the council rules on the application. Mr. Fugate replied no, they only have to show that they will get approval from the town. Mr. Fugate said the local issue is dealt with at the end and they have to be in compliance with the permit. Mr. Fugate said if they do not get a local permit the CRMC assent would be void. Mr. Gomez, seconded by Mr. Dawson moved to deny the application. Director Sullivan asked if the applicant's attorney indicated that he would file the conservation easement with speed and file it prior to the building permit. Mr. Boehnert replied yes. Director Sullivan asked if he would file it within 30 days. Mr. Boehnert replied that he has to finish working out the language with CRMC legal counsel but would file the conservation easement before a building permit was issued. Director Sullivan asked if the conservation easement precluded them from subdividing the lot. Mr. Fugate replied yes. Mr. Fugate noted that the conservation easement would have to be filed before issuance of an assent. Mr. Goldman noted that CRMC does not modify easements that easements are permanent. Director Sullivan stated that the application has come a long way. Director Sullivan stated that the project is less than 5% of the wetland and that 95% of the lot would be in a conservation easement. Chair Tikoian called for a roll call vote:

On the motion to deny the application:

Director Sullivan	Yes	Mr. Gomez	Yes
Mr. Abedon	No	Mr. Coia	No
Mr. Gray	No	Vice Chair Lemont	Yes
Mr. Dawson	Yes	Chair Tikoian	Yes

5 Affirmative                      3 Negative                      0 Absentation.

The motion to deny the application carried.

**9. EVIDENTIARY HEARING FOR RESTORATION:**

**2004-0081 THOMAS WHITTINGTON – Unauthorized construction of a wall (using stone from the beach), poured concrete stairs, earthwork (filling, removing, and grading), and cutting of vegetation on a coastal feature without a permit. Located at plat 40, lot 31; Prospect Lane, Portsmouth, RI.**

**Chair Tikoian recused himself and left the meeting. Vice Chair Lemont presided over the application.**

Thomas Whittington, the applicant was present. Joseph DeAngelis, attorney for the applicant was present on behalf of the applicant. Mr. Harrington gave council members a brief summary on the application. Mr. Harrington stated that a site inspection had been done on August 18, 2004 and they noticed the applicant had constructed an unauthorized wall. Mr. Harrington said the vegetation on the coastal feature had been cleared. Mr. Harrington said they reviewed aerial photographs from 1972 and the coastal feature was vegetated and there were no walls or stone. Mr. Harrington stated that in 1990 aerial photograph, the coastal feature was partially cleared and a small deck was near the coastal feature. Mr. Harrington said in a 1992 aerial photograph there was a deck, the rails were gone and had vegetation with slight paths. Mr. Harrington stated that in a 1996 aerial photograph, it was completely vegetated and there were no stairs or walls. Mr. Harrington stated that on August 20, 2004, there was a notice of fine and a C&D had been issued. On August 30, 2004, they required a restoration plan within 21 days. On September 30, 2004, the applicant responded to the C&D. On August 9, 2004, Mr. DeAngelis entered his appearance on the application. Mr. Harrington stated that on December 6, 2005 Mr. DeAngelis asked for a continuance on the hearing to get more evidence. He said the hearing was again continued on January 27, 2006. Mr. Harrington stated that a hearing was held on March 31, 2006 and a neighbor testified that there was something there but not to this extent. Mr. Harrington said the hearing officer had given the applicant 45 days to remove the structures and restore the site or a fine would be issued. Mr. Harrington stated that in 2006 they received an affidavit from the objector and a video of work done at the site. Mr. Goldman noted that it was the ruling of the hearing officer that a \$1,000 fine would be issued unless within 45 days the applicant removed the structure and restored the site. Mr. Goldman said if this was not agreed to the matter would come before the full council. Mr. Coia asked if the fine had been paid. Mr. Goldman said no the fine was issued and it was going to be appealed. Mr. Fugate explained that he looked at the aerial photographs himself and the coastal embankment was well vegetated in this area. Mr. Fugate said he had a discussion with Mr. DeAngelis acknowledging a pathway and said they would allow stairs in the area but there could be no shoreline protection in this area. Mr. Fugate said the applicant removed the vegetation and build seawalls. Mr. Fugate said staff requested that the walls be removed and they revegetate the area. Mr. DeAngelis stated that on August 29, 2007, the applicant was present to answer questions. Mr. DeAngelis said at the March 2006 hearing they presented evidences of remnants of a wall, railroad ties and another wall. Mr. DeAngelis said a neighbor testified there was some wall on the property. Mr. DeAngelis stated that there had been something holding the 40' of embankment. Mr. DeAngelis explained that they filed an application for an as built structure. He said they used cobble to construct the wall and there was no concrete used. Mr. DeAngelis asked what happens when they remove the cobbles the area will it go into the pond. Mr. DeAngelis felt this was constructed before the house and they needed to determine if there was a wall there. Mr. Fugate replied that he had looked at aerial photographs for a structure and did not see one. Mr. Fugate said vegetation would hold the area back as it had for a number of years. Mr. Fugate said it was his opinion that there was nothing there of any substance and the area should be restored. Mr. Gray said on page P19 there is a photograph of a house with a brick wall on the site and asked if this was the area they were talking about with a natural beach. Mr. Whittington replied. Yes. Mr. Gray asked if the area worked on is the stonewall to the picket fence. Mr. Whittington replied yes. Mr. Gray asked where the 40' they were talking about. Mr. Whittington replied the 40' area was from the house not the sea level. Mr. Gray said it looks like there is only 12- 15 feet of elevation. Mr. Gray asked how long the applicant has owned the property. Mr. Whittington replied since 2003. Mr. Gray noted that various parcels along the beach have walls and some do not. Mr. Whittington agreed. Mr. Gray asked staff if they have an aerial photograph to show where this area is. Mr. Harrington replied yes and Mr. Fugate provided Mr. Gray with a 1992 aerial photograph to look at. Mr. Fugate said alteration of an embankment would require a special exception. Mr. DeAngelis asked if there was evidence of a pre-existing structure would it still require a special exception to repair it. Mr. Fugate replied yes if it was damaged over 50% it would require a

special exception. Mr. Fugate said alteration of an embankment is prohibited. Mr. Gray said they were talking about possible remnants do they have any information when this was put in and if it had existed. Mr. Goldman explained that this was a notice of restoration hearing and an evidentiary hearing for the restoration. Mr. DeAngelis replied that he was not aware that this was a restoration hearing and thought they were here to answer any questions the council had.

**OBJECTORS:**

Mike Antonelli, an objector, stated that he lived in this area from 1998 to 2005. Mr. Antonelli said when he lived there was only five railroad ties on the property. Mr. Antonelli said he had a video of the applicant constructing the wall on the property after a C&D was issued by staff. Mr. Antonelli wanted full restoration of the area. Mr. DeAngelis noted that the objector was not on speaking terms with the applicant because the applicant objected to his application for construction. Vice Chair Lemont requested to see the DVD. Mr. DeAngelis objected. Mr. Goldman said the council could see the DVD as it was part of the record. Mr. Goldman asked Mr. Antonelli when he took the video. Mr. Antonelli replied in April 2004. Mr. DeAngelis objected again and said he wanted to see the video first before the council saw it. Mr. Goldman noted that the DVD was referred to in the staff report. Vice Chair Lemont agreed that the applicant should be allowed to see the DVD. Mr. Coia, seconded by Mr. Gomez moved to defer the matter for 2 weeks to allow the applicant to see the DVD. Mr. Fugate noted that staff said the work continued after the C & D was issued. The motion was carried on a unanimous voice vote.

**10. Category "A" List**

There were none held.

There being no further business to discuss. The meeting was adjourned at 8:44 p.m.

Respectfully submitted,

Grover Fugate, Executive Director

Reported by Lori A. Field