

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, December 11, 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  
Jerry Zarrella  
Ron Gagnon (Representing Director Sullivan)

**MEMBERS ABSENT**

Tom Ricci  
Joe Shekarchi

**STAFF PRESENT**

Jeff Willis, CRMC Deputy Director  
  
Dan Goulet, CRMC Dredging Coordinator  
David Alves, CRMC Aquaculture Coordinator  
Jim Boyd, CRMC Policy Coastal Policy Analyst  
  
Brian Goldman, Legal Counsel

1. Chair Tikoian called the meeting to order at 6:00 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. Dawson moved to dispense with the reading of the minutes of the November 27, 2007 meeting and accept them as presented. The motion was carried on a unanimous voice vote.

Chair Tikoian noted that the minutes of the October 23, 2007 minutes are not in the council's packet as they are still trying to clarify some of the last minute changes that Director Sullivan wanted. Chair Tikoian stated that these minutes would be taken up at the next meeting.

3. **SUBCOMMITTEE REPORTS**

Vice Chair Lemont stated that the Policy & Planning Subcommittee met on November 20, 2007 on two proposed changes: 1) Greenwich Bay SAMP, Section, 681.1 and 940.1 to revise the policies and create standards for existing commercial fishing docks. Vice

Chair Lemont stated that this would better define the policies and introduce standards that address how the Council will manage existing commercial fishing docks for the purposes of implementing the Greenwich Bay SAMP, and 2) RI CRMP relating to submerged transatlantic cables to address legislative revisions for creating an annual fee for submerged telecommunication cables as allowed in the 2007 legislative budget Article 30. Vice Chair Lemont said the purpose was to hold public hearings to seek input on fee options for submerged transatlantic telecommunications cables. Chair Tikoian requested that the report be accepted and put out to public notice and back to the Council for final action.

#### **4. STAFF REPORTS**

There were no staff reports.

#### **5. PRESENTATION: Greenwich Bay Special Area Management Plan Update – Jim Boyd, CRMC Policy Analyst**

Mr. Boyd gave a presentation to update council members on the Greenwich Bay Special Area Management Plan. Mr. Boyd stated that there were many issues associated with the development of the Greenwich Bay SAMP regarding degraded water quality resulting in low oxygen conditions. Mr. Boyd reminded council members about the fish kill in August 2003. Mr. Boyd stated that there are a high number of septic systems in the Greenwich Bay Watershed and other issues associated with marina expansion and public access. Mr. Boyd said the water type was changed from Type 3 to Type 2 waters to minimize any expansion of new marinas in Apponaug Cove. Mr. Boyd updated council members on the water quality issues associated with the SAMP and said they have begun to phase out cesspool use. Mr. Boyd said the City of Warwick has spent over \$130 million to sewer larger portions of the city. Mr. Boyd said one of the actions taken was to complete sewer connections and the Council required this through an assent condition that the City of Warwick and Sewer Authority develop a mandatory sewer connection plan. He said this has been done and was implemented as of January 2006. Mr. Boyd said they need to address the issue of enforcement of the connect capable fee. He said as of October there were 323 homes out of compliance with the sewer connection requirement and letters had been sent out by the Sewer Authority. Mr. Abedon asked what the connect cable fee was. Mr. Boyd explained that when a sewer line goes by your house, you have a one-year period to connect into that sewer line and if you do not connect, you are charged as if you are connected to the sewer line. Mr. Boyd stated that over 5,200 septic systems have been abandoned and replaced with sewer line connection. Mr. Boyd said there are over 8,000 sewer connections available and that they have almost 6,000 sewer connections for a 74% compliance rate. Mr. Boyd addressed the essential actions and said one of the essential actions was the reduction of nitrogen from the East Greenwich Wastewater Treatment facility. The other was storm water management the Phase II storm water permit which every municipality has to come up with a storm water management plan and they will report in the spring on their progress. Mr. Boyd said storm water is a primary source of fecal bacteria loading in Greenwich Bay. Mr. Boyd stated that one way to address this was through low impact development techniques where they would get infiltration on the site so they could minimize the amount of impact, which is the less expensive way of doing this, but means retrofitting a lot of the existing homes, businesses and land uses. Mr. Boyd stated that one of the areas they want to look at is a suburban buffer program. He said they have also been working on coastal and wetland habitat restoration in Warwick Cove. Mr. Boyd said another essential action was on monitoring water quality and said

they need better water quality monitoring. Mr. Boyd stated that there is a program that DEM does a lot of the water quality monitoring in the state and they have many dedicated volunteers to help with the water quality monitoring. Mr. Boyd stated that they were going to convene a meeting this winter of the Greenwich Bay Researchers so they can talk about some emerging issues see if they can collaborate them in terms of research dollars and their efforts to maximize their potential. Mr. Boyd said they need to strengthen the Clean Marina & Boating Program, grandfather existing Greenwich Bay Quahog Docks, which they have some draft language they will get out to the full council, and educate people. Mr. Boyd stated that they have held several Greenwich Bay summits. Mr. Boyd said there are five primary goals in the SAMP and explained them. Mr. Boyd said they are in the process of doing another complete report for the council, which will add a lot more detail. Mr. Abedon noted that there had been a lot of public input on this and asked if there was still a high level of involvement. Mr. Boyd replied yes and they continue to have forums and citizens advisory committee meetings. Chair Tikoian thanked Mr. Boyd for his presentation and thanked council members for their support of this SAM Plan.

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

**7. APPLICATIONS REQUESTING MODIFICATION OF ASSENT AND ARE BEFORE THE FULLCOUNCIL FOR DECISION:**

**2000-11-11-058 SALT WATER FARMS, LLC -- Modification of an existing Aquaculture Farm, expansion of area and addition of additional gear. Located in Narragansett Bay, Middletown, RI.**

Bill Silks, the applicant was present. Mr. Alves gave council members a brief summary on the application. Mr. Alves stated that Mr. Silks is the primary owner of Salt Water Farms. Mr. Alves said this is an existing 15-acre farm in Middletown and the applicant is requesting a 5-acre addition. Mr. Alves said there was no staff objection to the application. He said there were some comments from DEM which have been addressed in his report. Mr. Alves stated that the application was unanimously approved by the Marine Fisheries Council. Chair Tikoian asked if the applicant had anything to add. Mr. Silks did not. Mr. Coia, seconded by Mr. Gray moved approval of the application with all staff stipulations. The motion was carried on a unanimous voice vote.

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

**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 Greg Jones, Tiverton Yacht Club, the applicants 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 were also present. Chair Tikoian stated that this application had been continued from the prior meeting to address some issues raised and a pending lawsuit. Chair Tikoian stated that Mr. Goldman had reviewed the lawsuit and asked him to update council members on this. Mr. Goldman said he reviewed the Superior Court decision by Judge Thunberg that Mr.

Campbell provided to him. Mr. Goldman said there were a number of issues raised regarding the expansion of the structure; what can be there and what cannot be there; what is nonconforming; some relating to dredging; and the issue of parking. Mr. Goldman said there were some issues regarding the in-water facilities and said he was going to write a letter to the court reminding them that CRMC has exclusive jurisdiction below mean high water. He said the court applied the zoning ordinance to in-water facilities and they need to be reminded that CRMC has exclusive jurisdiction below mean high water. Mr. Goldman said the issue of parking was raised in the court's decision and Mr. Willis would address that. Mr. Willis said there is a parking issue and asked Mr. Goulet to address the parking issue specifically with regard to the number of spaces available to the marina. Mr. Willis said looking at the application now there appears to be five parking spaces and that the issue is that additional parking may be necessary to support the in-water facilities. Mr. Goulet said the yacht club has a lease for the additional parking which he received today. Mr. Goldman asked where the additional parking was. Mr. Goulet replied the lease is between the Tiverton Yacht Club and St. Christopher's Church. Mr. Karzenski addressed the parking issue and said they have provided off site parking for the past several years at the property to the north owned by Mr. Spoltz, which is a month-to-month lease. Mr. Karzenski stated that Mr. Spoltz is in the process of trying to sell his property but there is no purchase and sale agreement on the property. Mr. Karzenski stated that he knew CRMC wanted a long-term lease for the parking. Mr. Karzenski stated that St. Christopher's Church, which is on the right at the end of Riverside Drive, is a short walk to the marina and gives them sufficient parking for the marina. Chair Tikoian stated if the number of parking spaces for the boat slips is sufficient according to the CRMC regulation then there is no pending enforcement violation on the parking and the council could proceed with the dredging application. Chair Tikoian stated that the applicant presented the council with a lease up through November 30, 2008. Mr. Goldman explained this is a year-to-year lease with the option for five renewals. Chair Tikoian asked for the number of parking spaces. Mr. Goldman replied the lease was for twenty parking spaces. Chair Tikoian asked the applicant to give Mr. Campbell a copy of the lease for his review. Mr. Karzenski stated that the issue was raised regarding the number of parking spaces needed for the marina. Mr. Karzenski stated that they have 21 slips which would require only 14 parking spaces not 25 parking spaces. Mr. Karzenski wanted the council to review the number of parking spaces needed so they could be held to the current standard of one 1/2 boats per parking space. Chair Tikoian asked Mr. Willis if there was any pending enforcement action on this application. Mr. Willis replied no. Mr. Zarrella asked how far the church was from the marina. Mr. Karzenski replied it is roughly 840 feet walking down the road and around the corner to the church. Mr. Campbell felt the applicant never complied with the parking requirement. Mr. Campbell felt the parking area was far away and said the applicant never used the parking spaces they represented to the council in the past when it was either on their property or next to their property. Mr. Campbell felt this was just another piece of paper. Mr. Campbell said this is a residential neighborhood and felt the applicant had no intention of complying with the parking regulation. Mr. Campbell said they went to Superior Court to address their issues. Mr. Campbell stated they have a 20,000 s.f. area which they operate a club for 500 members with a pool and a marina. He said if you look at the Superior Court order it calls into question the existence of the marina and there is a hearing scheduled on this. Mr. Goldman said this had been address and that the issue of the marina which no one notified CRMC. Mr. Goldman said the council has exclusive jurisdiction at the mean high water mark. Mr. Goldman said the municipalities have no authority to regulate what takes place below mean high water. Mr. Goldman said he was going to file something with the judge notifying her of the case law and asking her to consider that position. Mr.

Goldman felt this issue would be disposed of relatively quickly when he points the Judge to the two Supreme Court cases which have held that CRMC has exclusive jurisdiction below mean high water and that municipalities have no zoning authority below mean high water. He said he would notify the lawyers of this as well and had notified Mr. Nicholson of this today. Mr. Zarrella asked if the council would be going against the judge's ruling if they voted on the application. Mr. Goldman replied no. Mr. Campbell stated that the applicant never suggested that they had a marina in 1964 and the Court said there was no evidence of any slips or marina in 1964. Mr. Goldman explained that the applicant has an existing marina perimeter permit from CRMC. Chair Tikoian noted that the assent was issued on June 26, 1990. Mr. Karzenski said they had received an assent from CRMC in 1987. Mr. Willis stated that the 1990 permit recognized a marina perimeter limit and there may be a previous history on this. Mr. Campbell said he was at a disadvantage and would look into this. Mr. Campbell felt there was no transportation from this remote lot to the yacht club and wanted the council to look at this. Mr. Campbell felt that the available parking spaces were only on paper. Chair Tikoian stated that the issue before the council is the dredging which is a very small dredge project. Chair Tikoian noted that the council can approve the dredging permit and if the parking issue becomes a problem the council can restrict the number of boats slips they have. Mr. Goldman pointed out to the council that that the upland activity happened when the facility burned down in June 2003 and that the applicants problem began when they tried to rebuild it. Mr. Goldman said the applicant still needed permission from CRMC to build on the upland. Mr. Goldman stated the limited issue before the council was whether they can do the maintenance dredging for their existing marina. Mr. Campbell felt the marina's existence was still in question. Mr. Coia asked if the applicant had to be in compliance when they file an application or when it comes before the council. Mr. Goldman said the compliance is addressed during the review. Mr. Goldman said there is no clear standard on this. Mr. Goldman noted that even if the application is granted the minute the applicant is in noncompliance of their assent, the assent is revoked. Mr. Coia asked if they had adequate parking spaces to fulfill the assent. Mr. Coia also stated that the applicant was looking for relief on the number of parking spaces. Mr. Goldman replied that Mr. Fugate had mentioned that this might want to be something the council, which they have the authority to grant relief on the parking, but it was not pending before the council at this point. Mr. Gomez noted that the parking requirement is one parking space per 1 ½ boat slips. Chair Tikoian replied correct. Mr. Abedon clarified that if the marina meets the parking requirement the council can hear the application. Mr. Goldman replied yes. Mr. Gray said the dredging is supporting a majority of where their slips are on inside the marina. Mr. Gray said it looks like the dredging does not include any of their boat slips it supports the area for the dinghy and youth sailing program. Mr. Gray felt the two issues were not connected. Mr. Gray said hopefully the applicant will submit an application to address the parking issue requirement. Mr. Gray said the parking is for the marina which is outside of the dredge area. Chair Tikoian said the reason the parking issue was raised because there was an allegation that there was a pending enforcement issue on the parking. Mr. Gomez stated at the last meeting the council said they would look at the number of parking spaces required for the marina. Mr. Gomez felt it was a short walk from the Church to the yacht club. Mr. Gomez felt parking was not an issue. Mr. Dawson said he would consider the dredge application approval and the number of slips that could be rented out based on the number of actual parking spaces. Mr. Dawson did not feel the number of parking spaces should restrict the dredging application. Mr. Dawson said if the dredge project is approved and they only have parking for seven slips they can only rent out seven slips and the rest of them would be transient slips. Mr. Karzenski stated that they have 25 parking spaces and according to the CRMC Red Book they only need 14

spaces. Mr. Karzenski felt they had an excess of parking and wanted to get their minimum requirement for parking down to 14 spaces. Mr. Gray asked how many slips they have. Mr. Karzenski replied they have 21 slips. Chair Tikoian asked if the applicant had anything to add to the application. Mr. Karzenski did not. Chair Tikoian gave Mr. Campbell an opportunity to summarize his comments. Mr. Campbell felt the parking document was fraudulent and that the applicant would never utilize those parking spaces. Mr. Campbell said he is not against boats. Mr. Campbell felt the applicant did not respect the council, their neighbors or the zoning requirements. Mr. Campbell felt the applicant could not comply with the parking requirements and wanted the council to look at their history. Mr. Campbell felt the application should be denied. John Moran, Jr., an abutter, noted that the parking may become an issue when there are activities going on at the church. Mr. Moran showed an aerial photograph which showed where the church parking was in relation to the yacht club and felt that it was far away. Mr. Moran passed out some aerial photographs of the dredge site and talked about the past dredgings which he never opposed. Mr. Moran felt their beach area was eroding because of the dredging. Chair Tikoian asked Mr. Goulet when the area was last dredged. Mr. Goulet replied in 2000 or 2001. Chair Tikoian asked how many cubic yard were dredged. Mr. Goulet did not know. Mr. Moran felt that if the applicant was allowed to dredge again the hole was going to fill in and it was going to get steeper and the water would get closer to the road. Mr. Moran felt that they were going to lose more of their land. Mr. Moran wanted the club to put in a bulkhead to project the rock jetty, protecting their own property and protecting the property to the north. He said he would not have an objection to this dredging with a bulkhead. Mr. Moran felt that if there was no bulkhead there should be no dredging. Mr. Moran felt his property would fall into this hole. Mr. Goulet noted that the applicant dredged 600 c.y. in 2001 and that this project was for 750 c.y. in the same basic area. Mr. Goulet said the 1989 pictures shows a similar footprint to what they are proposing now. Mr. Goulet said the reduced footprint protects the wall and he could not find any maintenance records on the wall. Mr. Goulet said he asked the applicant to reduce the dredge to reduce the impact to the wall. Chair Tikoian asked about the beach erosion issue. Mr. Goulet said he did not have the history on this but suspected that this is going to fill in relatively quickly as it has during the past six years. Mr. Goulet said a lot of the sand is from the sanding on the road. Mr. Moran was concerned with losing land if the wall caved in. John Moran, Sr., an abutter, stated that he was the abutter to the beach to the south. Mr. Moran, Sr. noted that this was the fourth dredging of the property. Mr. Moran, Sr. felt the area needed a bulkhead to protect the area. Chair Tikoian him to point out where his house is on the 1989 photo. Mr. Moran Sr. replied his house is the red house immediately to the south of the Yacht Club. Mr. Moran noted that his son owns the house and he owns the beach separately. Mr. Goldman explained that if you look at the Yacht Club building with the swimming pool across from the beach just to the right of that is the red house. Chair Tikoian stated that the house is on the other side of the street. Mr. Goldman said he is owns the beach on the seaward side of the street. Mr. Dawson asked over this period of time what is the status of his beach today versus what was there 20 years ago. Mr. Moran Sr. replied that it has gone down about 2 feet in grade. Mr. Goulet pointed out that if you look at the 1989 chart it illustrates the entire system of sand moving from south to north. Mr. Goulet said this is not necessarily caused by the dredging. Mr. Goulet stated that this was the direction the sediment movement here. Chair Tikoian asked if the dredge material was silt or sand and if the dredge material was coming from the property they are speaking about. Mr. Goulet said he believed it was all sand which is going to a CAD cell. Mr. Gray asked Mr. Moran Sr. who built the rock wall between his beach and the yacht club beach. Mr. Moran Sr. replied the Tiverton Yacht Club did. Mr. Gray stated that this area was unobstructed before the rock wall was put in. Mr. Moran Sr. replied

yes. Mr. Gray noted that if there was no rock groin there the sand that migrates from the south to the north would have gone past their beach. Mr. Gray said his beach would have been going down. Mr. Gray said the groin captured this sand and kept it on his beach. Mr. Moran Sr. said maybe if the groin was never there the nourishment in the beach came from the opposite direction. Mr. Gray said the sand movement is going to the north and in effect has helped maintain the beach. Mr. Moran Sr. felt the groin has helped hold up some of the sand to protect his beach. Mr. Campbell said he had reviewed the lease and wanted to address the parking issue again. Mr. Campbell noted that the lease was contingent on CRMC's ruling on the parking requirement and expires automatically if the CRMC parking requirement goes away. Mr. Gray said even if they have the 25 parking spaces, there is parking allowed on the street and boat owners could still park on the street and not in the parking spaces. Mr. Abedon asked if the parking lease was legal. Mr. Goldman replied yes. Mr. Abedon noted that if the assent only required 14 parking spaces and they have five already they would not need the 20 additional parking spaces. Mr. Goldman replied that the original assent specified 25 parking spaces and they would have to seek a modification on the number of parking spaces. Mr. Gomez asked when they moved into their present location. Mr. Karzenski replied in 1956. Mr. Gomez said the zoning code came into effect and they continued to proceed with the use of their property with boats, swimming, sailing and working with the Army Corps. Mr. Karzenski replied yes they put their pier in 1956 and the zoning code went into affect in 1964 at which point one side of their property was zoned residential. Mr. Zarrella asked if there was a requirement on how far the parking spaces needed to be from the marina. Mr. Goldman replied no. Mr. Zarrella felt the parking spaces were too far away. Mr. Zarrella said he would rule against the application and support the objectors. Mr. Gomez, seconded by Mr. Dawson moved approval of the maintenance dredging application with all staff stipulations. The motion carried. Mr. Zarrella was opposed. Mr. Gomez, seconded by Mr. Dawson moved to adopt the current council regulations on parking requirements of one parking space for every one ½-boat slip and modify the application from the requirement of 25 parking spaces to 14 parking spaces, staff to calculate the proper number of parking spaces for 21 slips. The motion carried. Mr. Zarrella was opposed.

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

Jeffrey Gardner, the applicant was present. Mr. Alves gave the council a brief summary on the application. Mr. Alves stated that the application was continued from the October 23<sup>rd</sup> meeting at the Council's request to hold a meeting between the objectors and the applicant. Mr. Alves noted that they had received several new letters on the application, one from the Town of Westerly objecting to the application and three in favor of the application which are in the back of the packet. Mr. Alves stated that he held a meeting between the objectors and the applicant on December 5<sup>th</sup> and that the applicant had met with the objectors' right after the last meeting. Mr. Alves stated that the applicant made some proposals to the objectors and offered to change the white PVC poles marking the right-of-way to gray to cut down on the visual impacts. Mr. Alves stated that the applicant also offered to eliminate the right-of-ways in the existing and proposed lease. Mr. Alves said the right-of-ways had been a requirement of CRMC but in reducing the right-of-ways it would reduce the size of the proposed lease from 3 acres to 2 acres. Mr. Alves explained that he met with the applicant, Mr. Fernandez, Mr. Reynolds and Ms. Kaslese to discuss the application and that they were unable to come to an agreement and the objectors still objected to the applicant's proposed changes. Mr. Alves said one of the objectors, Mr. Melvin withdrew his objection. Mr. Gardner said he had some new

letters in support of the application. Mr. Coia noted that the applicant had meet with the objectors and his proposal of what he would change was rejected. Mr. Coia wanted to know what was before the council, the proposal with changes or the original application. Mr. Gardner stated that his amended proposal as well as his original proposal were before the council. Mr. Gardner said he would prefer to have his new proposal accepted by the council versus his existing lease with the right-of-ways. Mr. Gardner felt the existing right-of-ways are not utilized by the public and not serving a purpose. Chair Tikoian clarified that he was talking about access areas not right-of-ways which are not the same. Mr. Gardner gave a chronology of the applicant process, what he has done and the objectors. Chair Tikoian stated that the applicant made an effort to meet the objectors' objections but they still objected Mr. Gardner stated that he has tried to work things out with the objectors. Mr. Gardner said at the last meeting Director Sullivan made a comment about the Marine Fisheries Council and their vote. Mr. Gardner stated that at the August 6, 2007 Marine Fisheries Council the vote was two for and one absentation on his application. Mr. Gardner said they then voted to table the matter and at the October meeting they took another vote on his application and the application was approved on a unanimous voice vote. Mr. Gardner said he gave a copy of the Marine Fisheries Council minutes of the vote to Mr. Ballou at DEM who was going to give it to the director. Mr. Goldman asked for a copy of this for the CRMC record. Mr. Gardner said he would give them a copy. Chair Tikoian suggested they hear from the objectors.

#### **OBJECTORS:**

Steven Hartford, Town Solicitor for the Town of Westerly, was present on behalf of the town stated that the town contested the application. Mr. Hartford raised a procedural point and said it was his understanding that the council would not act on an application if the town contested the application unless their was a representative from the town to participate in the discussion. Chair Tikoian said this was not true. Mr. Goldman clarified that thus rule only applies when an application is referred to a subcommittee and only if there was no member of the council from the affected municipality, then the Town Counsel would get to appoint a member. Mr. Hartford requested the opportunity to have a representative present on this because the Town contested the application. Chair Tikoian said the hearing is now and the representative is him. Mr. Hartford asked the council to delay action on the application until a representative could sit on the application and be heard on the application but the council was saying they would not do that. Mr. Goldman said this would only happen if the council referred the matter to a subcommittee. Mr. Hartford requested that the application be referred to a subcommittee. Chair Tikoian asked if the council wanted to send the application to a subcommittee. The council did not. Mr. Hartford stated that the town objected to the expansion of aquaculture in general in Winnapaug Pond, which lies entirely in the Town of Westerly, and objects to the expansion of the lease by Mr. Gardner. Mr. Hartford said the town was opposed to the negative impact on the recreational uses of the pond and the negative impact on the delicate ecological balance within the pond. Mr. Hartford felt there would be a substantial visual impact of the cages and the nonorganic equipment and the apparatus of the aquaculture. Mr. Hartford said the current lease at low tide creates a visual nuisance to the residents of the area, the users of the pond, the fishermen, boaters, as well, as the Town residents who use the Westerly Town Beach in the summer which is adjacent to the existing lease. Mr. Hartford felt the proposed site of the expanded lease area was similarly insufficient in depth to prevent a visual impact of the metal cages and other apparatus that make up the farm. Mr. Hartford said the town council was concerned with aquaculture expansion in the pond. Chair Tikoian asked if he had any evidence to show that there is an ecological impact. Mr. Hartford replied no he did not have any scientific evidence. Chair Tikoian said this was only an observation.

Mr. Hartford replied correct. Chair Tikoian referred to a letter from the Town Planner which stated that the pond was fragile and asked if anyone had said this pond was fragile and what they meant by fragile. Mr. Hartford replied that this was inarticulately worded by the planner. Mr. Hartford had no further evidence to present. Chair Tikoian stated that the council had sent a letter to the town because of their prior correspondence stating something similar asking the town if there was any evidence and to provide it but did not receive a response. Chair Tikoian stated that the applicant made an effort to address the concerns of his neighbors and the Town of Westerly. Mr. Hartford disagreed and said the applicant at the December 5<sup>th</sup> meeting, which he did not attend, would not consider an alternative location for the lease. Chair Tikoian stated that the Westerly Town Beach is on the other side of the road from the pond. Mr. Hartford said the parking for the beach is on the side of the pond and there is access to the pond for boaters. Chair Tikoian asked about his comments about the impact on swimming and fishing and asked if he knew where the lease was located. Mr. Hartford replied yes it is slightly northwest of the parking area. Mr. Hartford stated there is substantial recreational uses of the pond and their position is that the expansion of aquaculture will negatively impact that use. Chair Tikoian asked if he knew how much the expansion was. Mr. Hartford replied no. Chair Tikoian questioned how he could state there would be an impact on swimming and fishing when he did not know how big the expansion was. Mr. Gray asked if he was saying that their concern is that the aquaculture farm will hurt the fragile nature of the pond. Mr. Hartford replied yes. Mr. Gray asked what recreational uses they were concerned with. Mr. Hartford replied swimming, boating, etc... Mr. Gray asked what kind of boating he was referring to. Mr. Hartford replied small boats, small craft and sailboats. Mr. Gray asked about powerboats. Mr. Hartford said some powerboats, jet skis, sail boards, kayaks and canoes. Mr. Gray felt that anything mechanically powered would cause more damage to an ecological-sensitive pond than aquaculture on the pond. Mr. Zarrella asked if the applicant had to get any local approvals. Mr. Hartford replied no not that he was aware of. Mr. Alves replied no, the aquaculture is all under submerged lands owned by the State. Mr. Gomez said the original expansion was for a three-acre expansion and now they are talking about a two-acre expansion. Mr. Hartford noted that the current expansion is 5-acres now. Mr. Gomez stated that the council is using a 5% footprint for aquacultures in any body of water as a guideline. Mr. Alves replied yes they try to stick to this and said that the working group is working to get their final report and recommendations for aquaculture. Mr. Gomez asked if this farm was within the 5% limit. Mr. Alves replied yes there would only be 2% of aquaculture in the pond. Chair Tikoian asked if there was any evidence that aquaculture in RI has deteriorated the water quality of the pond. Mr. Alves replied no. Chair Tikoian was concerned with the town making ecological impacts allegations without having any evidence on the ecological impacts. Mr. Abedon asked if there was any scientific evidence that said aquaculture is beneficial to a body of water. Mr. Alves replied yes there are several articles. Mr. Abedon suggested that he forward them to the town to educate them on aquaculture. Mr. Alves stated that he did go and speak with the Westerly Town Council last month and gave them an update on the CRMC policy and permitting on aquaculture and also made them aware of the CRMC website which has about 50-60 scientific articles on aquaculture. Mr. Abedon asked about the mention of privatization of the pond in their letter. Mr. Goldman explained that CRMC grants leases for aquaculture and that the pond is still owned by the Town and CRMC has jurisdiction. Mr. Gray said there is a term on the assent. Mr. Goldman said the lease is renewed yearly and an assent is granted for 50 years. Vice Chair Lemont asked about the Dec. 5<sup>th</sup> memorandum which refers to replacing the white PVC pipes with gray PVC pipes to tone down on visibility. Vice Chair Lemont asked if he had an opinion on this. Mr. Alves said it was a balancing act and they had to make them visible enough for jet

skiers and reduce the visual impact. Vice Chair Lemont, seconded by Mr. Gomez moved approval of the application for a 2-acre instead of 3-acre aquaculture and that the visual markers and the marking of the public passages be addressed by staff and with all staff stipulations. Mr. Gray asked if he was reducing the 3-acre lease to a 2-acre lease and keeping the public access paths in the original plan. Vice Chair Lemont replied yes. Mr. Gray asked about the people that wanted to speak on the application. Vice Chair Lemont and Mr. Gomez withdrew the motion and the second to the motion.

**OBJECTORS:**

Douglas Fernandez, an objector, read his letter of objection into the record. Mr. Fernandez stated that he was opposed to the application. Mr. Fernandez stated that the applicant's existing site is across the pond from a residential area and is exposed at normal low tide. Mr. Fernandez said the proposed new lease is in front of an amusement park. Mr. Fernandez felt if the council allows 5% of the pond to be aquaculture all the sandy bottom wading acreage of Winnapaug Pond would be consumed between leases and aisle ways. Mr. Fernandez felt this would be devastating to the residents and have a financial impact on the tourist trade. Mr. Fernandez wanted the existing lease moved to a location where it would not be visible by residents. He also wanted CRMC to put a moratorium on future leases until CRMC comes up with a master plan for aquaculture that protects the public access and mutually benefits all. Mr. Fernandez felt Winnapaug Pond was an important natural resource in RI. Mr. Fernandez wanted the council to deny the application. Jason Jarvis, a recreational and commercial fisherman and part-time employee of Mr. Gardner was in favor of the application. Mr. Jarvis felt aquaculture was the best thing to happened in Winnapaug Pond. Jody King, Vice President of the RI Shellfishmen Association, Chair of the Warwick Harbor Commission and a member of the RI Marine Fisheries, stated that he is in favor of Mr. Gardner's lease and his expansion. Mr. King also felt there should be a plan for aquaculture in the state to address environmental concerns, public access and set guidelines. Mr. King said Mr. Gardner has done a good job with his aquaculture. Walter Reynolds, an objector, read his statement into the record. Mr. Reynolds thanked the council for allowing them an opportunity to work out a compromise with the applicant but unfortunately these efforts were unsuccessful. Mr. Reynolds stated that one major problem with the expansion and the existing lease is that they are located on sandbars which grow daily. Mr. Reynolds wanted to see an alternative location due to inadequate water depth. Mr. Reynolds asked the council not to approve the application and look for an alternative location for the current aquaculture. Chair Tikoian asked the applicant why his aquaculture was placed in this shallow area. Mr. Gardner replied the reason for this location was that it was the furthest away from the shoreline with adequate water depth for his type of aquaculture. Mr. Gardner said this location is one-quarter mile from the nearest residence and his other aquaculture is 1200 feet away from a residence. Chair Tikoian asked what staff had done with regards to the objectors' comments. Mr. Alves stated that they discussed moving it to a different location at the December 5<sup>th</sup> meeting which would be out of Mr. Reynolds and Mr. Fernandez' views but in an area where a lot more people use the water. Mr. Alves felt this was a good site and was the less used area of the pond. Mr. Reynolds felt there were other locations they could look at. Chair Tikoian noted that the pond belongs to all the people of RI. Chair Tikoian said the council reviews it and everyone has the ability to use it and see it. Mr. Gray asked if the cages were visible at low tide or extreme low tide. Mr. Gardner replied the cages are visible at low tide. Mr. Gray said the statements Mr. Reynolds is making tonight should be elsewhere and that he looked at the minutes of the Dec. 5<sup>th</sup> meeting and Mr. Reynolds stated that what he hopes happens through this process is the realization that Winnapaug Pond is not the proper location for aquaculture. Mr. Reynolds felt they could

find a better location. Mr. Reynolds ask the council not to approve the application to let them see if they could find a better location and not tell them they have to compromise. Mr. Gray said there are two things they are dealing with the visual from his standpoint and the technique of growing it in the top water column. Mr. Zarrella stated that he is listening to the evidence and that town sent their solicitor and they have been going back and forth with the applicant for 6 months and should have hired their own expert witness to present evidence. Vice Chair Lemont, seconded by Mr. Gomez moved approval of the application for a 2-acre instead of 3-acre aquaculture, that the visual markers and the marking of the public passages be addressed by staff, and with all staff stipulations. The motion was carried on a unanimous voice vote.

**9. Enforcement Report – October and November 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 8:42 p.m.

Respectfully submitted,

Grover Fugate, Executive Director

Reported by Lori A. Field