

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, October 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
Bruce Dawson
Dave Abedon
Neill Gray
Don Gomez
Michael Sullivan
Ray Coia

MEMBERS ABSENT

Tom Ricci
Jerry Zarrella
Joe Shekarchi

STAFF PRESENT

Grover Fugate, CRMC Deputy Director

David Alves, CRMC Aquaculture Coordinator
Brian Harrington, CRMC Enforcement
Laura Miguel, CRMC Enforcement
Kevin Cute, CRMC Marine Resources Specialist

Brian Goldman, Legal Counsel
John Longo, Deputy Legal Counsel

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

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

Mr. Gray requested that on page 6 - 15 lines from the bottom add the word "table" after "water". Mr. Gray requested that the minutes be amended on page 4 – 8 lines from the bottom change "there was no objection from the city" to "then the city's objection had been addressed" and page 4 – 18 lines from the bottom change the word "expansion" to "creation". Director Sullivan, seconded by Mr. Dawson moved to dispense with the reading of the minutes of the October 9, 2007 meeting and accept the minutes as amended. The motion was carried on a unanimous voice vote.

3. **SUBCOMMITTEE REPORTS**

There were no subcommittee reports.

4. **STAFF REPORTS**

Mr. Fugate informed council members that there would be a Greenwich Bay SAMP Plan Forum held on Thursday at 6:00 p.m. in the Warwick City Hall which is the first meeting to review the progress of the plan. Mr. Fugate invited members to attend.

5. PRESENTATION: Aquatic Invasive Species – Kevin Cute, CRMC

Mr. Cute stated that this was part of the continuing education series and that he would give a presentation on the Rhode Island Aquatic Invasive Species Management Plan. Mr. Cute said staff has been working on this for over a year with a working group to draw up the plan. Mr. Cute stated that the plan has been submitted to the federal Aquatic Nuisance Species Task Force and if the plan is approved that CRMC would be eligible for federal funding. Mr. Cute also acknowledged the work of DEM in helping to develop the plan. Mr. Cute explained the definition of what invasive species means. Mr. Cute talked about introduction of vectors and how they get here. Mr. Cute explained ecological roulette and said not all introduced species survive and that not all survivors become invasive but that the small fraction that becomes invasive causes enormous economic and environmental damage. Mr. Cute explained the impacts of invasive species. Mr. Cute said the first law to address the problem of invasive species was the Nonindigenous Aquatic Nuisance Species Prevention and Control Act of 1990 and amended in 1996. Mr. Cute explained NEANS “Northeast Aquatic Nuisance Species Panel” whose mission is to protect marine and freshwater resources of the Northeast from aquatic invasive species through commitment and cohesive coordinated action. Mr. Cute said CRMC is a member of the NEANS Panel and other members include the New England states, NY, New Brunswick, Nova Scotia and Quebec. Mr. Cute stated that the State AIS Management Plans receives federal grants of \$50k per year, federal cost share of 75% and the non-federal share may be cash or in-kind which the state matches. Mr. Cute said the goals of the RIAIS Management Plan are to prevent, control introduction and the establishment of AIS, control growth and spread of AIS and abate impacts and minimize harmful effects of AIS. Mr. Cute stated that the objectives of the RI AIS Management Plan are coordination and communication; monitoring; education; research and development; planning and assessment; prevention and control; and legislation and regulation. Mr. Cute gave examples of aquatic invasive species such as the Zebra Mussel which attach to a boat and travel. He said they are not here yet but will be here. Mr. Cute showed pictures of a water plant invaded by Zebra Mussels and maps of their original distribution in 1998 and in 2005. Mr. Cute also talked about the Hydrilla which is a freshwater plant species introduced in 1960 and largely in Florida which is very invasive. Mr. Cute showed maps of Hydrilla invasion which is not yet in Rhode Island but was found in Cape Cod in the last two years. Mr. Cute talked about the Chinese Mitten Crab which he passed out a copy of an alert issued on June 1, 2007. Mr. Cute said they are moving up the east coast and this summer they were found in the Hudson River. Mr. Cute stated that the Chinese Mitten Crabs were considered a delicacy in China. Mr. Cute felt that they were being purposely distributed into the waters so people can grow them. Vice Chair Lemont asked how long the crabs were. Mr. Cute replied that they are 8-10 inches and have fur on their claws which is why they are called Chinese Mitten crabs. Mr. Cute said California collected one million pounds of them and they are a real problem. Mr. Cute showed council maps a map of them and how they are moving up the coast and approaching RI. Mr. Cute gave council members the CRMC website crmc.state.ri.us/projects/projectfiles/RIAIS_Plan_Draft.pdf. so they could look at the plan. Mr. Gomez noted that he has to show stickers that his boat is clean before he can go into other state waters and asked if this was going to happen in

Rhode Island. Mr. Cute replied yes. Mr. Abedon asked if it was the purpose of the plan to describe the scope of the problem in Rhode Island. Mr. Cute replied yes and said there are 21 identified non-invasive species in RI which are not necessarily invasive. Mr. Abedon asked if they would be receiving money in RI next year. Mr. Cute replied yes if the plan was approved at the annual task force meeting next month, which he is attending, they would receive the \$50,000 federal funding grant next March. Chair Tikoian noted that he spoke about the objectives and asked how they can meet that objective and if municipalities are included. Mr. Cute replied that municipalities are not involved but that he would look into that. Chair Tikoian noted that there were no regulations in the Red Book and if they would be establishing regulations. Mr. Cute said he would look at this and see how they do this. Mr. Cute noted that the Biosecurity Board was looking at this. Mr. Alves explained that in the regulations non-indigent species are not introduced into the state without the Biosecurity Board review. Director Sullivan said there was a meeting held in Glocester which dealt with freshwater invasive species and that there would be a mandatory requirement for boats going from pond to pond. Director Sullivan stated that CRMC and DEM were looking at inspections of boats moving from one place to another place. Chair Tikoian thanked Mr. Cute for his presentation.

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

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

7. **ADMINISTRATIVE APPLICATION BEFORE THE FULL COUNCIL FOR DECISION:**

2007-07-093 HOLY UNION SISTERS, INC – Demolition of three existing buildings, with no new construction at this time. Located at 49 Nanaquacket Road, Tiverton, RI.

Thomas Moses, attorney for the applicant was present on behalf of the applicant. James Karam, the purchaser of the property and Michael Abbott, the applicants' architect was also present on behalf of the applicant. Mr. Fugate gave council members a brief summary on the application. Mr. Fugate stated that this was for demolition of an existing building. Mr. Fugate said staff reviewed the application and it could have been approved administratively but because of an objection and the HPC comment in the file it was before the full council for approval. Mr. Abedon asked what CRMC's role was regarding HPC approval. Mr. Fugate stated that CRMC's role is to protect historic sites or sites with archeological value and that HPC acts as an advisory opinion to the council. Mr. Moses stated that the application is to build a new home and that Mr. Karam, the new owner, wants to build a home. Mr. Moses qualified Mr. Abbott as an expert architect. There was no council objection. Mr. Abbott stated that he reviewed the site and property and also the historic resources. Mr. Abbott said this building was identified as an historic site but not recommended to be added to the historic register as the building had been altered and changed. Mr. Abbott authenticated photographs of the site taken two months ago and submitted four pages of photographs as exhibits to the council. Mr. Abbott described the photographs of the original house and how it was added to, the interior walls removed and reconfigured for a convent. Mr. Abbott said the original staircase was still there and they would keep that for the new home. He said they had HPC walk through the building with them and they confirmed that this was an old building but not historic building and had no objection to demolishing the building. Chair Tikoian stated that the only reason the application was before the full council was because of the question on the historical value. Mr. Moses replied yes. Chair Tikoian

noted that page 5 in the packet the HPC letter said there was no historical value to the building. Director Sullivan asked if they were saving the bronze copular. Mr. Moses replied yes. Mr. Gray noted that the HPC letter did not say they visited the site but Mr. Abbott testified that HPC visited the site with them. Mr. Gray felt that it should be clear in the HPC letter that they visited the site. Mr. Fugate explained the HPC process with staff and said if there was a problem with the structure HPC would be present. Mr. Gray asked if staff knew HPC went out to the site. Mr. Fugate replied yes. Mr. Gomez noted that the application was for demolishing of a building and asked if they would come back before the council to build a new structure. Mr. Fugate replied yes if the new structure is within the CRMC jurisdiction. Chair Tikoian asked if the application could be approved administratively if there was no objection. Mr. Fugate replied yes.

OBJECTOR:

Renee Jones, a resident of Tiverton, was opposed to the application. Ms. Jones was concerned that she did not want this application to go through unopposed. Ms. Jones disagreed with HPC and felt that the property had historic value to the residents of Tiverton. Ms. Jones felt that historic homes offer the town great value but if they were individually owned they could be sold. Ms. Jones was concerned with public access to the property and the owner building more than one home. Mr. Moses replied that the applicant was only building his home. Mr. Dawson noted that the application was under the Holy Union Sisters Inc and not Mr. Karam's name. Mr. Moses explained that Mr. Karam assumed the application when he purchased the property. Mr. Gomez stated that the application said they would be demolishing 3 buildings but there are 4 buildings on page 9. Mr. Moses confirmed that they were only demolishing 3 buildings on the property. Vice Chair Lemont asked if the land was available for use under the Sisters. Mr. Moses stated that the property had been posted for over 10 years with no trespass signs but they did allow people to picnic occasionally. Mr. Moses stated that the Sisters tried to sell the property to the town but they did not buy it. Vice Chair Lemont asked if there were any easements or rights-of-ways on the property. Mr. Karam and Mr. Moses both replied no. Vice Chair Lemont asked if the road that runs across the property was for public access. Mr. Moses replied that this was an access road and not public access. Mr. Karam stated that the property was never open to the public but they did allow schools to picnic once a year. Vice Chair Lemont wanted to make sure if there was public access it was not closed. Vice Chair Lemont, seconded by Mr. Gomez moved approval of the application with all staff stipulations. Mr. Gomez stated that when he read the application he had a problem with public access being closed and the historical value but after hearing the testimony on the historic value his concern was addressed. Mr. Gray questioned if the town really did try to purchase the property by the comments made and was saddened that the town did not purchase the property. Mr. Gray said he could not vote to deny the application. The motion was carried on unanimous voice vote.

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

2007-02-069 JEFFREY GARDNER -- Construct and maintain a three-acre aquaculture farm in Winnapaug Pond, Westerly, RI.

Jeffrey Gardner, the applicant was present. Thomas Gardner, Timothy Shortman and James Agney were in favor of the application. Eileen Reynolds and Edward Melvin, the objectors were also present. Mr. Alves gave council members a brief summary on the application. Mr. Alves stated that the application was for a new 3-acre aquaculture in

Winnepaug Pond. Mr. Alves noted that the agency objections had been addressed and that RIMFA recommended approval of the application but they received several objections to the application. Mr. Alves stated that staff had no objection to the application. Chair Tikoian asked about the municipal objections and asked what their objections were. Mr. Alves replied that he did not received specific answers from the town to his questions about their objections. Mr. Alves said there were pictures in the file to show the site taken at low tide. Mr. Alves said a landowner objected to the application because their renters would not have access to the pond. Chair Tikoian asked where the residence was that complained. Mr. Alves explained that the land owners objections varied: the Reynolds' home is 1616 feet away, the rental property is 1,122 feet away and Susan Carr's mother property is 2,480 feet away. Mr. Gomez said he looked through the packet for information on the water quality and did not see it in the packet. Mr. Gomez asked if the water quality was good. Mr. Alves replied yes the water quality is very good. Director Sullivan noted that the vote of endorsement from the RIMFA approval was 2 for, 4 absentation and 1 no. Director Sullivan asked if the photograph showed the current farms in the area. Mr. Alves replied yes, the existing farms. Mr. Gray asked if the other aquacultures were in deeper water than this. Mr. Alves replied yes and other areas have shallow water. Mr. Gray was concerned with the visibility and with being able to go over the existing farms. Vice Chair Lemont had a question on the vote that Director Sullivan mentioned 2 for, 4 abstained and 1 negative and said some voted to abstain from voting on the application. Mr. Alves explained that members of the RIMFA have abstained from voting in the past because they wanted the CRMC to come up with an aquaculture plan and felt they did not want to vote for or against an application. Mr. Dawson asked how far along the working group was on getting a plan. Mr. Alves replied that they have had 5 meetings and a draft biologist statement. Mr. Alves noted that they are using the 5% of the water body capacity as a rule of thumb. Mr. Dawson said if this was approved it would be 2% of the whole pond. Mr. Alves replied yes. Director Sullivan wanted to clarify Mr. Alves comment on the vote. Director Sullivan explained that members declined to offer opinions due to lack of a plan. Mr. Gardner stated that he has been growing shellfish in Winnepaug pond for 14 years. Mr. Gardner said he was out of space in his existing space. Mr. Gardner said he was not aware that he stirred up a pot with his neighbors. Mr. Gardner said his "watch hill oysters" are a federal trademark and sold in Whole Food Markets. Chair Tikoian asked if the applicant reviewed the staff packet. Mr. Gardner replied yes. Chair Tikoian asked about the stir up with his neighbors. Mr. Gardner said he was not sure about the stir up until he reviewed the packet at CRMC. Chair Tikoian noted that there were 14 letters of objection in the packet. Mr. Gardner said he was aware of the objectors and tried to change his farming technique to address their concerns. Chair Tikoian asked what the complaints were. Mr. Gardner said his neighbors did not like people in the pond. Chair Tikoian asked if he was present when the application was heard before the Westerly Town Council. Mr. Gardner replied no because it was not on the agenda and was brought up under public comment. Mr. Gray asked why the aquaculture was situated in shallow water rather than deeper water. Mr. Gardner replied he uses a shallow water aquaculture technique. Mr. Dawson asked how he accessed his farm. Mr. Gardner said from his family home by boat. Vice Chair Lemont asked if the application was denied what was his alternative plan. Mr. Gardner said he did not have one. Vice Chair Lemont noted the letters of opposition in the packets and said there was a lot of concern about this and shutting down the use of the pond. Mr. Gardner said he had a petition signed by his neighbors in favor of his application and that he did not have an alternate plan. Chair Tikoian stated that he never heard this many objections to an aquaculture on other aquaculture applications. Chair Tikoian was concerned that RIMFA did not fully vote in favor of the application, there were 14 letters of objection to the application and the

Westerly Town Council voted to object to the application. Chair Tikoian said there was no evidence that the applicant tried to reach out to the objectors to address some of their concerns. Mr. Gardner said he had not reached out to the town council but spoke with some of the objectors. Mr. Gardner said if the application was refused he would look at an alternative location for the aquaculture. Vice Chair Lemont said the council is generally in support of aquacultures and they don't want to force this on area with substantial objections. Vice Chair Lemont suggested that the applicant withdraw his application and talk to the objectors. Vice Chair Lemont said aquaculture is new and they are trying to work it in the state. Mr. Alves agreed with Vice Chair Lemont. Director Sullivan stated that he has been advocating for an aquaculture plan to avoid situations like this. Director Sullivan said they needed to determine the value of aquaculture in ponds and the value to the public. Director Sullivan said the applicant has done a good process with his current aquaculture. Director Sullivan was concerned with the number of objections to this aquaculture. Director Sullivan was concerned with the functionality and use of the pond. Director Sullivan said he was not in opposition to the application. Director Sullivan asked for the council's support to have Mr. Alves and the committee bring together a plan for aquaculture. Mr. Dawson noted that several of the letters of objection mentioned numerous violations on the site and asked if there had been violations. Mr. Gardner replied yes there had been a signage problem in the past and the tried to correct them. Mr. Gardner said the water depth at this aquaculture would be deeper than the existing aquaculture by 6 inches. Mr. Gardner said the right-of-way in the aquaculture is wider than his other aquaculture and he would be using new poles, changing from white poles to gray poles, to show where the aquaculture is.

IN FAVOR OF APPLICATION:

Thomas Gardner, the applicant's son and a student at Roger Williams University, felt that aquaculture was a benefit to the community. Tim Shortman, an employee of the farm, said clams on the pond are a life lease brought to the pond. Mr. Shortman said the new lease was in deeper water and there would be no problem with boating. Mr. Shortman said cleaner water would bring more shellfish. James Agney, who works for the applicant as the 'field general' and manages the place, said the lease is shrinking with all the oysters put into the pond. Mr. Agney felt the lease expansion was a very good idea and it provides a different selection of new food and different food was better for the water flow.

OBJECTORS:

Eileen Reynolds, an objector, said she lives across from the new aquaculture and was concerned with recreational use of the pond and felt that the pond should be protected. Ms. Reynolds was concerned with the visibility of the cages at low tide and felt aquacultures should be underwater and should not be seen. Ms. Reynolds was concerned about the displacement of fish and water fowl. Ms. Reynolds felt that there would be a lose of use of the pond. Mr. Abedon asked if she had a better area for the aquaculture. Ms Reynolds replied at the end of the pond where you would not see it. Mr. Alves said the area at the end of the pond was too shallow for an aquaculture. Ed Melvin, an objector, was concerned with the visual impact of the current aquaculture and felt that the visibility was substantial. Mr. Melvin felt aquaculture interfered with the use of the pond and was hazardous to sailors. Mr. Melvin said sailboats depend on the wind and tacking maneuvers and the aquaculture would block off the maneuvering of sailboats. Mr. Melvin said this was a rectangular design for the aquaculture and there was 750 feet separating a 3-acre aquaculture and a 5-acre aquaculture. Mr. Melvin felt that the aquacultures would take up a fair amount of the pond and have visible impact.

Mr. Melvin also felt there would be an affect on fisheries. Mr. Melvin said he was opposed to the application

Chair Tikoian called for a recess at 8:15 p.m. Chair Tikoian called the meeting back to order at 8:22 p.m.

Chair Tikoian said Director Sullivan felt the issue could be resolved if there was an aquaculture plan in place and advocated in favor of that and this would be a beginning. Chair Tikoian suggested that the application be continued for 30 days so that applicant and staff can work together and look at a different location. Chair Tikoian suggested that the applicant should talk with the objectors to see if they can resolve this. Chair Tikoian said some of the objections raised may be issues that need education. Director Sullivan suggested rather than 30-day continuance that the council table the application for a time that the applicant can submit a revised application changes. Mr. Gray agreed with what they were purposing and working on a plan but felt the plan may not address the issues raised. Mr. Gray said public trust waters are for everyone's use. Mr. Gray said property values what you see or not is not a total weight in the factor. Mr. Gray said people navigate around obstacles. Vice Chair Lemont agreed with Mr. Gray. Vice Chair Lemont said the State of Rhode Island is in dire need of economic development and this is part of that. Vice Chair Lemont felt there needed to be a compromise instead of "not in our pond" or "my pond". Vice Chair Lemont felt that aquaculture was good for the state and said he can support aquaculture. Mr. Abedon said the pond was zoned for multiple use and was in favor of the application. Chair Tikoian said the council is in no way opposed to aquaculture but there area parts to be worked out. Director Sullivan said DEM is supportive of aquaculture and its part of our future. Director Sullivan noted that at the August 6, 2007 meeting of the Marine Fisheries Council they voted two for and four absentions on the application and at the October meeting they took another vote on this application and the application was approved on 5 to 0 vote . Director Sullivan, seconded by Vice Chair Lemont moved to defer all action on the application until Mr. Alves, the applicant and the other interested parties address the issues raised. Chair Tikoian suggested that they look at standardization of marking for aquacultures. Mr. Alves replied they are working on it. The motion was carried on a unanimous voice vote.

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. Vice Chair Lemont noted that this matter had been continued from the previous meeting and they concluded the meeting with an objection by Mr. DeAngelis to see the DVD which had been provided to him. Mr. Fugate said this was a noticed as a restoration hearing. Mr. Goldman asked if Mr. DeAngelis objected to the viewing of the DVD. Mr. DeAngelis said he reviewed the DVD and filed and Memo of Objection because he felt this was not relevant to the proceedings. Mr. DeAngelis said a witness testified that there was a structure there and

that Mr. Goldman agreed with staff that there was nothing there. Mr. DeAngelis said he filed an appeal with the court on the administrative fine. Mr. DeAngelis stated that the video did not show the area in question. He said the applicant and the Antonelli's are not on speaking terms and felt that this affected the applicant. Mr. Goldman explained to council members that this hearing is in addition to the administrative fine action and only the council can take action and they could only fine them. Mr. Goldman said a fine had been issued and if the council agreed with the fine they can issue an order of restoration. Mr. Goldman said this was not a permitted activity and the area needed to be restored. Mr. Abedon asked if the applicant filed an appeal. Mr. Goldman said an appeal had been filed on the fine but this was not the issue before the council. Mr. Coia said the original fine would not be paid until resolution of the appeal. Mr. Goldman replied yes. Vice Chair Lemont noted on page P2 Mr. Antontelli says he is directly where the location is and said the body can determine the authentication of the DVD. Mr. DeAngelis said the question was whether there was an alteration and said his client testified that there was a previous structure they're holding the earth back. Mr. DeAngelis said the hearing officer did not find there was a pre-existing structure there. He said they cannot file an application to show there was a pre-existing structure there because of this. Vice Chair Lemont said there may have been a structure but not the extent now. Vice Chair Lemont said if was up to the council to determine if this was a substantial alteration an order restoration of the site. Vice Chair Lemont said council members could see the DVD. Mr. Gray stated they heard testimony they altered the site and wanted to know what pre-existing structure was there. Mr. Gray felt they needed to describe what was there. Vice Chair replied it was pointed out by testimony of staff through aerial photographs that there was something there and the area had been altered. Council members viewed the DVD. Vice Chair Lemont did not see a value to the video and said he was not familiar with this area. Mr. DeAngelis submitted a picture of the area shown in the video as an exhibit. Mr. Whittington viewed the video and went out to the site where the video was taken and took photo of area along the shoreline. Mr. Whittington said the area of issue could not be seen except by boat. Mr. Coia asked if the applicant said the objector was in the video. Mr. Whittington replied that the objectors has property in this area. Mr. DeAngelis said the applicant could not say it was Mr. Antonelli. Vice Chair Lemont said the photos show what is there no but not what was there before. Mr. Fugate explained that this was a natural coastal embankment with natural vegetation. Mr. Fugate said staff said the site was altered without a permit and the extent of the work was not permissible under the CRMC rules. Mr. Gomez asked what his restoration recommendation was. Mr. Fugate replied the stonewall would have to be removed and replanted back to the slope. Mr. Gomez asked if they would suggest plants. Mr. Fugate replied yes there is a list of plants that can be used. Vice Chair Lemont referred to page P23 and if asked there was a restoration order if the set of stairs to the south would have to be filled in. Mr. Fugate replied that there was evidence of a path there and the stairs would be allowed. Vice Chair Lemont asked what about the foreground. Mr. Fugate said if its revegetated it could come back to its natural state and the turf area could be natural vegetation. Mr. Fugate said the stonewall would have to removed and the site replanted. Director Sullivan said Mr. DeAngelis acknowledged there was a modification of the slope and they cut vegetation and made changes to the slope. Mr. DeAngelis said they did not do any filing but did grading. Mr. DeAngelis said there were five railroad ties on the property. Mr. DeAngelis said they cannot remove the stones because of the enforcement action. Director Sullivan asked if they would offer testimony of the changes or responding to questions. Mr. DeAngelis asked Mr. Fugate if he had a specialty in reviewing aerial photographs. Mr. Fugate replied yes. Mr. DeAngelis asked if staff had a specialty in reviewing aerial photographs. Mr. Fugate replied yes they have taken classes Mr. DeAngelis said if vegetation grew between the

railroad ties they would not show up on the aerial photographs. Mr. Fugate replied yes but they could not see any structures on the property. Mr. Fugate said the aerial photographs showed a heavily vegetative area. Mr. Fugate said the aerial photographs also showed that the heavy vegetation had been removed. Mr. Fugate said they acknowledged there may have been railroad ties there but did see evidence of a path there. Mr. Whittington stated that he rented the house in February 2003 and purchased the property in April 2003. Mr. Whittington described the area as an overgrown area and he moved in and fixed up his property. Mr. Whittington said he built the stonewalls on his property and felt he was improving his property and beautifying the area. Mr. Whittington said the 3-tiers of railroad ties were deteriorating and the bank started to erode. He said he wanted to shore up the area. Mr. Whittington said the stone used for the wall was from the wall upland and buffer zone. Mr. Whittington said he would remove the stairs if the council wanted but felt it would be detrimental to the bank if removed. Mr. Whittington stated that he did not use fill when he constructed the wall only did grading. Mr. Gray asked if the 3 ties went side to side on the property. Mr. Whittington replied they were in the general area that the tiers are in now. Mr. Gray asked about the photograph on page 25. Mr. Whittington said this only showed 25 feet of his property. Mr. Gray said there is brush to the left going down to the beach, stairs and steps and grass slope with a wall in front. Mr. Gray asked if beyond the picture does the grass go on. Mr. Whittington replied no there is growth there. Mr. Gray said the only area altered is what he sees in the photo. Mr. Whittington replied yes. Mr. Gray asked where the railroad ties were. Mr. Whittington replied to the left. Mr. Gray said there was nothing to the right. Mr. Whittington replied correct. Mr. Gray asked if he put the wall in front of the grass area. Mr. Whittington replied yes, there was no wall there. Mr. Gray said the stone terrace was put in where the railroad ties were. Mr. Whittington said yes. Mr. Gray stated that the applicant purchased the property and fixed it up. He said staff visited the site on August 18, 2004 and the applicant was not present and a verbal C&D had been issued for the work done without a permit. Mr. Gray said a written C&D had been issued on August 20, 2004 to the applicant. Mr. Gray referred to pages P23 and P25 in the packet which depicted the 2 ½ stone walls and the top tier which was just dirt. Mr. Gray said on page P26 taken in 2005 it showed all the work finished. Mr. Gray wanted to know when the work was completed. Mr. Whittington replied that he finished the wall before the C&D was issued. Mr. DeAngelis asked if any of the work was done on the site after the C&D was issued. Mr. Whittington replied no.

OBJECTORS:

Marybeth McBain, a resident of Portsmouth stated that she has lived in the area since 1983 when they built their home. Ms. McBain said she knew the previous owner Mr. O'Chefsky and used to visit his home. Ms. McBain said her husband and son helped him maintain his property. Ms. McBain said there were railroad ties on the property when she visited the site. She said the railroad ties were on the embankment with growth over them and stairs leading down to the water. Vice Chair Lemont asked how many tiers of ties there were. Ms. McBain said she could not recall. Mr. Fugate noted that staff acknowledged that there were ties on the property. Mr. Fugate said on page P26 there were railroad ties in the brush area but the bank had not been altered to the state that it is. Mr. Gray said she remembered that the bank was heavily vegetated and she went up and down stairs. Ms. McBain replied yes. Mr. Gray had a problem with the testimony regarding the tiers being there if the area was overgrown. Mr. Fugate said they acknowledge there was an access way down to the water and they are not asking the applicant to remove the stairs. Mr. Gray referred to page P30 and asked where the deck was in relation to what is there today. Mr. Whittington said the picture of the deck was a picture he had from the old owner and was in the same exact spot until it got whipped

out. Mr. Whittington said the deck was not there when he purchased the property. Director Sullivan said it was clear to him that claiming ignorance of the law was not an acceptable excuse. Director Sullivan stated if there was erosion, the unauthorized construction of multiply walls, filling and removal of a lot of colonized vegetation was prohibited under the CRMC regulations. Director Sullivan, seconded by Mr. Dawson moved to accept the recommendation of staff and ordered full restoration of the land to include appropriate vegetation. Vice Chair Lemont asked if the motion carried when restoration would begin. Mr. Fugate replied in the spring. Mr. Gomez asked how they would arrive at restoration plan. Mr. Goldman explained that the applicant would supply a restoration plan done by an expert to CRMC for their approval. Mr. Coia was opposed. The motion carried.

9. Enforcement Report – September 2007

There were none held.

10. Category “A” List

There were none held.

There being no further business to discuss. The meeting was adjourned at 9:45 p.m.

Respectfully submitted,

Grover Fugate, Executive Director

Reported by Lori A. Field