

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, February 12, 2008 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

MEMBERS ABSENT

Jerry Zarrella
Tom Ricci
Joe Shekarchi

STAFF PRESENT

Grover Fugate, CRMC Executive Director

Jeff Willis, CRMC Deputy Director
Ken Anderson, CRMC Senior Engineer
David Reis, CRMC Environmental Scientist

John Longo, Deputy Legal Counsel

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

Chair Tikoian 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 Vice Chair moved approval of the minutes of the January 22, 2008 meeting. The motion was carried on a unanimous voice vote.

3. **SUBCOMMITTEE REPORTS**

There were no subcommittee reports.

4. **STAFF REPORTS**

There were no staff reports

5. **Presentation:** Section 160 Fees

Chair Tikoian stated that due to the snowstorm, Mr. Willis said they could put off this presentation until the next meeting

6. **CONTINUANCES:**

2006-11-078 JOHNSTON CORPORATION – Construct a 28’ x 36’ single-family dwelling connected to municipal sewers, with garage, view corridor, deck and permeable driveway.

The applicant was not present. Mr. Fugate stated that the applicant sent in a request for a continuance several days ago because their expert witnesses were not available. Chair Tikoian continued the application until the next meeting.

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

2007-04-011 THOMAS & JANE FLANDERS -- for a State of Rhode Island Assent to construct and maintain: a 4’ x 75’ fixed timber pier, 3’ x 20’ ramp, and an 8’ x 18’-9” float. The proposed terminus of the facility extends thirty-five (35) feet seaward of Mean Low Water (MLW) and achieves a water depth of approximately twelve (12”) inches whereby requiring a variance of six (6”) inches from Section 300.4.E.3.(a) (18 inch minimum required). Located at plat 333, lot 337; 252 Bellman Avenue, Warwick, RI.

Thomas Flanders, the applicant was present. Frank Hertel ,the applicant’s engineer was also present on behalf of the applicant. Mr. Anderson gave council members a brief summary on the application. Mr. Anderson stated that this is an application for a residential boating facility on the north side of Conimicut Point. Mr. Anderson said the application complies with all of the CRMC regulations except for the water depth standard. Mr. Anderson said the regulations require a minimum water depth at the terminus of 18 inches and this dock only has 15 inches requesting a variance of three inches to the minimum standard. Mr. Anderson explained the applicant had addressed the variance criteria and have said they intend to use small vessels of limited draft. Mr. Anderson said staff deferred the application to the council for their decision. Chair Tikoian asked how they got the measurement of such small parameters of 3 inches. Mr. Anderson replied engineers can do that. Mr. Gomez said he noticed they were going to install a float stop to elevate to a minimum of 18 inches. Mr. Hertel replied yes. Mr. Gomez referred to page 5 in the packet regarding the stipulations which stated that the structure is permitted as a shallow water dock no dredging would be allowed at the site in the future and that no application for extension of the dock shall be accepted and processed for 10 years from the date of the issuance of the assent. Mr. Gomez asked if the applicant agreed to these stipulations. Mr. Flanders replied yes. Mr. Gray asked about the side setbacks. Mr. Anderson replied that the abutters signed off and this alleviated the variance. Mr. Gray said he had a hard time with building a dock in 15 inches of water when 18 inches is minimal to begin with. Mr. Gray noted the dock was extended an additional 50 feet to get three inches of water and the cost to do this seemed excessive. Mr. Gray asked what the height was under the dock to the beach at high water. Mr. Flanders replied about 8-9 feet. Mr. Gray asked what was creating the need to have this pier for the types of vessels the applicant would be using. Mr. Flanders replied that the dock would be used for dinghies and for pleasure boats to offload passengers. Mr. Flanders said nothing would be tied up to the dock except the dinghies or the sunfish. Mr. Gray noted that they cannot make a requirement to

monitor the vessels on the dock because it would be prohibited. Mr. Gray said any kind of vessel with a prop would cause prop dredge. Mr. Gray said he could not support this dock. Mr. Gomez asked about the existing docks in this area. Mr. Anderson said there are similar residential piers, there are about four or five of them along the north side of Conimicut, and they predated the minimum depth requirement. Chair Tikoian stated that staff deferred the application to the council and in light of Mr. Gray's questions asked why they did not recommend denial of the application. Mr. Anderson said there is an ongoing debate about the functionality of the dock as to whether a dock that has limited functionality should be allowed. Mr. Anderson said the 18-inch minimum regulation was due to the concern of prop dredging and the impacts of not having enough water. Mr. Anderson said the applicant made their case that they are only going to use small vessels and try not to exacerbate the condition. Chair Tikoian felt that staff still could have come out with a position for denial on the application and the fact that they did not come out with a denial sends a message that they thought the dock was okay. Mr. Anderson replied if the dock were used the way it is proposed, staff would not have an objection. Mr. Gray asked how much further they would have to go out to get 18 inches of water. Mr. Hertel replied about 50 more feet. Mr. Gray said it looked like 100 feet looking at their plans. Mr. Gray asked staff about the stipulation that there would be no application or extension of the dock accepted and processed for 10 years and asked why just 10 years. Mr. Fugate said they have found that they are receiving a number of applications that go out 50 to 75 feet to get the dock through the process and within a year of processing the application, the applicants are coming back and saying they don't have enough water. He said applicants are piece-mealing their applications to get approval under the variances and then coming back in for what they really want a year later. Mr. Fugate said the 10 years was put there because there may be a situation that occurs and they may allow dredging. Mr. Fugate said they felt 10 years was a significant enough period that would discourage people from coming in with false figures. Mr. Gray asked if they could bind the applicant to a certain type of vessel. Mr. Fugate said this was difficult to enforce. Mr. Gray wanted to know if they could make the type of vessel part of the application so they could not bring in an outboard or larger boat. Vice Chair Lemont replied no and said they could bind the water depths and distance and the nondredging as a stipulation and it would run with the assent. Mr. Gray asked if a new owner could ask for an extension or modification to the dock. Chair Tikoian replied not for 10 years. Mr. Fugate said the 10 years carries with the permit. Director Sullivan asked if when staff went out to the site and noticed the other residential docks that predated the council if they looked at any evidence of prop dredging or any other evidence of vegetative disruption due to vessel traffic. Mr. Anderson replied no and there was no submerged aquatic vegetation on this side of Conimicut. Mr. Reis also replied that there is no SAV boring Conimicut that far up but there is drift macro algae but that species is not considered to be of concern. Mr. Fugate noted that some of these docks have as little as 6 to 8 inches of water and vessel are just not getting in there. Director Sullivan stated this area is a regular challenge to DEM in terms of servicing the odor complaints that are common in this area. Director Sullivan said this is an exceptionally shallow area. Director Sullivan did not think a dock made sense in this area and the various issues were problematic. Vice Chair Lemont referred to page 12 and asked if there was a big sand bar out there. Mr. Anderson replied yes. Vice Chair Lemont said he was familiar with this area and did not think there was much boating activity where this dock would be. Mr. Flanders said there are six other docks in this area, which are used for offloading people. Mr. Flanders said they do not tie up to the dock because it's too shallow at low tide. Vice Chair Lemont noted that even at high tide there is no fishing. Mr. Flanders replied yes. Vice Chair Lemont, seconded by Mr. Coia moved approval of the application with all staff stipulations and the variance. Mr. Dawson said he was leaning against this application. Mr. Dawson said the applicant said he would use the dock for an 8-foot dinghy and two sunfish and then you have powerboats loading and unloading people. Mr. Dawson felt this was a discrepancy in the testimony. Mr. Flanders said you could only bring people in at high tide and would not bring them in at low tide. Chair Tikoian called for a roll call vote on the application:

Chair Tikoian called for a roll call vote on the motion for approval of the application:

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

3 Affirmative 5 Negative 0 Absentation

The motion failed. The application was denied.

8. APPLICATION REQUIRING PUBLIC HEARING FOR A SPECIAL EXCEPTION:

2006-04-002 RI DEPT of TRANSPORTATION -- Replace existing Sakonnet River Bridge (RI Bridge No. 250) that carries RI Route 24 over the Sakonnet River between Portsmouth and Tiverton, with a new bridge span and approaches south of the existing bridge location. The project will require a CRMC setback variance for work within 50' of coastal features, a variance for filling on a coastal feature, a variance for exceeding 3:1 fill slopes, and a variance for not treating the runoff from project impervious surfaces for 80 total suspended solids (TSS) removal. The project will further require a special exception for filling in tidal waters (for six bridge piers and public access fishing pier/boat ramp – total fill volume 11,279 cu. yd.) and for filling coastal wetland (two wetlands will be filled permanently and one on a temporary basis – total permanent fill area 5,500 s.f.). Wetland mitigation is required pursuant to RI CRMP Section 300.12 to compensate for wetland impacts. The wetland to be temporarily filled is proposed to be recreated in place. The project further includes dredging for bridge pier installation and causeway/boat ramp preparation (3,165 cu. yd. total). Stormwater management practices are proposed to treat runoff including the construction of two stormwater detention ponds and 3 bio-filtration facilities. The project further includes approach and alignment improvements, public amenities and landscaping

David Fish, Managing Bridge Engineer for the Rhode Island Department of Transportation was present on behalf of the applicant. Andrew Teitz, Town Solicitor for the Town of Tiverton was also present. Mr. Reis gave council members a brief summary on the application. Mr. Reis stated that this application had been continued. Mr. Reis stated the project was to replace the existing Sakonnet River Bridge which carries Route 24 over the Sakonnet River between Portsmouth and Tiverton. Mr. Reis stated that the new bridge span is south of the existing bridge location. Mr. Reis said there are a number of variances and special exceptions which he read into the record previously and are part of the applicant's presentation. Mr. Fish stated at the last hearing he gave a brief description of the project. Chair Tikoian asked Mr. Fish to address the issue of why this was delayed and see if it had been rectified. Mr. Fish explained that the reason the application was delayed was because they have been in conversation with the Town of Tiverton and that they went to the Tiverton Town Council meeting on February 4th along with Director Williams, the consultant and members of the DOT staff to address a number of the town's concerns. Mr. Fish stated that they have some additional concerns but in good faith they have made promises to the Town to remain an open dialogue and made a commitment to meet with them quarterly to discuss any issues they may have with the project. Mr. Fish felt they are in the process of mitigating the issues with the Town and wanted to move forward with the hearing. Mr. Tietz stated that they did have a good meeting with the applicant and that Director Williams along with the appropriate staff. Mr. Teitz sated that they agreed to things and resigned to things that are not going to change. Mr. Teitz stated that his main concern was to make sure the agreements they made were part of the assent. Mr. Teitz wanted the execution of construction and maintenance agreement

with the Town of Tiverton regarding local street paving and drainage systems underneath those streets the applicant is putting in drainage systems on as a condition of the assent. Mr. Teitz wanted to make sure if the systems failed they were repaired. Mr. Teitz said the applicant would be responsible for any failure of the systems and the town would be responsible for the day-to-day maintenance of the systems. Mr. Teitz had three additional conditions they wanted to have put in the CRMC assent: 1) DOT would be responsible for perpetual and permanent maintenance of the berm, landscaping, swales and drainage ponds; 2) testing of all soils per DEM standards and that the results are regularly provided to the Town of Tiverton and to CRMC; and 3) DOT would be responsible for any major failure of the drainage systems they are installing under the Town streets and that the Town would be responsible for the day-to-day maintenance of the drainage systems. Chair Tikoian went through the four conditions mentioned by Mr. Teitz and wanted to make sure they would not be setting a precedent. Chair Tikoian asked Director Sullivan about the request to test all soils to DEM standards and asked if this was part of the water quality certification. Director Sullivan felt to test the material or provide evidence of a safety was not an unreasonable request and is generally provided to DEM as part of the information on a regular basis. Director Sullivan stated this would be a normal condition of a permit of this magnitude. Chair Tikoian asked staff about the local approvals and if this was a prerequisite. Mr. Fugate replied the project is on state property and they were exempt from local approval. Mr. Fugate stated they usually ask for a maintenance agreement and this was not an issue. Chair Tikoian asked about the DOT perpetual maintenance of the swales and the drainage ponds. Mr. Teitz wanted the landscaping on the berm included. Mr. Fugate noted that there are some fairly significant slopes in this area and staff also had some concerns with the erosion and maintenance of the slopes. Mr. Fugate said the failure of the slopes was part of the staff concerns and stipulations. Vice Chair Lemont asked if there is a failure who is the enforcing authority. Mr. Fugate said DOT would be responsible. Vice Chair Lemont asked why CRMC would be involved. Mr. Fugate said because they are concerned about the slope failure in terms of the stormwater. Mr. Fugate said the slopes are going to the detention basins. Vice Chair Lemont asked what authority they have to enforce this. Mr. Fugate replied they would have the authority under the permit and under the authority of DOT to enforce. Chair Tikoian asked Mr. Teitz if he felt it was CRMC's responsibility to go out there and check to make sure that it is done properly and they have to initiate legal action. Chair Tikoian wanted to know how this was going to work. Mr. Fugate explained during construction there would be an environmental monitor that would report to CRMC and this would be a person on staff hired by DOT that is an independent monitor that reports back to the agency. Director Sullivan had a problem with the language used by Mr. Teitz regarding the term landscaping and said he had no problem with appropriately vegetated berm as vegetation is used to stabilize a structure. Mr. Teitz agreed. Mr. Teitz felt these conditions would benefit everyone down the line and if they look at the assent 10 years down the line they would have the authority to deal with it. Mr. Reis said the Town is saying if the State is going to put in the drainage systems in the Town roads they want the state to be responsible for any major failures and the Town would take care of the day-to-day maintenance associated with these systems. Chair Tikoian noted that if this bridge was not built they would not get the detention ponds or the drainage systems. Mr. Reis said correct. Mr. Fish stated that it was standard operating procedure for them to enter into a construction and maintenance agreement with any municipality they do work in and they are agreeable to the items Mr. Teitz had stated. Chair Tikoian said they were asking that these statements be part of the CRMC assent and asked if he was okay with that. Mr. Fish replied yes. Mr. Longo explained that if this treatment system failed and suddenly there were pollutants coming out of the pipe, the council would go to the pipe owner and say fix the pipe. Mr. Longo said if they have stipulation number 4 the town is going to point to the state and say there is a major failure and you have to fix that and the state is going to say that the town failed to maintain the pipe properly and it's there at fault. Mr. Longo said there would be a lot of finger pointing. Mr. Longo did not agree with this stipulation. Mr. Teitz said the applicant agreed to this and wanted it part of the stipulations. Mr. Teitz noted that this would

be part of the construction and maintenance agreement. Director Sullivan did not agree with this stipulation and felt that CRMC would become an arbitrator 20 years from now if there was a failure. Director Sullivan felt that this was a contractual issue between the Town and DOT not CRMC. Chair Tikoian said this was also a concern of his. Chair Tikoian felt the agreement should be between the Town and DOT and not have CRMC be in the middle on this issue. Mr. Teitz felt this was the responsibility of CRMC, if they approve the plan they should realize the future enforcement. Chair Tikoian said the issue is who is going to fix it and that CRMC does not want to arbitrate who is going to fix it. Mr. Teitz said they will have a construction and maintenance agreement which states who is responsible, who is going to fix it, and if there is a dispute they will submit the issue to an arbitrator so CRMC does not have to. Mr. Teitz said if CRMC finds there is a failure they can serve notice of violation. Mr. Fugate noted that with subdivisions and other properties with drainage they require the maintenance agreement to be worked out between the Town and the party. Mr. Fugate said CRMC would cite whoever the structure land is on for the failure to maintain then they work it out amongst themselves. Mr. Fugate said they are rarely involved in any dispute resolution between the parties. Chair Tikoian felt they could reference number four in the maintenance agreement between the Town and DOT. Mr. Teitz wanted to combine number four with number one. Mr. Teitz said number one would read “as a condition of the assent, execution of a construction and maintenance agreement with the Town regarding local street paving and drainage systems underneath the streets. The DOT shall be responsible for any major failure of said drainage systems under Town Street. The Town shall be responsible for day-to-day maintenance of the drainage system.” Mr. Longo suggested that they end the language at the execution of the construction and maintenance agreement. Mr. Teitz wanted to keep it in. Mr. Gray felt they could have the maintenance agreement and within the agreement they could deal with catastrophic failure and daily maintenance. Vice Chair Lemont was bothered by the redundancy in the language and the fact that in these days of budget and crisis they were asking CRMC to take on a new responsibility. Vice Chair Lemont asked what happens if they do not incorporate this language are they saying it would change their agreement with DOT. Mr. Teitz said they asked for a continuance a month ago and had this all amicably agreed to and felt they could incorporate it in the assent. Chair Tikoian said they worked it out amicably with DOT and not CRMC. Chair Tikoian stated staff reviewed the application and thoroughly reviewed it from an environmental point of view and now the town wants to bring another enforcement obligation on the agency. Chair Tikoian felt they were asking for something beyond the call of duty. Mr. Abedon asked if anything the council did would nullify the agreement with the Town and DOT. Mr. Long replied no they have a private agreement between them. Mr. Reis suggested a condition of the assent be that they workout a maintenance agreement between them and leave it to the Town and DOT to workout that agreement and submit it to CRMC to be incorporated into the assent as a condition of that approval. Chair Tikoian said that is what they were saying. Director Sullivan stated that DEM issued a water quality certification last month and looked at the application fairly substantially. Director Sullivan, seconded by Vice Chair Lemont moved approval of the application subject to staff’s recommendations, conditions and absolute requirement on the clarification of the right-of-way access. The motion was carried on unanimous voice vote. Chair Tikoian stated they needed to clear up a housekeeping matter on the special exception which requires its own voice. Director Sullivan, seconded by Mr. Gray moved approval of the special exception. Mr. Coia, seconded by Vice Chair Lemont moved to close the public hearing on the special exception. The motion carried.

Chair Tikoian called for a roll call vote on approval of the special exception on the application:

Mr. Dawson	Yes	Director Sullivan	Yes
Mr. Gomez	Yes	Mr. Gray	Yes

Mr. Coia	Yes	Mr. Abedon	Yes
Vice Chair Lemont	Yes	Chair Tikoian	Yes

8 Affirmative 0 Negative 0 Absentation

The motion carried.

10. PUBLIC HEARING ON CHANGES TO THE Rhode Island COASTAL RESOURCES MANAGEMENT PROGRAM/PROCEDURES:

**The following change is proposed:
Rhode Island Coastal Resources Management Program
Rhode Island Coastal Resources Management Procedures**

Proposed fee for submerged telecommunications cables

The council will hold a public hearing to address legislative provisions for creating an annual fee for submerged telecommunications cables, as allowed in budget article 30 – trans-atlantic submarine cable fee - of the 2007 legislative session to solicit the range of fee options for such. The purpose of this hearing is to seek input on fee options for submerged trans-atlantic telecommunication cables and to revise the Council’s fee schedule.

Chair Tikoian opened the public hearing. Chair Tikoian said the program change has to do with submerged telecommunications cables and legislation that was passed last year. Chair Tikoian said Ames Colt, Chair of the Bays and Rivers Coordination Team would give the council a presentation on their perspective on this change to the submerged cables and the fees that they are going to request the council to approve. Mr. Colt explained that this public hearing was in response to a decision by CRMC’s Planning & Procedures Subcommittee at its November 20, 2007 meeting to discuss implementation of Budget Article 30 which was passed in 2007 as part of the RI FY2008 budget. Mr. Colt stated that the budget article states that CRMC shall impose a maximum fee of \$80,000 per annum for any transatlantic submarine cable that makes landfall in Rhode Island. Mr. Colt said the public hearing was to help CRMC solicit input on establishing the fee. Mr. Colt stated that the coordination team requested that CRMC set the annual fee at \$38,000 per year, per cable, starting in RI FY 2008 payable by May 1st annually. Mr. Colt said the coordination team also requests CRMC to stipulate they will reassess this fee at least every 5 years. Mr. Colt explained how they justified this amount and that they looked at other coastal states that place fees upon these kinds of cables and not just for transatlantic cables. Mr. Colt stated that Budget Article 30 states that CRMC shall impose a maximum fee of \$80,000 per annum and the General Assembly intended the fee to be set in high end of the range of fees applied to submarine cables utilizing state submerged lands. Mr. Colt said they looked at fees applied to submarine cables installations on coastal state submerged lands around the country which are summarized in Table 1 in his memo. Mr. Colt said they recommend that CRMC set the fee at \$38,000 per year per cable as fair and accurately reflecting the intent of the RI General Assembly and to ensure that this fee responds or is set in relation to changes in long-term market conditions that it be reassessed every 5 years by the council. He said they ask that the invoices be issued by April 1 each year and payable in 30 days to ensure that the fee is collected within each fiscal year starting in FY2008. Vice Chair Lemont asked who issues the bill. Director Sullivan replied CRMC is required by statute to issue the bill. Chair Tikoian asked if they had discussions with owners of the cables. Mr. Colt replied no. Chair Tikoian asked if there were any owners of the cables present. Mary Jane Balsler from Block Island replied yes she is representing a potential owner of the cable. There were no other cable owners present. Mr. Gomez felt Mr. Colt gave a good presentation to justify how they arrived at this number. Ms. Balsler stated that she writes

grants for the Block Island Power Company. Ms. Balsler said she has written a grant for an undersea electric cable with fiber optic capacity in the Block Island sound which calls for transatlantic. Ms. Balsler asked if they considered Block Island transatlantic. Director Sullivan replied no they are exempt. Mr. Colt said the fee would not apply to interstate cable like this only to transatlantic. Director Sullivan, seconded by Mr. Gomez moved to close the public hearing. The motion was carried on a unanimous voice vote. Director Sullivan, seconded by Vice Chair Lemont and Mr. Gomez moved approval of the recommendation for a \$38,000 transatlantic cable fee. Chair Tikoian noted that they advertised to have a discussion to access a fee and did not advertise the \$38,000 fee and asked if they have to advertise the fee because the cable owners are not present. Mr. Longo felt they should advertise the fee. Mr. Willis stated the notice was also to change the Council's fee schedule. Mr. Willis said this would be the fee schedule for cables. Chair Tikoian noted that they were not changing the scheduling they were adding a fee to the schedule. Director Sullivan, seconded by Vice Chair Lemont moved to close the public hearing and advertise the \$38,000 fee and that this amount be reviewed every 5 years as suggested by Mr. Colt. The motion was carried on a unanimous voice vote. Chair Tikoian continued the public hearing to the second meeting in March.

12. Category "A" List

There were none held.

There being no further business to discuss. The meeting was adjourned at 7:20 p.m.

Respectfully submitted,
Grover Fugate, Executive Director
Reported by Lori A. Field