

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, September 09, 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  
Robert G. Driscoll

### **Members Absent**

Bruce Dawson

### **STAFF PRESENT**

Grover J. Fugate, Executive Director  
Jeffrey M. Willis, Deputy Director  
Kenneth W. Anderson, Supervising Civil Engineer  
Danni Goulet, Dredge Coordinator  
Jim Boyd, Coastal Policy Analyst  
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 Vice Chair Lemont, to approve minutes of previous meeting, July 28, 2009. Mr. Sullivan requested a revision to the minutes – page two, Anthony Palazzo, to reflect the affirmation that the attorney representing Mr. Palazzolo agreed that no work had taken place on lot. Mr. Sullivan requested that, concerning the Karen Sue application, page five, the minutes reflect that he withdrew his motion to approve at the request of the Chair. Mr. Sullivan also requested that page seven of the minutes reflect that much of the discussion was about a project not yet before the Council. In reference to the Goldner petition to change RICRMP Section 300.17, Director Sullivan distributed to the Council members a rendering which identifies State owned lands and CRMC Type 1 waters and the reason why he would consider supporting the concept of wetland walkover structures. Mr. Sullivan stated that the rendering reflects that in many places the State owns the land that is adjacent to Type 1 waters and at some point there may be a public benefit value of walkover structures. Mr. Sullivan stated that he would like the record to reflect that the hearing was less about the applicant's desire for a wetland walkover structure and more about the programmatic issues of being able to propose a wetland walkover structure in Type 1 waters. Motion to approve minutes with requested changes was carried on unanimous voice vote.

3. **SUBCOMMITTEE REPORTS**

Vice Chair Lemont stated that the Policy and Planning Subcommittee met on Tuesday, August 18, 2009 and seeks Council's concurrence to begin rule making on Section 110(c) – applications for Category A and Category B Council assents addressing that up to a 20-lot subdivision application may be reviewed and approved administratively; Section 210.2.D.5 – barrier islands and spit prohibitions – to distinguish between prohibited and not prohibited public utility activities in barriers and that ancillary utility activity such as cable

and telephone would not be prohibited; Section 300.11 – Aquaculture – various subsections throughout to address issues such as recreational aquaculture activities, maximum water areas for aquaculture activities per water body, maximum lease sizes in coastal ponds and several editorial revisions. Chair Tikoian asked for comment. Hearing none, Council accepts the subcommittee recommendation and will send them out to public notice. Mr. Sullivan, as to Section 110.D.5, where it affects utility, stated that he hoped there would be some consideration as rule making begins for the possibility of offshore developments being involved in the utility discussion. Chair Tikoian takes suggestions under advisement.

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:**

**A2002-12-055 ANDREW and TINA BONAVIDA – Extension of Assent to construct a single family dwelling to be serviced by private well and Individual Sewage Disposal System (ISDS). Located at plat 2, lot 580; East Beach Road, Charlestown, RI.**

Mr. Fugate briefed the Council on the proposal stating that the Bonovita's are requesting their fourth and final extension. Mr. Fugate informed the Council that CRMC enforcement had visited the site and that all was in compliance with assent and the application is before the Council for its final extension. Vice Chair Lemont motioned approval, seconded by Mr. Coia. Chair Tikoian asked Mr. and Mrs. Bonavita if they understood that this would be their final extension. Mr. Bonavita stated that their project would be completed within a few months. Motion to approve carried on unanimous voice vote.

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

**2009-07-012 TOWN OF NEW SHOREHAM – Demolish and reconstruct western section of piers in Old Harbor (“Inner Basin”); construct small crane structure to aid fishing vessels (approx 320 lf new pier total). Located at plat 7 lot 000; Water Street, New Shoreham, RI.**

Rick St. Jean representing Town of New Shoreham. Ken Anderson gave brief overview of application stating that the applicant proposed to demolish and reconstruct the west dock, in the inner basin at Old Harbor, the Town of New Shoreham, Block Island and that the project is consistent with the program. Mr. Anderson explained that the project involved a minor expansion, in-fill of sections of the dock, modernization, and an addition of a small crane to aid the fishing vessels. Mr. Anderson stated that staff had no objections to project as proposed. Mr. Sullivan stated that the application required a Water Quality Certification and that the application for such had been received by DEM that day. Mr. Fugate stated that the permit would not be issued until the Water Quality certification was received. Vice Chair Lemont motioned approval of project subject to Water Quality, seconded by Mr. Coia. Motion carried on a unanimous voice vote.

**8. Public Hearing on changes to Rhode Island Coastal Resources Management Program, Metro Bay Special Area Management Plan:**

**1. METRO BAY SPECIAL AREA MANAGEMENT PLAN -- New Chapter: Natural Hazards: Hurricanes, Floods, and Sea Level Rise in the Metro Bay Region Special Area Management Plan**

Jim Boyd stated CRMC staff and Coastal Resources Center staff has been working closely with the Metro Bay partnership and the four communities of Cranston, Providence, Pawtucket, and East Providence; and gave brief overview of the program changes to Metro Bay SAMP Hazards Chapter. Mr. Boyd stated that a public workshop was held in March and changes received from that venue were incorporated and went out to 30-day notice in July which resulted in receiving comments from Statewide Planning Program requesting very minor technical corrections – to integrate the Special Area Management Plan with the land use 2025 plan that the state has as part of its State Guide Plan Elements as well as the Comprehensive Plan and Land Use Regulations Act. Mr. Boyd stated that those changes were submitted in a timely manner and they were incorporated in the document that is being reviewed for approval by Council. Mr. Boyd stated that he recommended approval of program changes. Chair Tikoian clarified that what was before the Council for their review was the first chapter of several. Mr. Boyd stated that the ports chapter is in public review mode with stakeholders and that a public workshop is expected to be scheduled in October bringing the it before the P & P Subcommittee to start the rule making process for adoption some time in the winter. Mr. Sullivan complimented staff on their work and quality of the document. Hearing no further comments, Chair Tikoian closed public hearing. Mr. Sullivan motioned for adoption of new Natural Hazards chapter, seconded by Mr. Coia. Motion carried on unanimous voice vote.

Two minute break.

**9. 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.

Chair Tikoian stated that it was decided by the Council at the July 28, 2009 meeting to continue the application so that the two parties could try to negotiate the littoral lines. Chair Tikoian asked for the status of the negotiation. Ms. Noonan, attorney for the applicant, stated that the two parties had met with Danni Goulet at CRMC offices and then continued with their negotiations on their own thereafter. Ms. Noonan stated that working closely with Sean Coffey, attorney for abutter, they did agree to a plan. Ms. Noonan describes the resolution as a 50/50 split of the northern and southern boundaries, as the opposing parties knew them, with a slight jog to accommodate the structural perimeter limit on the Roebuck's proposed project. Ms. Noonan states that the agreed upon line will allow the Roebuck's project as it is proposed and applied for to go forward and will set the line for the abutter and their future proposals. Ms. Noonan states that the applicant is in agreement with the line but that the abutter is requesting that the two parties hold off finalizing the agreement until the abutter has been able to have their application processed by CRMC or receive a PD approval. Ms. Noonan states that the applicant is reticent to agree to stipulation. Mr. Sullivan asked if the large scale plan was still relevant and if it could be made available for Council. Ms. Noonan stated that they did not have a blow up of the most recent agreed upon plan. Mr. Coffey was able to provide a smaller rendering for the Council to review. Chair Tikoian asked CRMC staff member Danni Goulet if he had seen the revised plan. Mr. Goulet

stated that he had not seen the plan with the compromised littoral line. Mr. Coffey stated that the negotiations had continued after the cancellation of the last meeting. Mr. Coffey stated that in negotiating with the applicant, there was more to it than just agreeing to the line – the town had to accept it and the abutter had to have a level of comfort that some kind of workable marina plan can be accommodate with the new line, which would require a preliminary determination from CRMC to see what's realistic and if its workable from Mr. Mazza's point of view. Chair Tikoian asked Mr. Coffey is papers were filed in court as directed at last meeting. Mr. Coffey stated he had been filed a Declaratory Judgement action on the previous Friday, September 4, 2009 when it was certain that the application would be heard this evening. Ms. Noonan stated that they were unaware of this filing. Ms. Noonan stated that her client is concerned that the process could linger for a very long time. Chair Tikoian and Mr. Coffey discussed the filing of the litigation. Mr. Goldman was given a copy of the filing. Mr. Sullivan posed a question to Mr. Goldman asking if the Council could go forward and deliberate on the Karen Sue's original submittal as reviewed and recommended approval by CRMC staff? Mr. Goldman stated that there would be no legal barrier to proceeding, but that it may not make sense to do so when the issue is going to be in litigation. Mr. Sullivan stated that the line extensions were consistent with many others and possibly all of the ones he has seen since sitting as a member and that he was prepared to embrace it and allow the Court to pass judgement on the Council's action. Mr. Sullivan acknowledged that the applicant had demonstrated a reasonable amount of compliance with rules, regulations and good faith and that the Council must weigh that at some point. Mr. Coffey stated his concern that the Council was ascribing the delay to the objector; delay timeline clarified and discussed further.

Chair Tikoian asked if they would show the Council the agreed upon line. Greg Roebuck, PE is sworn in. Mr. Roebuck explained the agreed upon line using the large scale plan submitted with original proposal with agreement on explanation from Mr. Coffey. Chair Tikoian asked Mr. Goulet if he had been apprised of new line. Mr. Goulet stated he had not been involved in the more recent negotiations. Mr. Goulet stated that he would need to review the plan and also to consult with the Town as it is their right-of-way. Mr. Sullivan and Mr. Goulet discussed the Town's approval of the original submittal. Mr. Goldman stated that the Town is named in the Declaratory Judgement filed. Mr. Goulet clarifies the new line position for the Council stating that the Town wanted to make sure that there was a clear obvious path to the water, a 40-foot ROW out to the water.

Chair Tikoian asks for Council input. Mr. Sullivan suggests tabling it until the next meeting. Mr. Coffey states he will be out of the country in two weeks. Chair Tikoian states that Council could act on application pending Mr. Goulet's discussions with Town. Vice Chair Lemont stated that he motioned at the last meeting to get everyone talking with Danni as the mediator to resolve the issues and that he is pleased to see the amount of accord that has been reached to this point, however, he hoped that it would continue before Mr. Coffey leaves for trip. Mr. Coffey stated leaving tomorrow and Ms. Noonan stated that her client has been waiting for long time and they are not comfortable letting this go until the objectors are comfortable with their marina plan. Vice Chair Lemont asked if they would agree to a date specific. Mr. Coffey suggested October 13<sup>th</sup> meeting stating that if they could get things wrapped up prior to October 13, they would withdraw their objection as part of the agreement and the necessity of going forward with any hearing may well disappear because without their objection the application could be issued administratively. Chair Tikoian expressed concern of setting a precedent for abutters to ask for pds prior to their agreement to applications. More discussion on negotiating until October 13<sup>th</sup> meeting. Chair Tikoian asks the applicant's attorney to make the decision on whether they continue until the October 13<sup>th</sup> meeting or whether we go forward with original application. Ms. Noonan asks for two minutes with client.

(Brief recess)

Chair Tikoian brings meeting back to order.

Ms. Noonan stated that her client did not want to table the application until October 13<sup>th</sup> and would like to be able to proceed with the original application as submitted. Mr. Coffey stated that he was prepared to go forward.

Mr. Goulet gave brief overview of original application to Council stating that the applicant proposed to expand an existing commercial dock to support two 80-foot long commercial fishing vessels and two 40-foot long floating docks, as well as relocation and reconfiguration of aquaculture upwellers that are on site. Mr. Goulet stated that no variances were required and that they meet the structural perimeter limit. Mr. Goulet stated that the application met all the geometric requirements of Section 300.3 and also 300.4. Mr. Fugate stated that the application is waiting for the Federal consistency from the ACE.

Mr. Coffey stated that he would not reiterate any of the objections made already, but stated that the procedure of allowing the objectors to go forward first is based on the fact that already in the record is some extensive submissions by the applicant and that the materials already submitted by the objectors is also part of the record. Mr. Coffey brings the Council's attention to a letter from himself to Mr. Fugate dated December 30, 2008 which focuses on the littoral lines and also an extensive critique of the application with respect to its compliance with the marina regulations. Mr. Coffey also brings Council's attention to Warren Hall's engineering evaluation of the application dated December 22, 2008. Mr. Coffey argued that in Section 200.5 it is clearly laid out to maintain a balance among the diverse port-related activities, including recreational facilities, such as marinas, commercial fishing facilities, ferry boats, overall to promote the efficient use of space. Mr. Coffey stated that the current CRMC regulations failed to provide for this type of balance. Mr. Coffey states that the application should be denied because the Council regulations, as they currently exist, are deficient in that they do not provide a mechanism to effectively balance these competing uses, such as marina versus fishing dock.

Ms. Noonan asks to put three witnesses to address the issue of need for this expansion. Donald Roebuck, owner/president of Karen Sue, Inc, is sworn in. Mr. Roebuck testified as to where he lived and where the business is located; also the location of his brother's residence. Mr. Roebuck testified as to Karen Sue's nature of business to which he stated that they have been commercial fishermen for 40+ years starting out with a single dock and boat and has grown to two 80-foot steel boats, 36-foot lobster boat, and that his son has started an aquaculture business. Mr. Roebuck stated that the business needed more room because with the shoaling that has taken place the water depth is not sufficient for his vessels. Mr. Roebuck stated that the only way to have sufficient water depth is to increase the length of the dock. Mr. Roebuck stated that the dock would be reconfigured so that the aquaculture upwellers could have some water and that the best way to work with the conditions is for the dock to lay parallel with the channel and lay the docks up against the dock. Mr. Roebuck testified that the new configuration would make it so that they can rearrange so that the lobster boat is not taking up space where the upwellers are. Chair Tikoian asked Mr. Roebuck to explain the insufficient water depth. Mr. Roebuck stated that with the filling in or shoaling the only way to have enough water would be to dredge which they did not want to do because of the cost and that the area would fill in again. Ms. Noonan refers to photographs in Council Agenda packages which Mr. Goldman and Mr. Coffey review, removing an aerial photograph that was objectionable. Photos are marked as exhibits Applicant's 1, Applicant's 2 and Applicant's 3, up to 7. Ms. Noonan reviews the photos with Mr. Roebuck and he describes them for Council benefit, showing the lack of water at the dock. Mr. Coffey cross examines Mr. Roebuck asking him to show on a 1951 aerial the position of their original dock and that of Mr. Mazza's dock. Mr. Roebuck states that he had owned the property since approximately 1974. Ms. Noonan then called David Roebuck, owner of Salt Pond Oyster Co, who was sworn in and read some prepared remarks stating that his business included himself, one full-time employee and two part-time employees. Mr. Roebuck stated that the expansion would allow for him to expand his aquaculture business to be able to make use of the 12 upwellers that he has received CRMC approval for. Mr. Roebuck explained that a lucrative part of his business was providing larger oyster seed to farms that do not have upwellers and that this season he only used 5 ½ upwellers of the 12 that he is approved

for due to the lack of space available. Mr. Roebuck stated that the water temperature throughout the summer and the water plankton supply in this area provides very good growth for the oysters. Mr. Roebuck stated that the commercial dock is perfect for the upwellers because the work is very consistent with commercial fishing boats and the work they do on their boats, work that would not be allowed in marinas. Mr. Roebuck stated that the expansion would be beneficial to the area as oysters are good for the environment by filtering nitrogen from the water. No cross examination. Ms. Noonan called Greg Roebuck, PE and asked that he be qualified. Mr. Roebuck had been previously sworn in. Mr. Roebuck stated that he had prepared all of the plans submitted to the CRMC, that he was familiar with CRMC regulations, and that the application met all necessary requirements. Mr. Roebuck stated that he was familiar with the staff engineer's report and concurred with those conclusions. Mr. Coffey cross examined. Mr. Roebuck stated that he had determined the property line between the Roebuck real property and Periwinkle Lane and Periwinkle Drive using a survey from Northeast Engineers and Consultants that was dated 11/30/07 by Roger Lizotte, titled Marina Perimeter Line. Mr. Roebuck stated that he determined the littoral line based on a straight line extension of Roebuck boundary and boundaries of Periwinkle Lane. Mr. Roebuck stated that he realized that the property line extension cut through the abutters dock by approximately 35'.

Both attorneys made closing arguments. Mr. Coffey stating that the property line extension cuts through the Periwinkle dock and adverse impact on rights that the Town may have to utilize their own littoral ROW. Mr. Coffey also reiterates the imbalance between the sparsity of regulations applying to fishing facilities versus the very extensive regulations that apply to marinas. Mr. Coffey stated that proceedings have been initiated to rectify and clarify the appropriate littoral lines for this area. Mr. Coffey also stated that they will appeal and seek a stay in the event that the Council grants approval. Mr. Coffey asks for the opportunity to explore what their proposal is with this Council so as to see what can be done to resolve this matter. Ms. Noonan stated that she did not feel as though the lines of communication were closed as of yet with the objector. Ms. Noonan reiterated that CRMC staff recommended approval of application and that, if no objection had been received, the application would have been processed administratively. Ms. Noonan stated that what was brought before the Council was a desire of Mr. Coffey to change the regulations and that the real issue before the Council is that the Karen Sue application meets all the requirements of CRMC regulations. Ms. Noonan states that the application approval is necessary for the expansion of their business opportunities both fishing and aquaculture and asks that the Council approve the application as submitted.

Mr. Fugate, at the request of Chair Tikoian, clarifies the regulations in question by Mr. Coffey stating that because of the breadth of uses that commercial dock facilities cover, it is not possible to come up with the same level of detail. Mr. Fugate stated that the regulations are geared at engineering soundness, documentation that the area is necessary for the particular use they support; and then we establish a perimeter so we don't have incursions beyond the areas approved under this. Mr. Fugate stated that this has been measured against other states and it is very applicable policy response.

Vice Chair Lemont motioned approval of application, seconded by Mr. Sullivan for discussion purposes. Mr. Gomez stated that he was encouraged by the interaction between the two parties and that perhaps they could have the application return on the October 13<sup>th</sup> date after the town has given their consideration to the property line extension and Danni has had an opportunity to review the pd. Chair Tikoian stated that it was too late for that option. Mr. Gomez then stated that he would support the application as submitted. Mr. Sullivan stated that not only should the application be looked at from the issue of commercial use versus residential/recreational use, but also ecological equity. Mr. Sullivan suggests that reasonable balance of uses should recognize the aquacultural use which is an emerging industry that both CRMC and DEM support. Mr. Sullivan pointed out the efficient use of space by combining the vessel use and aquaculture operation. On that basis, Mr. Sullivan stated that he could support the motion to approve. Vice Chair Lemont stated that with the recommendation of staff and testimony he had no choice but to move in favor of the approval but that he hoped the attorneys would continue to try to resolve their difference and keep it out of the court system. Mr. Coia asked about revisiting

the possibility of not making a decision at this meeting but holding off until the October 13<sup>th</sup> meeting to make their decision. Mr. Goldman stated that there was nothing in the rules which required the Council to act on this application this evening other than the fact that there is a pending motion.

With no further discussion, Chair Tikoian asked for voice vote. Motion carried on vote of 6 in favor and one opposed.

10. Vice Chair Lemont motioned to go into executive session to discuss personnel matters and litigation affecting the Council. Motion seconded by Mr. Coia. Roll call vote.

Mr. Sullivan	Yes	Mr. Driscoll	Yes
Mr. Abedon	Yes	Vice Chair Lemont	Yes
Mr. Coia	Yes	Chair Tikoian	Yes
Mr. Gomez	Yes		

**11. Category “A” List and Enforcement report August 2009**

None were held.

There being no further business to discuss. The hearing was adjourned at 7:46 p.m.

Respectfully submitted,  
Grover Fugate, Executive Director

Reported by Lisa A. Mattscheck