

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

MEMBERS

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

STAFF PRESENT

Grover J. Fugate, Executive Director
Jeffrey M. Willis, Deputy Director
David S. Reis, Supervising Environmental Scientist
Tracy Silvia, Sr. Environmental Scientist
Danni Goulet, Dredge Coordinator
Brian Goldman, Legal Counsel

1. Chair Tikoian called the meeting to order at 6:00 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 Mr. Dawson, to approve minutes of previous meeting, July 13, 2009. Motion carried on unanimous voice vote.

3. **SUBCOMMITTEE REPORTS**

Vice Chair Lemont stated that the Policy and Planning Subcommittee met on Tuesday, July 13, 2009 and seeks council's concurrence to begin rule making on Management Procedures Section 4.3.2, Schedule of Fees as directed by legislature and Department of Administration to increase: the beach vehicle permit -- in-state from \$50 to \$100 and out-of-state from \$100 to \$200; the residential dock application from \$500 to \$1,500; the structural shoreline protection application from \$750. to \$1,500 for the first 100 linear feet and from 10 to 15 per linear foot thereafter. Also, changes to Metro SAMP – all projects must comply with a 15% vegetative cover and 100% stormwater management standards of UCG Section 150.1. Chair Tikoian asked for comment. Hearing none, Council accepts to subcommittee recommendation and will send them out to public notice.

4. **STAFF REPORTS**

There were no staff reports.

5. **CHAIR TIKOIAN READ THROUGH THE AGENDA TO SEE WHICH APPLICANTS/ ATTORNEYS WERE PRESENT.**

6. APPLICATIONS REQUESTING EXTENSION OF ASSENT BEFORE THE FULL COUNCIL FOR DECISION:

2003-02-059 ANTHONY PALAZOLLO – Extension of Assent for dwelling, driveway and OWTS. Located at plat 155, 122, 123, 124; Shore Gardens Road, Westerly, RI.

Attorney Thomas McAuley representing the applicant. Mr. Fugate gave brief overview of application stating that this is the fourth and final request for extension of the assent. Mr. Fugate stated that to date there has been no work initiated under this assent and that a site inspection had been done and there are no infractions currently at the site making it eligible for its fourth and final extension. Vice Chair Lemont motioned, seconded by Mr. Coia, to approve final extension. Chair Tikoian reiterated to Mr. McAuley that this was the final extension to which Mr. McAuley stated he understood. Motion to approve extension request carried on unanimous voice vote.

7. ADMINISTRATIVE APPLICATIONS BEFORE THE FULL COUNCIL FOR DECISION:

2008-11-065 BRIAN SADLER – Construct a new four-bedroom single family residence with attached garages, decks, driveways, OWTS and associated earthwork. Located at plat 177, lot 96; 402 Poppasquash Road, Bristol, RI.

Mr. Sadler present as well as his attorney, Donald Packer; project engineer, Steven Cabral; and project biologist, Scott Rabideau.

Tracy Silvia gave brief overview of application stating the applicant is proposing a four-bedroom single-family residence with two garages, driveway, decks, on-site septic and associated earthwork on Bristol Harbor, Poppasquash Point. Ms. Silvia stated that the required buffer zone for this project is 150 feet with a 175 foot setback and freshwater wetland rules dictate area of 50' and 100-foot riverbank. Ms. Silvia stated that the applicant is seeking a 50% variance to the coastal requirement, and that although they meet the 50' freshwater requirement they did not address the 100-foot riverbank requirement at all. Ms. Silvia stated that the Executive Director declined the issuance of the assent administratively. Ms. Silvia briefed the council on the permit history of this lot as well as violation history stating that CRMC staff has worked with various consultants and applicants on this site advising all to minimize, redesign, relocate and to become conformant. Ms. Silvia stated that as full compliance can be achieved on lot, staff has recommended denial as currently proposed.

Mr. Packer called Steven Cabral, project engineer, Crossman Engineers. Mr. Cabral was sworn in. Mr. Cabral testified as to the placement of the structure being up against Town zoning setback lines. Mr. Cabral testified about the placement of the on-site wastewater treatment system using aerial photograph (marked Applicant's 1 for identification purposes) and submitted site plan stating that due to the topography of the site, the septic system must be located where it is on the plan. Mr. Cabral stated that the septic system design is based on the number of bedrooms in the dwelling therefore the footprint of the house has no bearing on the size of the septic system, and if the footprint of the house was reduced, the OWTS would stay the same. A sketch (marked as Applicant's #2 for identification) is reviewed showing the design progress and efforts towards compliance to CRMC regulations since the project began in 2002. Chair Tikoian questioned Mr. Cabral in regards to the applicant's effort to obtain local zoning relief so as to maximize the CRMC buffer requirement. Mr. Packer stated that no application to the Town has been made. Mr. Goldman made Applicant's exhibit #2 a full exhibit.

Mr. Packer called Scott Rabideau, project biologist, Natural Resource Services. Mr. Rabideau was recognized as an expert witness and sworn in. Mr. Rabideau stated that he had read staff comments and that staff concurs on project consistency for part two and three of CRMP. Applicant's exhibit #1 was discussed by Mr. Rabideau explaining how he developed the overlay using a 2008 aerial photograph to show as up to date a picture of existing conditions and where the house, driveway, septic fall in relation to adjacent roadways, coastal features and adjacent homes. Applicant's Exhibit #1 made full exhibit. Mr. Rabideau discusses the buffer areas and

coastal features in relation to the plan utilizing the aerial. Mr. Rabideau explained the impact on the 100-foot riverbank wetland due to the fact that the applicant is requesting a 50% reduction in the buffer zone. Mr. Rabideau describes the neighboring properties as shown on the aerial stating that the house portion is modest compared to the other structures, mentioning the size of the garage. Mr. Rabideau states that most of the neighboring properties have no coastal buffer zone and they front on Usher Cove but the Sadler property fronts on the stream and would have the largest buffer zone of all existing properties even with the 50% reduction. Using the aerial layout graphic, Mr. Rabideau explains to the Council why the applicant did not seek zoning board relief stating that if Mr. Sadler were to reconfigure house/garage on the site, the neighboring property would lose their privacy buffer area between the two properties. Mr. Rabideau and Chair Tikoian discussed buffer zone criteria with Mr. Rabideau stating that there would be no cumulative impact from this particular case.

Mr. Packer called the applicant Brian Sadler. Mr. Sadler was sworn in and discussed with Mr. Packer the history of his association with CRMC starting with a Cease and Desist Order. Mr. Sadler stated that he is the owner of First Acura car dealership and that he also collects antique cars which he keeps away from his dealership. Mr. Sadler explained that the garage was an essential to his livelihood and enjoyment. Mr. Sadler stated that he had worked with Mr. Rabideau and that the plan they submitted was the best for him and his family.

Ms. Silvia clarified that staff requested the reduction in the number of bedrooms which would enable the applicant to reduce the size of the septic system giving them more area to move the design around. Ms. Silvia also clarified a few reduction misconceptions regarding the buffer zone. Mr. Gomez questioned Ms. Silvia about compensatory buffer. Ms. Silvia stated that staff has done in the past and would consider it in this case.

After deliberation with client, Mr. Packer stated that the client would like to revisit the application rather than take a vote. The Council continued the application to allow applicant to rework.

2009-03-055NI, Ltd. – “As Built” approval of “filling, grading, and construction of masonry walls” (ref. Cease and Desist Order No. 08-0140, dated 11/14/08), and additional proposed new filling, grading, (landscape) wall construction, gazebo (completion) and misc. landscaping/drainage construction, landward of “cliff walk”, along 700’ section of applicant’s property. Located at plat 36, lot 50; 245 Ruggles Avenue, Newport, RI.

Present for the applicant, Attorney Turner Scott. Also present as witnesses for the applicant are engineer, Mr. Cataldo; environmental professor, Dr. Cooper; and architect, Dr. Yoder. David Reis gave brief overview of application stating that the application is before the Council for an as-built approval of filling, grading and construction of masonry walls which was the subject of a CRMC Cease and Desist Order issued in November of 2008, as well as additional work consisting of additional filling, grading and wall construction and completion of a gazebo and miscellaneous landscaping. Mr. Reis stated that approximately 700’ of the applicant’s property abuts the Cliff Walk in Newport and that a portion of the fill and wall construction is located within the minimum 50-foot setback contained in Section 140 of the CRMP requiring variances. Mr. Reis stated that from his environmental scientist perspective there is not a significant environmental impact due to the landscaped border and manmade shoreline, but from an engineering perspective, it does constitute fill in a V-zone which causes a concern for scour. Mr. Reis stated that if the variances were not granted, the walls would have to be taken down and the fill would have to be removed to restore the area creating a difficult situation. Mr. Scott stated that the State Historic Preservation Commission has no objection to the project as it has always been a landscaped area.

Chair Tikoian clarified by stating that Council had two options; one is to deny the application and order restoration and the second is to approve an as-built; or three approve an as-built with a fine. Mr. Scott stated that he thought the enforcement proceedings would include the Administrative Fine. Mr. Goldman clarified that the Council also has the ability to impose a fine if they so chose. Vice Chair Lemont asked what the procedure would be if the Council denied the application and asked for restoration of the site. Mr. Scott stated that heavy equipment would be involved on the site to remove the wall that’s already been built and also to remove the fill. Vice Chair Lemont stated that was not a viable alternative. Clarification was made that the

State Historical Commission and the City Historical commission did not object to the project. Vice Chair Lemont motioned, seconded by Mr. Abedon, to approve the project with a \$2,500 fine. Mr. Driscoll stated concerns about ruining the integrity of the cliff walk and the loss of view landward towards the building and also his concerns of other properties along the cliff walk doing the same thing and both views are valued. Attorney Scott stated that no views will be impaired by this project clarifying that if privacy was the issue they could move their project out of CRMC jurisdiction and put up the wall as the City of Newport does not regulate walls or fences. Discussion between council members on precedent setting for similar projects. Motion carried on unanimous voice vote.

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

2007-12-048 KAREN SUE, INC -- Expand an existing commercial pier and establish a Structural Perimeter Limit (SPL) in accordance with Section 300.3. Located on Point Judith Pond at plat 88-1, lot 29 and 30; 54 Perrywinkle Road, South Kingstown, RI.

Donald Roebuck, principal for Karen Sue Inc present. Attorney Elizabeth Noonan present for the applicant, as well as David Roebuck with Salt Pond Oyster Company and Gregory Roebuck, professional engineer and designer of project. Opposition to the application is Attorney Sean Coffey representing Frank Mazza principal of Perrywinkle Realty and Perrywinkle Marine, also present; along with Warren Hall, engineer.

Danni Goulet gave brief overview of application to the Council stating that Karen Sue Inc is proposing to expand an existing commercial dock with one 80-foot long fixed pier section and two 40-foot long dock extensions which would enable the applicant to move existing aquaculture upwellers into deeper water. Mr. Goulet stated that the applicant had adhered to the CRMP Section 300.3 rules. Mr. Goulet also stated that there was an objection to the expansion by the abutter from the next lot over (not the direct abutter). Mr. Goulet explained that the objection was involving the orientation of the property line extensions of both the Karen Sue property as well as the right-of-way. Mr. Goulet stated that staff recommends approval of application as it meets all requirements; however, because of the objection, he had met with both parties twice with the town present at both times trying to resolve it with no resolution.

It was decided amongst all parties to let objectors present their case as the staff report for the applicant which recommended approval was pretty complete. Ms. Noonan stated that she believed the objection that was going to be discussed should be raised in Superior Court and that the applicant should not be held up on a project that is compliant to the Council's regulations and asks the Council to give the approval that is consistent with the staff recommendation.

Mr. Coffey made presentation to the Council, using an aerial photograph of Point Judith Pond, stating that if the applicant is allowed to extend the fingers of their L-shaped dock, there would be encroachment to his client's littoral area. Mr. Coffee spoke about the various methods of establishing the property line extensions and the fact that the Council can not determine the appropriate littoral boundary between properties. Mr. Coffey stated that the method of establishing the property line extensions on the map submitted was the straight line extension and that they have been suggesting other methods of establishing the lines. Mr. Coffey stated that he was under the impression that a letter would be initiated on behalf of the Council stating that prior to proceeding on this application issue with respect to the appropriate littoral lines should be resolved in Superior Court. Chair Tikoian stated two issues – one being competing interests and the second being littoral lines may not be correct. Mr. Goldman stated that the law specifically says that CRMC does not have the authority to adjudicate littoral rights.

Ms. Noonan briefly stated her case for the applicants stating that there was a pre-existing dock built in the 1950's that her client rebuilt. The Roebucks keep lobster boats their and perform aquaculture using upwellers that they cannot get to and are looking for resolution. Ms. Noonan stated that they would like to see the approval granted as recommended by staff, allow the applicant to proceed with their business and let the abutter take the decision to superior court if he so chooses.

Chair Tikoian presented the option that the objector has 30 days to file suit and if it is not filed within 30 days the application comes back before the Council and they vote on it. The opposition is in agreement with option. Ms. Noonan is concerned with the length of time that would take in court. Vice Chair Lemont presented a second option to the applicant that they try to come to some agreement within 30 days (sort of a 30 day grace period to the Chairman's option). Mr. Sullivan motioned to approve the application as put before the Council and based on staff's approval recommendation. Mr. Coffey stated that his client's would then like to present their case and states that he does not believe that the Council has any authorization to act on the application. Chair Tikoian stated that although he believes that the Council can act on the application as presented to us and as reviewed by staff, he would prefer to give everyone the opportunity to resolve issues. Chair Tikoian asks for guidance from other Council members. The Council consensus was to continue for 30 days and re-hear application if not file for in superior court. Mr. Goldman set forth criteria for reappearance before the Council stating that the attorneys should come back on August 25, 2009 and be prepared to proceed under the following procedure – that the lines as set forth on the plans i.e. extended property lines will be accepted for purposes of processing the application, it's not a determination by this body of any littoral rights. Chair Tikoian stated that no continuances for either side would be granted. Application continued to the August 25th, 2009 meeting.

9. Petition to change to Rhode Island Coastal Resources Management Program Section 300.17:

2009-01-026 BRIAN & BARBARA GOLDNER – Petition to change RICRMP Section 300.17 Wetland Walkover Structures

Applicant Brian Goldner present along with Attorney Kristen Sherman, Adler Pollock and Sheehan.

Jeff Willis gave brief overview of petition for rule change to the Council stating that prior to CRMC staff review, the petition was brought before the Planning and Procedures Subcommittee where a vote was taken to go through rule making. Mr. Willis stated that staff has reviewed policy change and submitted a report on findings. Chair Tikoian opened the Public Hearing.

Ms. Sherman made her presentation stating that the rule change would allow proponents of wetland walkover structures association with Type 1 waters the opportunity to come before the Council and have the Council pass upon whether or not it is appropriate to have the structure on that particular site removing the unqualified prohibition that currently exists in the regulations. Ms. Sherman stated that the amendment would permit such structures in limited circumstances where there is already an existing walkover structure in close proximity, where the structure is the only reasonable way for an individual homeowner to get access to the water, where that individual has pursued all reasonable alternative means of access and all attempts have been made to minimize the environmental impacts.

Ms. Sherman called Scott Rabideau, sworn from earlier case. Mr. Rabideau gave credentials for the record. Ms. Sherman had plan marked for the record as Goldner #1 Full and distributed copies to Council members. Mr. Rabideau explained to the Council members his view of what a walkover structure is stating that it is any kind of structure that is designed to gain access, and by CRMC's rules, gain access to the shoreline. Mr. Rabideau stated that in this particular case the small structure would traverse a wetland. Mr. Rabideau stated that he was familiar with the Goldner site as he had filed the preliminary determination for the applicant and that he had reviewed Mr. Reis' staff report. Mr. Rabideau presented is views on the property differing from Mr. Reis in the percentage of saltmarsh within Little Mussachuck Creek. Mr. Rabideau remarked that a portion of Mr. Reis' report explained how CRMC had worked to restore some of the tidal flushing in the northern part of the wetland complex to help control phragmites in the area. Mr. Rabideau stated that there was still a significant area of phragmites in the northern part. In answer to Ms. Sherman's questions, Mr. Rabideau stated that there was a pre-existing walkover structure on the property immediately adjacent to the Goldner site which crosses over a tidal creek fragmenting the habitat in that location. Mr. Rabideau described Mr. Goldner's property stating that the tidal creek is 90 to 100 feet in width to the south and 50 to 55 feet in width to the north with a depth of 3' to 3.5' in the channel at high tide. Mr. Rabideau stated that the bottom of the channel had a fairly significant layer of muck making it impossible to traverse the channel on foot and talked about alternative means of crossing the tidal creek which included guide wire and pulley of flat bottom boat, kayaks, small boats,

etc, but that this was not a possible alternative to all pedestrians cutting off a major asset to Mr. Goldner's property.

Ms. Sherman introduced Mr. Goldner to the Council and he was sworn in. Mr. Goldner gave the Council a brief background about himself and his family's lifestyle living on this property. Mr. Goldner stated that he had approached his neighbor to see if he and his family could use their walkover structure to gain access to his beach area and they were flatly denied, several times. Mr. Goldner talked about other ideas for his family to be able to gain access to their beach area but none would work for everyone.

Ms. Sherman reviews several aspects of Mr. Reis' report with the Council stating that Mr. Reis would like the language for the policy change tightened up a bit; that the language left room for interpretation. Ms. Sherman stated that while the applicant realizes that the language might have been written more broadly than expected, the Council has discretion to interpret their own regulations but that they would welcome any suggestions as to language changes should that need be.

Chair Tikoian opened the floor for public comment. Wendy Waller, Esq. spoke on behalf of Save the Bay agreeing with Chair Tikoian that the environment should not take the hit because access to the shore cannot easily be gained. Ms. Waller stated that the applicant's specific site and the area is one of the few primarily unaltered wetland complexes in this state and a Type 1 conservation area. Ms. Waller stated that it is Save the Bay's position that eliminating a strongest curve from a valuable regulation not only allows alteration of this specific, undisturbed natural resource, but also jeopardizes the hard work and progress CRMC and others have made to this date in preserving our historical wetlands. Ms. Waller finishes by saying that Save the Bay respectfully requests that the Council follow the staff report that strongly recommends denial of the petition.

Mr. Reis explained his position to the council stating that the site is a pristine site that would require much more than a wetland walkover structure to gain access to the beach. Mr. Reis gives detailed description of property. In regards to the regulation change, Mr. Reis stated that the current regulations were put into place to protect the sensitive resources particularly on Type 1 waters. Mr. Reis stated that even if this particular regulation change was approved, the Goldner site has additional prohibitions that would apply; for instance, the wetland walkover structure would have to be well over 100 feet long to go from upland to upland which is also a prohibition. Mr. Reis gave other examples of additional challenges. Mr. Goldner addressed the Council restating his position of difficulty in gaining access to his beach area. Mr. Rabideau readdressed the Council countering some of Mr. Reis's concerns stating that he realizes there are other hurdles but that the point of the public hearing is for the program change not the application for wetland walkover structure that will come in the future.

Mr. Sullivan commented that if the program change was approved it would open the door to other work and application coming before the Council. Mr. Sullivan stated he was concerned about the lack of specificity with regard to "close proximity". Mr. Sullivan stated that he could probably support the regulation change if "close proximity" was changed to a definitive number.

Mr. Gomez and Vice Chair Lemont expressed concerns about cumulative impact. Mr. Reis stated that he had done some preliminary research into other areas where this regulation might have an impact and he believed that, due to prior structures that were approved previous to the current regulation, there could be some cumulative impact.

Mr. Fugate stated that he had reviewed the petition for rule change however he did not perform a survey of all sites to see how widespread this could get. Mr. Fugate stated that maybe there were other ways to tighten up the language for the regulation.

Mr. Reis explained the aspect of disturbance to existing wildlife on the property stating that the human use would be more disturbing to the wildlife than the actual structure. Mr. Reis also explained the scenic use of this area which borders the Barrington Land Conservation Trust which have pathways that go to the shoreline that people use.

Chair Tikoian asked Mr. Fugate what his recommendation would be to make the language tighter. Mr. Fugate stated that he would like to work with Mr. Reis to see what can be done to alleviate some of the concerns expressed in the staff report. Ms. Sherman stated that they would be willing to come back and present just on the issue of “close proximity”. Mr. Rabideau stated that they would be willing to work on the inventory of photo interpretation making this a cooperative effort. Mr. Sullivan suggested minimizing the footprinting in the regulations. Mr. Abedon commented that he believed that the area being Type 1 waters means this area is special and buying property in that area, you essentially know what you can and can not do. Mr. Abedon expressed his concern about any intrusion into Type 1 waters.

Chair Tikoian continued the public hearing so that Mr. Fugate could work with staff on tightening up the language.

10. Category “A” List

None were held.

There being no further business to discuss. The hearing was adjourned at 8:35 p.m.

Respectfully submitted,
Grover Fugate, Executive Director

Reported by Lisa A. Mattscheck