

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, November 27, 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
Michael Sullivan
Joe Shekarchi (Left Meeting @ 7:00 p.m.)

MEMBERS ABSENT

Tom Ricci
Jerry Zarrella

STAFF PRESENT

Grover Fugate, CRMC Deputy Director
Dan Goulet, CRMC Dredging Coordinator
Brian Goldman, Legal Counsel

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

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.

2. The applicant was not present. Chair Tikoian noted that the Executive Director had informed him that the applicant's attorney had requested a continuance on the application and that the continuance had been granted.

Chair Tikoian stated that he did not have the opening statement and noted that everyone was familiar with the opening comments. Chair Tikoian asked the stenographer to reference the opening comments into the record.

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

Mr. Coia, seconded by Vice Chair Lemont moved that they dispense with the reading of the minutes as set forth in the agenda and accept the minutes as presented. Mr. Abedon requested that on page 7 – 8 lines up from Item #9 that the word “multiply” be

changed to “multiple”. Director Sullivan asked that the minutes be postponed until the next meeting because when they were talking about the aquaculture applications he cited the results of the votes taken at the various Marine Fisheries Council meeting. Director Sullivan noted that he was asked this afternoon to verify which meetings those votes were taken and have the minutes reflect that. Direction Sullivan requested that the council delay action on the minutes in order for him to make sure the minutes reflect accurately the votes taken at those meetings. Chair Tikoian asked if there was any objection. There was none. Vice Chair Lemont withdrew his second to the motion and Mr. Coia withdrew his motion. Mr. Gray noted that on page 4 six sentences up from Item #9 it stated “Mr. Gray stated that when he read the application” he believed that Mr. Gomez made that statement and requested that the minutes be amended to reflect that it was Mr. Gomez. The minutes were held until the next council meeting.

3. SUBCOMMITTEE REPORTS

Vice Chair Lemont stated that the Policy & Planning Subcommittee met on November 20th and the following revisions were approved by the committee: Section 130 – Special Exceptions, revised the exception for public infrastructure barriers; Section 210.2, Barrier Island and Spits, revise the findings to address high hazard potential that these features experience in major storm events; Section 145 – Sea Level Rise to add a new section that addresses issues and implications of sea level rise; Management and Procedures – Section 5.19 – Notification to revise it to state that applications cannot be revised unless the staff reports are complied and that only the executive director or council and make revisions to an application once the staff report has been filed; and Management & Procedures – Section 4.3.8 – Schedule of Fees would include that a fee may be assessed for applications that pose revisions after the staff report has been filed. Chair Tikoian requested that the proposed changes and revisions go out to 30-day public notice and then be brought back to the full council agenda for decision.

4. STAFF REPORTS

There were no staff reports.

5. PRESENTATION: Dredging and Filling – Danni Goulet, CRMC Dredge Coordinator

Mr. Goulet gave a presentation on “Dredging in Rhode Island”. Mr. Goulet stated that there are two types of dredging projects – improvement dredging and maintenance dredging. Mr. Goulet explained that the biggest challenge for dredging is the disposal of dredge materials. Mr. Goulet explained the different types of dredging equipment. Mr. Goulet said in 1996, the Marine Maintenance and Infrastructure Act gave much of the responsibility for the state dredging, planning and implementation to the CRMC. Mr. Goulet explained the sequence of dredging applications. Mr. Goulet said they spend a lot of time working with people on the front end of the project with pre-applications, which is very helpful to applicants. Mr. Goulet explained the rules of CRMC on dredging. Mr. Goulet noted that some dredge material is reused for beach nourishment and filling. Mr. Goulet stated that a majority of the projects in Rhode Island have very silty material which are disposed in CAD cells. Mr. Goulet showed an aerial photograph which depicted the CAD cells in the Providence River. Chair Tikoian asked if any of these CAD cells were closed yet. Mr. Goulet replied no. Chair Tikoian asked how many CAD cells were open. Mr. Goulet replied seven. Chair Tikoian asked how much capacity is left in the CAD cells. Mr. Goulet said he did not have a handle on this because he did not have the surveys from the Corps and the surveys they were doing. Mr. Goulet said

the last time he did the math they were filling the CADs at a rate of about 100,000 c.y. a year and he figured they had until about 2011 to fill them. Mr. Goulet showed pictures of what the CAD cells look like inside and explained how the dredge material is disposed of into the CAD cell. Director Sullivan asked if they had any data on the dredge spoil deposited into the cells movement after it is there. Mr. Goulet replied yes and he would address it. Mr. Goulet noted that you have to do biological testing on dredge materials and it's very expensive and time consuming. He said it costs \$100,000 +/- to do the testing. Mr. Goulet said most small projects cannot absorb this cost. Mr. Goulet addressed Director Sullivan's questions regarding movement of the dredge material once it is placed in a CAD cell and said they had did some research and samplings around the CAD cells and found that nothing really came up out of the CAD cells. He said they also do a precision survey which is a multi-beam survey so you can see all the soundings and the locations of the CAD cells and dredge materials. Mr. Goulet said some of the near term dredge projects are: Bullocks Cove Federal Navigation Project (which has been postponed); Point Judith Pond; Great Salt Pond in Block Island; Little Narragansett Bay; and an estimate of approximately 100,00 c.y. of private material will be going into the CAD cells this season, which will come from two users – one of the terminals in Providence and a marina which has not been dredged yet. Director Sullivan asked about Ninigret Pond. Mr. Goulet replied that Ninigret was going on. Mr. Goulet stated that looking forward CRMC needs to look at the next generation of CAD cells and Rhode Island needs to have a dredge material reuse facility. Mr. Goulet said the dredging season is October 15th to January 31st typically when you're not doing earthwork. Mr. Goulet noted that some examples of the beneficial reuse of dredge material was in Sachuese Point in Middletown and Ninigret Pond last year which was used for beach nourishment. Mr. Fugate noted that on Sachuese Point this was a landfill and the dredge material was used to cap it. Mr. Goulet showed a video from last summer of blasting rock in the Providence River to remove some rocks to council members. Mr. Shekarchi asked if he had any idea of where the future CAD cells were going to be or any of the proposed locations. Mr. Goulet replied that there are not any proposed locations but they need to locate them close to the dredge centers. Mr. Gomez asked about the reuse of dredge material and bringing the material to shore and asked how long it has to sit before it's appropriate to use. Mr. Goulet replied it depends on the material. Mr. Goulet said if the dredge material is sandy it could be dried and trucked almost immediately. He said if there is a lot of salt in the dredge material they had to let it sit in the rain for a while so the salt dissolves. Vice Chair Lemont noted that there had been a proposal a few years ago to build a facility in East Providence off the Golf property and he had opposed the proposal because the material was like mayonnaise. Vice Chair Lemont asked what length of time was needed for the material to stabilize for future use. Mr. Goulet replied that this material could never be reused because it has very high water content and is very limited engineering properties. Mr. Coia said this was a very good presentation. Chair Tikoian thanked Mr. Goulet for his presentation.

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

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

2007-07-022 BILLINGTON COVE MARINA – Maintenance dredge approximately 1265 cubic yards of material via mechanical equipment. Materials proposed to be disposed onsite in an upland area. Located in Point Judith Pond at the Billington Cove Marina, 557 Pond Street, South Kingstown, RI. Plat 69-2, lot 4

John Phillips, the applicant was present on behalf of Billington Cove Marina. Richard St. Jean, the applicant's engineer was also present on behalf of the applicant. Objectors: John Barton and Mark Levitt. Mr. Goulet gave council members a brief summary on the application. Mr. Goulet stated that the project consists of maintenance dredging within an existing marina perimeter limit. Mr. Goulet said disposal is proposed to be in a pit on the applicant's property. Mr. Goulet explained that the dredge material will be excavated, transferred to a barge and then transferred into dump trucks and placed into the pit. He said the dredging is about 1,265 c.y. which will give them -4' at mean low water with no overdraft. Chair Tikoian asked if the application was classified as maintenance dredging. Mr. Goulet replied yes. Chair Tikoian noted that on page 5 of Amy Silva's report she raised a concern about the depth of the deposition pit in the proximity of the wetland but did not say who raised the concern and if it was resolved. Mr. Goulet replied it was Amy's concern about the groundwater and the pit itself and it was resolved by stipulations that were placed as well as additional setback for erosion and sediment control. Chair Tikoian noted that this application would normally had been a Category A application but was before the full council because of an objection. Chair Tikoian asked if Mr. Phillips had anything to add to the application. Mr. Phillips did not have anything to add.

OBJECTORS:

Jason Greer, an objector, was present. Chair Tikoian asked if he was the same Jason Greer that had submitted several letters of objection on the application. Mr. Greer replied yes. Mr. Greer said he prepared a statement in advance and read it into the record. Mr. Greer said he is not necessary an objector to Mr. Phillips application but there are some specific objections he has to the dredging project. Mr. Greer objected to the dredging proposal being designated as a maintenance project. Mr. Greer felt that the Town of East Greenwich citizens and officials, and the Army Corps of Engineers were not aware that the basin of the area would be deepened in order to accommodate a change of use. Mr. Greer did not agree with the staff analysis that this was maintenance dredging within the marina perimeter limit. Mr. Greer was concerned with the size of the boats that would be allowed at the marina and felt this will cause larger wakes, more erosion and more disturbance to more boats using this area. Mr. Greer was concerned with the applicant requesting a 4' depth of water rather than the standard 3' depth of water at mean low water. John Barton, an objector, stated that he did not really have a position on the application as he just recently learned about the application and just had a few questions. Mr. Barton asked if the application was complete and this was the public hearing. Chair Tikoian replied yes. Mr. Barton wanted to know if the proposed dredging involved removal of dredged materials from the site to be placed on an inland piece of property of the applicant. Chair Tikoian replied yes. Mr. Barton wanted to know where the disposal site was located. Mr. Goulet showed Mr. Barton the location of disposal site on the plan. Mr. Barton wanted to know if their had been testing for PCB's, petroleum distillates or other toxic materials. Mr. St. Jean replied yes and submitted a copy of the findings to Mr. Barton for his review. Mr. St. Jean stated that the levels are a little high but are within the regulation requirements. Mr. Goulet noted that DEM also does analysis as part of the dredging permit and their review. Chair Tikoian asked if DEM would issue a water quality cert if the arsenic levels had been higher than required by RI. Mr. Goulet replied no. Mr. Barton asked about the dewatering process

when the silt or dredged material is brought up and asked how this worked. Mr. Goulet explained that the material is very silty and will be excavated and placed on a barge. He said the barge will have turbidity controls and have silt fences and hay bales so none of this will go back into the water. Mr. Goulet said the turbidity will go back into the water and will run through that. Mr. Goulet said the barge will go up against the bulkhead and the dredge material will be transferred to a dump truck and sealed and the dump truck will take the dredge material to the pit and the material will be slowly dewatered. Mr. Barton asked when the dredging would be done. Mr. Goulet said the dredging would have to be completed by January 15th and if it was not completed by then it would have to wait until the next dredge season. Mr. Barton wanted to know who was liable if it was discovered that there were toxic materials in the dredge materials or there were smells emanating from the disposal site. Mr. Goldman replied the applicant would be liable. Mr. Goulet stated that he does monitor the site and some dredge materials smell worse than others and as part of their standard stipulations, if the smell is bad they make them lime the material and that takes care of the odor pretty quickly. Mark Levitt, an objector wanted to know what determines the difference between a maintenance and improvement application, it is the use or the depth. Mr. Goulet referred to pages 28 and 29 in the packet and stated that maintenance dredging is to maintain the existing level of use at the marina. Mr. Goulet stated that if an applicant is dredging a lot deeper than what is there it would be improvement dredging. Mr. Levitt was concerned that if the water depth was deeper there could be larger boats at the marina and lowering the current number of smaller boats. Mr. Fugate explained that when they look at a marina or an expansion of a marina they do an environmental assessment and do an analysis of what is permissible to put there. Mr. Fugate said there are two factors that drive the marina regulations that the perimeter remains the same and it has the same boat count. Mr. Fugate said whether they shrink the boats down to 20 footers or go to 40 footers that is a business decision and CRMC does not get involved. He said CRMC does not regulate boat lengths and depths of drafts. Mr. Levitt was concerned with the arsenic level and whether or not this needed to be considered. Mr. Fugate replied that the arsenic levels in RI are characteristically significantly fairly high in a lot of areas because of the base bedrock in RI so you will find high number of arsenic on many sites in RI. Mr. Fugate said arsenic number standards are set by DEM and the EPA. Mr. Fugate said arsenics are a problem number in RI because of the natural occurring levels of arsenic. Gavin Malafronte, abutter to the marina, asked if there had been any analysis to the dredging and what impact it might have on the stability of his seawall which is directly across from the marina. Mr. Goulet said there would be no dredging beyond the marina perimeter limit. Chair Tikoian asked what the distance of the seawall was to the dredging area. Mr. Goulet replied sixty feet and there would be no impact to Mr. Malafronte's seawall.

Mr. Gray noted that the applicant went to a 4' depth versus a 3' or 3 ½' water depth and asked what the rationale was for this. Mr. Phillips replied that the main depth coming in the channel to the marina is basically 4 feet. Mr. St. Jean said there is also an economic factor if they go a little deeper than the 3 ½ feet they will not have to redredge as quickly as the area starts to fill in. Mr. Gray addressed the issue raised about the erosion from the wakes and larger boats making bigger wakes than smaller boats. Mr. Gray said from his experience on the water small boats can cause a larger wake than larger boats or a powerboat with its hull configuration. Mr. Gray said he did not see this being a major change in what already exists in this area. Mr. Dawson noted that it looks like some of their docks are outside the marina perimeter and asked if they would be reconfigure these. Mr. Phillips replied yes. Mr. Dawson said they would be loosing some slips. Mr. Phillips replied yes. Mr. Dawson asked how many slips they had now. Mr. Goulet

replied that there are 42 slips there now. Vice Chair Lemont, seconded by Mr. Gomez moved approval of the application with all staff stipulations. The motion was carried on a unanimous voice vote.

2007-08-039 TIVERTON YACHT CLUB – Maintenance dredge of approximately 850 cubic yards of material mechanically with disposal in the CAD cell. Located in Sakonnet River at the Tiverton Yacht Club, 58 Riverside Drive, Tiverton, RI; Plat 70, lot 5; plat 73, lot 30

Wayne Karzenski and Rick Hall, Tiverton Yacht Club, the applicant were present. Richard St. Jean, the applicant's engineer was also present on behalf of the applicant. Objectors: John Moran, Sr., John Moran, Jr., and David Campbell. Mr. Goulet gave council members a brief summary on the application. Mr. Goulet stated that this project also consists of maintenance dredging of an existing marina within its existing perimeter limit. Mr. Goulet said 725 c.y. will be dredged to a minus 4' mean low water and the proposed disposal location is in the CAD cells in the Providence River. Mr. Goulet stated that no dredge material will be dewatered on the site or brought onto land. Chair Tikoian suggested that they hear from the objectors first.

Objectors:

David Campbell, an objector, stated that he filed a letter of objection to the application dated August 30, 2007. Mr. Campbell felt the council should not hear the application as the applicant was not in compliance with the assent which required 25 parking spaces and the applicant only has three parking spaces. Mr. Campbell stated that the applicant physically cannot comply with the parking requirement and that the 20 parking spaces they represented to the council are not legal parking spaces. Mr. Campbell stated that the applicant received a notice of violation in 2003, 2003-32-34 for non-compliance of parking spaces. Mr. Campbell said the applicant has never been in compliance with the parking requirement since the assent was issued in 1987. Mr. Campbell stated that the Newport Superior Court called into question the legality of the marina and that the Tiverton Yacht Club is a nonconforming use in a residential area. Mr. Campbell stated that the zoning was enacted in 1964. Chair Tikoian noted that zoning does not apply here and the council does not get involved in zoning issues. Mr. Campbell stated that the legality of the operation had been questioned by the Superior Court. Chair Tikoian asked Mr. Fugate to address the fact whether there is a pending violation first. Mr. Fugate addressed the issue of the parking spaces which has been a seasonal one each year within the facility. Mr. Fugate explained that each year the enforcement officer checks with the facility to demonstrate the parking. Mr. Fugate said their preference would be to have a long-term parking arrangement but each year the facility is able to secure one-year leases on the parking. Mr. Fugate noted that the number of parking spaces will dictate the number of boats they are allowed to put in each year. Chair Tikoian asked about the violation. Mr. Fugate replied the status is the boats are out of the water and they are lacking parking at this point and they will not be allowed to place any boats in the water until they secure parking. Mr. Karzenski replied that for the past year they have been leasing property to the north of the marina and they have 15 spots on the Spoltz property, 5 spots behind their club house and 5 spots on the each for a total of 25 parking spaces. He said they are in negotiating a lease with Mr. Spoltz. Chair Tikoian asked if they comply with the CRMC rule relative to the number of boats they allow in the marina with respect to the parking spaces that are supposed to have. Mr. Karzenski said they comply. Mr. Karzenski raised the issued that they are required to have more parking spaces than allowed in the CRMC Red Book and they don't

understand this. He said the regulations require that for every 1-½ boats you need one parking space and they have 21 slips and have to have 25 parking spaces. Mr. Karzenski said by his calculation they would only need 14 parking spaces instead of the 25 parking spaces. Mr. Karzenski said they have been working with Laura Miguel to find out why this is. Mr. Karzenski stated they have to pay Mr. Stoltz to lease parking spaces. Chair Tikoian asked how long the marina has been existence in Tiverton. Mr. Karzenski replied the Tiverton Yacht Club has been there for a bout 50 years. Chair Tikoian asked Mr. Campbell what the judge's order was on this. Mr. Campbell replied on the issue pertinent to the parking, the judge said there were no legal off street parking spaces behind the clubhouse. Mr. Campbell said the applicant was told today they had no intention of giving them a lease for the parking and that the representation that there is some sort of negotiation going on regarding the lease is not true. Chair Tikoian stated that it sounded like he was single handedly trying to close the yacht club down. Mr. Campbell said this was not his intent but said the marina was a problem and had not been grandfathered. Mr. Campbell felt the marina was non-conforming and was illegal and the Superior Court was very close to saying that in their ruling Mr. Campbell noted that the applicant cannot comply with the parking requirements. Chair Tikoian stated that the application before the council is on dredging not the issue of the marina. Mr. Campbell felt the applicant was not in compliance with their assent, they are not in compliance because of the 2003 notice of violation and they do not have a long-term lease for parking. Chair Tikoian stated that this was a relatively small dredge project and unless there is an objection by Council Members on the issues that were raised they continue the application two weeks. Chair Tikoian suggested that the applicant work with the executive director, legal counsel and any other party to try to rectify this issue. Director Sullivan and Mr. Goldman asked for a copy of Judge Thunberg's decision to review. Mr. Campbell said he would provide it. Mr. Karzenski noted that Mr. Campbell is trying to close down the marina and yacht club and throws everything possible against the wall to see if it will stick. Mr. Karzenski said every season they work to resolve the parking issue by leasing parcels for parking. Mr. Karzenski said the court ordered has not been issued yet. Mr. Campbell said a 15-page decision has been rendered and they had a hearing before Judge Thunberg on November 16th. Chair Tikoian asked if any of the order related to parking. Mr. Campbell replied no. Mr. Karzenski said the Judge's had an issue with the marina. Mr. Karzenski said the marina in a waterfront zone which means its allowed by right. He said the issue with the judge is that they have a yacht club on one side of the property and the marina on the other side of the property and they were parking cars from the marina on a piece of property that is zoned R-40. Mr. Karzenski said Mr. Campbell's argument is that they are supporting the marina with a residential piece of property. Mr. Karzenski wanted the council to look at the number of parking spaces they are required to have. Mr. Gray asked how they devise their marina spaces. Mr. Hall said they are along side dockage. Mr. Hall said the first long pier there are two boats on the inside and two boats on the outside. Mr. Gray asked how many slips they have at the marina. Mr. Hall replied 20. Mr. Gray said he did not know how the 25 parking space requirement came about. Mr. Gray asked if they presented CRMC with a marina plan that shows they only have 21 or 20 slips shouldn't the council adjust the parking requirement according to the regulations. Mr. Fugate replied they have not applied for any reconfiguration and when they applied they may have indicated on the application that they had a certain number of parking spaces available and this was incorporated in the assent. He said if people put more parking than required they would put it in the assent. Mr. Fugate said they can request the current parking regulation requirement. Chair Tikoian asked why the council can't make this request at the hearing. Mr. Fugate replied it can. He said they can wait two weeks and bring back the additional information on the issue. Mr. Gray asked if they were only able to come up

with X amount of parking spaces this would allow them X amount of boats and this would be the limit for their marina. Mr. Fugate said that's right. Mr. Abedon said whatever the boat count and parking spaces are they can still dredge. Chair Tikoian said yes except that they raised the parking issue and the potential enforcement issue which need to be resolved. Chair Tikoian stated that if they continue this to the next meeting they can review the assent and the parking requirements on the assent and resolve the enforcement issue at the same time. Mr. Dawson noted that the marina was in type 3 waters and this is a priority usage in this type of water. Mr. Dawson said there is not a lot of space for boats in the East Bay and felt they need to resolve the parking issue but the application is still a dredge application. Mr. Gray said he had a problem with the dredging if they cannot get enough parking spaces to support the number of boats they would not need to dredge. Mr. Karzenski asked if they had to have a signed lease for the upcoming year for parking of some undetermined number of parking spaces. Mr. Gray said right now they have five spaces and five spaces equate to seven and ½ boats. Mr. Gray said the number of parking spaces will determine the number of boats at the marina and the marina size could shrink. Chair Tikoian asked with the marina being so old why it did not get grandfathered in. Mr. Campbell replied the marina has only been there 20 years. Mr. Karzenski said they have had a single pier since the 1950's. Mr. Dawson asked if they had someone lined up to dredge and a firm date for dredging. Mr. Hall replied yes but they are waiting for CRMC approval. Mr. Gomez had a question on the parking and asked how many spaces were available on the residential section for the yacht club. Mr. Karzenski said they could fit 15 spaces there. Mr. Karzenski asked a question on the parking spaces and asked if he had to have a letter of intent or a signed lease. Chair Tikoian replied a letter of intent. Mr. St. Jean asked if they should file an application for modification to the assent to reduce the number of parking spaces required. Mr. Fugate replied the council is saying they may adjust the parking need based on the regulation requirement. Mr. Goldman stated that the council can approve, deny or modify what's pending before them so if they want they can change the parking requirement as they have the authority to do that. Director Sullivan, seconded by Mr. Gray moved that the council defer action for a period of not less than two weeks, asked legal counsel to review the court decision issued by Judge Thunberg and that the previous assent be provided for discussion. 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 7:46 p.m.

Respectfully submitted,

Grover Fugate, Executive Director

Reported by Lori A. Field