

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, April 28, 2009 at 6:00 p.m. at the Department of Administration; Conference Room A; One Capitol Hill, Providence, RI.

### **MEMBERS**

Michael Tikoian, Chair  
Paul Lemont, Vice Chair  
Ray Coia  
Don Gomez  
David Abedon  
Bruce Dawson  
Michael Sullivan

### **MEMBERS ABSENT**

None Absent

### **STAFF PRESENT**

Grover J. Fugate, Executive Director  
David Reis, Spv Environmental Scientist  
Caitlin Chaffee, Coastal Policy Analyst  
Brian Goldman, Legal Counsel

1. Chair Tikoian called the meeting to order at 6:05 p.m. and made a brief statement on the Council's permitting process.

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

Mr. Coia motioned, seconded by Director Sullivan, to approve minutes of previous meeting, April 07, 2009. Motion carried on unanimous voice vote.

3. **SUBCOMMITTEE REPORTS**

Chair Tikoian stated that there would be an Ocean SAMP Subcommittee meeting on Thursday, April 30, 2009 at 6:00 p.m. at the University of Rhode Island Narragansett Bay Campus.

4. **STAFF REPORTS**

Mr. Fugate reported to Council about the three day conference that CRMC co-sponsored with the Natural History Service regarding the environmental impact of Wind Energy in the offshore environment and two workshops with federal officials and some Europeans to give us the benefit of their experience in the offshore environment.

Chair Tikoian informed Council that he and Mr. Fugate were invited to update the Senate Environmental Oversight Committee on the Ocean SAMP. Chair Tikoian stated that he would like to update the Council as well at a future meeting.

Chair Tikoian made a few suggestions to the Council about "Going Green" with the Agenda package; with possibilities being paperless Agendas either by personal notebooks or pdf scans via e-mail. Future discussions to come.

Mr. Fugate informed Council of CRMC's newest employee, Mr. David Beutel, CRMC's new Aquaculture Coordinator. Mr. Fugate also informed the Council that we would be losing one of the offices administrative support staff, Pam Casey as she accepted a position at Rhode Island College.

5. **CRMC EDUCATION SERIES** – presentation by Caitlin Chaffee on CRMC's participation in the Habitat Restoration program
6. **CHAIR TIKOIAN READ THROUGH THE AGENDA TO SEE WHICH APPLICANTS/ ATTORNEYS WERE PRESENT.**

All applicants and/or their attorneys present

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

**2008-10-024 WATCHEMOKET REALTY INC -- Replace/enlarge exterior deck over the Seekonk River, south and east of existing "East Providence Yacht Club" building. The new deck (360 sq ft +/-) will replace an existing deck (100 sq ft +/-). Located at plat 16, lot 22; 9 Pier Road, East Providence, RI.**

The applicant, Michael Perry (co-owner), was present. David Reis gave brief overview of application stating that the staff deferred the decision for approval/denial to the Council based on deck to be expanded over Type 4 waters. Mr. Reis cited RICRMP Sections 300.3.D.5(b) and 200.4.C.1 which would then pull in Section 130.A.1 for Special Exception. Mr. Perry was sworn in and gave explanation to the Council of project intent stating that originally application was to shore up the existing deck. Mr. Fugate stated that in the process of maintenance of the deck, large stones found in area requiring the expansion and also allowing for Public Access. Discussion on commercial restaurant and public access concerns between Council and applicant. Mr. Fugate stated that easement language would be added to the permit and that permit would be recorded in land evidence records. It was decided by Council that a special exception was not required. In reviewing the application language, Mr. Gomez questioned a statement saying that public access would be denied from "sun up to sun down". Mr. Perry assured the Council that this particular statement was a typographical error and should state "sun down to sun up". Mr. Perry stated that for liability purposes that particular access way would not be available after sun down. Mr. Lemont stated that he is very familiar with the proposal and is in favor of the change to the waterfront development. Mr. Lemont stated that he commends Mr. Perry's proposal to enhance the areas waterfront. Mr. Lemont motioned, seconded by Mr. Dawson, to approve application. Discussion on application of MetroBay SAMP and UCG guidelines affecting this application; Mr. Reis stated that Coastal approved greenway in this area. Motion to approve carried on unanimous voice vote.

**2007-12-054 MICHAEL NEVES – Construct and maintain a residential boating facility to consist of a 4' x 120' fixed pier, a 3' x 20' ramp and a 4' x 33' float with 6 tie-off piles. The most seaward tie-off pile extends to 90-feet beyond mean low water (MLW) requiring a 40-foot variance from the CRMP (50-foot MLW) standard. Located at plat 21, lot 83; 706 Park Avenue, Portsmouth, RI.**

**2007-12-056 MICHAEL NEVES -- Construct and maintain a residential boating facility to consist of a 4' x 121' +/- fixed timber pier, a 3' x 18.5' ramp and a (4' x 33') 132 square foot float with 6 tie-off piles. The terminus of the dock extends to 93-feet beyond mean low water (MLW) requiring a 43-foot length variance from RI-CRMP § 300.4.E.3. standard. Located at plat 21, lot 84; 726 Park Avenue, Portsmouth, RI.**

Chair Tikoian stated that because these two applications are relatively similar, the Council would review them at one time but take two votes.

The applicant, Michael Neves is present as well as his attorney, Michael Daly. Mr. Reis gave a brief overview of both applications stating that the both docks require a 40' length variance. Mr. Reis stated that

staff recommended denial not because of structural or placement issues but because RICRMP policy determination of whether property can be considered residential. Mr. Goldman stated that staff had brought the issue to him in a staff meeting for clarification. Attorney Daly submitted aerial photo to Council as Exhibit which Mr. Goldman identifies as Neves #1. Mr. Neves is sworn in. Mr. Neves authenticates photo. Mr. Daly states that both parcels are similar and contain multi unit residential properties with no commercial use. Mr. Daly stated that all other approvals received such as ACOE and HPHC. He reiterated that there are no environmental concerns from CRMC staff and that all that needed to be decided was the legal definition of residence. Mr. Daly distributed to Council a letter written to Mr. Deveau of CRMC staff dated 3-20-2009 stating the reasons that the applicant believes that CRMC staff interpretation is legally wrong. Mr. Daly goes over aspects of the letter stating that RICRMP Section 300.4 does not have language specifically pertaining to multiple unit residences and no language saying that rental properties cannot be considered private residences. Mr. Daly talked to Council about properties located at 10 and 14 Point Road which are rental properties that also contain docks. Council discussion on the properties in question referring to whether or not dock was there previous to current CRMC regulations. Mr. Reis stated that many of the docks in Blue Bell Cove were issued "Grandfather" dock permits. Mr. Daly references Supreme Court case law confirming legal definition of residences from their viewpoint. Mr. Goldman states that it may apply to zoning statutes. Mr. Daly stated that the case law referred to restrictive covenants; property related. Mr. Gomez asked what the rental situation at the property entails. Mr. Daly stated that it is long term rentals. Mr. Dawson asked who would be using the docks. Mr. Neves stated that the tenants would be using the docks and that building the docks would enhance his property. Director Sullivan asked how many current tenants had vessels. Mr. Neves stated that there was one on a trailer and two on the beach. It was established that the current tenants did not have need for dock and Mr. Neves did not have a vessel because he did not have a dock. Mr. Fugate stated that the Council had always interpreted a residential boating facility as defined private residence, condominium for homeowner's association. Mr. Fugate stated that the Council had always considered apartment buildings to be a commercial entity or commercial structure. Mr. Coia asked for documentation supporting Mr. Fugate's statement. Mr. Fugate stated that documentation just stated private residences, condominiums or homeowners associations. Mr. Coia asked if they've ever been denied previous to this application. Mr. Fugate stated that applicants do not usually get this far. Chair Tikoian asked Mr. Goldman what happens to an application when our regulations are silent? Mr. Goldman stated that the Council can interpret the regulations they enact. Mr. Daly made closing statement. Chair Tikoian clarified Mr. Goldman's answers for the record. Mr. Dawson asked Mr. Neves what would happen to the rent between two tenants, same unit, one with boat, one without. Mr. Neves stated that he had not crunched the numbers yet.

Two minute recess.

Vice Chair Lemont motioned, seconded by Mr. Gomez, that both of the applications be denied. No further discussion. Motion to deny carried. One opposed.

**2008-09-130 ANNE LAW – "As-built" application for grading activities, and construction of a fieldstone stairway and fieldstone "patio", on a dune and within the RICRMP dune setback area, located on a "Developed Barrier Beach". Located at plat 6, lot 136 and 137; 597 Corn Neck Road, New Shoreham, RI.**

Present for the applicant is Attorney Stephen Litman. Mr. Reis briefed Council stating the application is for an as built activity which included the construction of the fieldstone stairway and fieldstone patio on a dune within the dune setback area on a developed barrier beach. Mr. Reis stated that this application is subject to enforcement action. The applicant could not submit a complete application to CRMC because they could not obtain local approval because according to the local building official the stairs were not built to code. Mr. Reis stated that they reviewed the application inters of where various soils are, beach type or not, where the wetlands were, and looked at the delineation in the coastal program as to where the edge of the barrier beach is. The application was also reviewed the CRMC's coastal geologist. Mr. Reis stated that based on their review it is the opinion of the staff that the application is on the barrier beach and has effected the dune which is prohibited under the coastal program as well as altering the setback of a dune. Mr. Reis stated that

staff does not feel that the application satisfies the burden of proof for a special exception. Mr. Reis stated that staff recommended denial. Attorney Litwin stated that he had the authority to bind the applicant. Attorney Litwin gave overview of Ms. Law's association with piece of property stating that when she purchased the property there were remnants of a stairway to the beach, so due to liability reasons she rebuild the stairway and the patio area based on her interpretation on what was there previously. Chair Tikoian stated that it would have been in Ms. Law's best interest to receive all the approvals prior to the construction. Mr. Fugate stated that what may have been there previously may have been permissible as CRMC does allow walkover structures across the dunes and wooden stairs that don't interfere with the dune process. Mr. Fugate stated that the structure on the property now does interfere with the dune process and with any storm activity will destroy the structure. Mr. Fugate stated that it would be best to remove all the material out of the area and the applicant would be permitted to build a walkover structure along the stairwell as long as it does not interfere with the dune process. Attorney Litwin stated that many of the stones were there already. Ms. Wendy Waller of the Save the Bay voiced an objection from Save the Bay. Mr. Dawson stated that he would like to see the person hired to do the work held somewhat responsible as well. Director Sullivan motioned, seconded by Mr. Lemont, that the council enforce the recommendation of the staff. No discussion. Mr. Goldman clarified that motion is to deny special exception and remove structure and restore area as per staff report. Mr. Sullivan stated that any new construction would require a new application after the restoration of the property. Chair Tikoian requested to modify the motion to have a roll call vote for denial of the special exception. New motion seconded by Mr. Coia. Chair Tikoian stated that a vote "yes" is a denial of the special exception.

Director Sullivan	yes	Mr. Abedon	yes
Mr. Dawson	yes	Mr. Gomez	yes
Mr. Coia	yes	Mr. Lemont	yes
Chair Tikoian	yes		

Mr. Goldman – unanimous; Chair Tikoian motion carries.

Director Sullivan motioned, seconded by Mr. Lemont, to go with staff recommendation to deny application as presented and restore area prior to acceptance of a validly executed application. Motion to deny carried on unanimous voice vote.

## 8. Category "A" List

None were held.

There being no further business to discuss. The meeting was adjourned at 7:39 p.m.

Respectfully submitted,  
Grover Fugate, Executive Director

Reported by Lisa A. Mattscheck