

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, April 12, 2011 at 6:00 p.m. in Conference Room A of the Administration Building, One Capitol Hill, Providence, RI.

**MEMBERS PRESENT**

Michael Tikoian, Chair  
Paul Lemont, Vice Chair  
Dave Abedon  
Donald Gomez  
Robert Driscoll  
Ray Coia  
Ron Gagnon, RIDEM

**STAFF PRESENT**

Grover J. Fugate, Executive Director  
Jeffrey M. Willis, Deputy Director  
Ken Anderson, Spv Civil Engineer  
Amy Silva, Sr. Environmental Scientist  
Janet Freedman, Coastal Geologist  
Brian Goldman, Legal Counsel

**MEMBERS ABSENT**

Bruce Dawson

**1. CALL TO ORDER**

Chair Tikoian called the meeting to order at 6:05 p.m. and made opening statement.

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

Chair Tikoian called for approval of the minutes from the previous meeting. Vice Chair Lemont motioned, seconded by Mr. Coia, for approval of minutes from March 08, 2011 meeting. Motion carried on a unanimous voice vote.

**3. STAFF REPORTS**

There were none

**4. SUBCOMMITTEE REPORTS**

There were none.

**5. APPROVAL OF MINUTES OF MARCH 1, 2011 MEETING OF THE OCEAN SAMP SUBCOMMITTEE**

The Ocean SAMP Subcommittee voted to approve the minutes of the subcommittee meeting of March 1, 2011. Vice Chair Lemont motioned to approve, with a second from Mr. Gomez. Minutes approved on a unanimous voice vote.

**6. APPLICATION REQUESTING SPECIAL EXCEPTION AND ARE BEFORE THE FULL COUNCIL FOR DECISION:**

**2010-12-022 City of East Providence/East Providence Sewer Dpt/ State of Rhode Island -- Construct and maintain: a new 20" and 24" diameter force sewer main from Watchemoket Cove pump station to the East Providence Water Pollution Control Facility (via the East Bay Bike Path; approx. 12,000 linear feet total) to comply with RIDEM plant upgrade requirements. Project required setback variances and a Special Exception to alter coastal wetlands at Boyden**

**Blvd. Pump Station area. Located on Veteran’s Memorial Parkway, East Bay Bike Path, East Providence, RI.**

Attorney Sean Coffey and Stephen Coutu, City of East Providence, Public Works Director were present. Kenneth Anderson gave brief overview of the project stating that variances and a special exception were required. Mr. Anderson stated that staff recommendation was a Council deferral but that if the Council did chose to approve the project, there were recommended stipulation in the staff report. Mr. Goldman stated that the request for special exception was due to the alteration of a small amount of contiguous wetland. Mr. Coffey stated that he represented the City of East Providence on this \$50 million dollar project based on order from the RI Dept of Environmental Management to lower the nutrient level into Narragansett Bay. Mr. Coffey stated that the City engaged United Water/ACOM for project management. Mr. Coffey stated that the conveyance line is what is before the Council for approval and that the alternative location of the line will save the City \$4 million dollars. Chair Tikoian asked if the City had reviewed all the stipulations. Mr. Coffey stated that they had reviewed staff reports and there were no objections except that they had a question in regards to the stipulation on funding for future maintenance. Mr. Anderson stated that the maintenance insurance fund was stipulated so as to securing responsibility for continued maintenance on pipeline if damaged in coastal storm and would limit public exposure to the funding of the maintenance. Mr. Coffey stated that the City had put up a bond for the \$50 million dollar improvement project. Vice Chair Lemont stated that he was familiar with the application and was fully supportive of it. Vice Chair Lemont motioned, seconded by Mr. Coia, to approve special exceptions. No discussion followed.

Roll Call Vote:

Mr. Gagnon	Yes	Mr. Abedon	Yes
Mr. Gomez	Yes	Mr. Driscoll	Yes
Mr. Coia	Yes	VChair Lemont	Yes
Chair Tikoian	Yes		

Unanimous approval for Roll Call vote to approve Special Exception

Vice Chair Lemont questioned the stipulation for the maintenance fund asking about the 30 year contract with United Water. Mr. Coutu was sworn in and stated that there was a 10 year operating agreement with additional 10 year option; and that anything occurring in that ten year period will be the responsibility of United Water and the City. Vice Chair Lemont motioned, seconded by Mr. Coia, approval of the project without the maintenance fund stipulation but with all other staff stipulations and variance. Application approved on a unanimous voice vote.

**7. PUBLIC HEARING OF CHANGES TO THE RI COASTAL RESOURCES MANAGEMENT PROGRAM:**

**RICRMP Section 300.14 -- Table 4a**

Mr. Willis gave brief overview stating that additional activities to occur would be decks on roofs, widow walks, rooflines; no new rooms/livable space; the change would also acknowledge structures in coastal areas that cannot be moved back away from coastal feature. Chair Tikoian opened the Public Hearing. No questions/ discussion. Vice Chair Lemont motioned, seconded by Mr. Coia, approval of program change. Motion carried on unanimous voice vote.

## **RICRMP Section 300.6 – Treatment of Sewage and Stormwater**

Mr. Boyd gave brief overview of the changes to Section 300.6 stating that the changes were necessary to be consistent with the new State Stormwater Manual. Mr. Boyd stated that CRMC received a set of comments from Save the Bay in support of changes to RICRMP Section 300.6. Mr. Boyd stated that the purpose of this change is to provide further exemptions so that the way we apply stormwater requirements will be consistent with the Freshwater Wetlands within the Vicinity of the Coast and RIDEM jurisdiction elsewhere in the state. Mr. Boyd stated that it was important to have consistency across the board. Mr. Boyd brought to the Council's attention one typographical error – section E in standards e8 – which refers to single family dwellings -- “with” should be replaced with “within”. Mr. Goldman stated that he and Mr. Boyd had discussed the error and it was decided that it did not require re-noticing. Vice Chair Lemont explained the Program change process stating that the Policy and Planning Subcommittee discusses at length and that the changes were not new to the Council and the changes are fully understood. Chair Tikoian opened hearing up to Public comment. None heard. Chair Tikoian asked if RIDEM had reviewed changes. Mr. Boyd stated that he had coordinated with RIDEM regarding the changes through an interagency working group involving Russ Chateanuef. Vice Chair Lemont motioned, seconded by Mr. Coia, for the approval of the changes. Motion carried on unanimous voice vote.

## **MetroBay Region SAMP Urban Coastal Greenways**

Mr. Boyd gave brief overview of the proposed changes and stated that they were merely editorial changes to make the policy consistent to how we now apply stormwater management. Chair Tikoian opened the Public hearing. No comments heard. Mr. Coia motioned, seconded by Vice Chair Lemont, to approve changes to program. Motion carried on unanimous voice vote.

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

**2008-11-062 MARK BARD – Construct new 3-bedroom, 24’ x 62’ dwelling (1,488 sf), with 10’ x 62’ second floor cantilevered deck, OWTS (septic system), pervious driveway, and associated site work. Located at plat 12, lot 87; Clarkes Village Road, Jamestown, RI.**

Attorney Elizabeth Noonan stated that they would present their final witness, Dr. Peter Rosen for rebuttal. Mr. Goldman confirmed sequence of exhibits stating that the last ones were Bard 14 and Objectors 20. It was established that Dr. Rosen was still under oath. Dr. Rosen confirmed that he had reviewed the transcripts of the previous meetings on the Bard application, he was familiar with the testimony, he had reviewed the staff reports and he had visited the site one more time for a total of three site visits. Ms. Noonan asked Dr. Rosen about the bluff. Dr. Rosen stated that it was an unusual glacial bluff. Ms. Noonan submitted Google Earth vertical photo; writing in red to show property line extensions, photo dated 4-29-2009; Marked as Full. Dr. Rosen stated that the photograph's purpose was to show the variability of the width of the bedrock ledge by Google earth photographs in comparison to conditions in field. Dr. Bolen said that there is a large variability in the width of bedrock ledge and correspondence with area of erosion. Dr. Rosen stated that the Bard property can be seen in aerial photograph adjacent to very wide section of bedrock ledge (bright white) high and dry bedrock in direction of fetch (south east) and that there was a 55’ fairly wide bedrock ledge and at least 10 more feet of wet bedrock. Dr. Rosen stated that based on his measurements there is no correlation between the width of the bedrock ledge and the failure associated with other processes as much of the remaining bluff is very well vegetated. Dr. Rosen

stated that his observation is that scarping in particular was not related to wave action. Dr. Rosen stated that the bluff is secure and stable. Dr. Rosen stated that he was interested in seeing if there was surface runoff since the street runoff problem was fixed. Dr. Rosen stated that there was no evidence of runoff over the bluff on the Bard site even with the severe snow precipitation of the winter and that suggests that the drainage problem has been solved by improvements made. Dr. Rosen stated that in regards to Dr. Bolen's testimony regarding large wave action offshore, it did not bear any resemblance to what is on site; he did not see erosion corresponding to areas of narrow bedrock ledges. Ms. Noonan asked Dr. Rosen about the debris at the site. Dr. Rosen stated that he did not observe any debris on the bard site but he did see two pieces of concrete slab about 3' and smaller in lower portion of slope. Dr. Rosen stated that he was able to walk up slope easily; and he looked into face of open soil where he saw that it was pebbly; nothing artificial Dr. Rosen stated that he had reviewed Dr Bolen's testimony. Dr. Bolen stated that the erosion is at specific locations on the bluff and if wave action was an issue, erosion would be along the bluff in general. Dr. Rosen stated that storm events would affect the Bard property with waves reaching over bedrock ledge in a 10 year storm event but that it does not affect his opinion regarding the reason for bluff erosion. Dr. Rosen stated that Coir logs should be suitable and can be repaired. Discussion on Janet Freedman's report regarding a fault line on Bard property. Dr. Rosen stated that in his opinion the fault line was on the property with the gabions which differs from the Bard property. Ms. Freedman's testimony bedrock cannot accrete; boulders can fall off ledge. Dr. Rosen stated that he believed the proposed structure would be stable and that he reviewed the stability analysis. Dr. Rosen stated that if further stability step was desired the bedrock can be pinned to bedrock; 8' pile; but he did not believe it was necessary.

Ms. Noonan asked Dr. Rosen about Mr. Anderson's testimony of the inaccuracy of the FEMA mapping. Dr. Rosen stated that he did not agree with summation of inaccuracy; he believed that FEMA is accurate and if not it can be fixed by submitting info to FEMA and they will fix discrepancy.

Attorney Chris Little questions to Dr. Rosen.

Attorney Chris Little questioned Dr. Rosen on his statement that there was no correlation between the size of the ledge and the incidents of scarp. Dr. Rosen stated that Google maps are only as good as the angle of shot and that the map presented by Dr. Bolen showed a different angle offshore – objectors 14. Mr. Little asked Dr. Rosen about the filite rock and the metamorphose rock layering which actual rocks from the area. Dr. Rosen stated that he did not believe that it was the same as was on the Bard property as there was a color difference and did not recognize what was before him.

Break 7:00

**Public comment:**

Mr. Varoujan Karentz was sworn in. Mr. Karentz is an abutter to the ROW which abuts the Bard property. Mr. Karentz prefaces that he is neither for nor against Mr. Bard's proposed project but that he is concerned with the stabilization of the embankment. Mr. Karentz state that his family had been living at the property since 1984 and had seen a lot of water impact to property. Mr. Karentz described the stormwater drainage issue and his experience with emptying the drain when it failed. 1. Mr. Karentz stated that last year on two different occasions, the storm drain could not handle water; overloaded overflowed and down into Clark Village Lane. Mr. Karentz explained

that there was an incident 10 years ago on property line between and Brown property where the wave action undercutting the bluff resulted in a chunk of the bluff breaking/dropping off a 6' to 8' wide chunk out into the water. Mr. Karentz explains how storm action affects the beach area and bluff area. Mr. Karentz discusses his need to protect his property which abuts the Bard property by installing gabions. Mr. Karentz talked about wave action during Hurricane Bob in 1991 which destroyed the stairs leading to the water. Mr. Karentz also described the telephone poles that lay parallel to Clark Village Lane and that the overflow from the storm drain would follow the line of the poles. Mr. Little asked Mr. Karentz when drain was fixed. Mr. Karentz thought about three years ago and the utility poles had been placed in the 1980's.

Ms. Jane Austen, Sr. Advisor for Save the Bay was sworn in. Ms Austen called upon the Council to uphold the setback and buffer obligations set by the RICRMP. Ms. Austen stated that Mr. Bard did not satisfy variance criteria despite their four attempts to justify their need for approval. Ms. Austen submitted her written statement. Ms. Austen also pointed out the issue with storm drainage and that the Town of Jamestown did not issue a variance. Ms. Austen also stated that the purchase was fully aware of the permitting situation when purchasing the property. Ms. Austen stated that on behalf of Save the Bay, they strongly urge the Council to deny application.

Mr. Gagnon questioned staff regarding the limit of disturbance and how close to area of erosion; what is dimension between area of coastal feature and silt fence? Mr. Anderson stated that there was three feet from crest of bluff. Mr. Anderson stated that he could not speak for the applicant but they could potentially clear up to the silt fence. Mr. Anderson stated that they did not submit a planting plan for restoration of buffer area.

### **Closing argument**

Ms. Noonan thanked Council for opportunity to present and have considered the application to construct home. Ms. Noonan stated that the testimony of three witnesses testifying to granting of variances. Ms. Noonan stated that the primary reason neighbors do not want house on property is that it would block their view. Ms. Noonan stated that the testimony of Mr. Frisella and Dr. Rosen explained the science of property. Ms. Noonan stated that episodic failures resulted in stormwater runoff. Ms. Noonan stated that while the site is limited; the Bard's had a right to build. Ms. Noonan pointed to the wave documentations from Dr. Bolen not evident for this area and that Dr. Rosen was not seeing evidence of erosion on site. Ms. Noonan stated that it is a fairly unique site and differs from neighbors on North and South and that stability can be provided for house with varying width and lengths without impacts. Ms. Noonan stated that the site was mown up to edge; but that additional plantings can be discussed for buffer restoration. Ms. Noonan stated that the applicant had put forth evidence that property can be stable and hopes that the Council votes to approve the building of the home.

Mr. Little thanked the Council. Mr. Little stated that the initial Preliminary Determination was submitted in 2005 by Mr. DeAngelis and that Mr. Fugate wrote back stating that a 50' setback had to be adhered to. Mr. Little stated that in 2008 another preliminary determination was requested by the Kozaks for Mr. Bard which lead to an action before the Jamestown Zoning Board; Mr. Fugate once again wrote a letter stating that the 50' buffer be adhered to. Mr. Little stated that that Jamestown Zoning board decision and minutes were part of the exhibits. Mr. Little stated that the least relief was being sought and that the substantive objections were the staff objections. Mr. Little stated that sole cause of erosion is the malfunctioning catch basin and that Mr. Anderson stated that the basins there can not handle the runoff in large storms. Mr. Little spoke of the effects

of erosion from wave action. Mr. Little stated that the neighboring house in essentially same location has come to CRMC for approval of gabions. Mr. Little asked what surface runoff would do to a smaller buffer and that the purpose of buffer is to address surface water pollutants and velocity of surface water. Mr. Little talked about the steepness of the bluff and what is recommended by manufacturer for coir logs. Mr. Little questioned whether the foundation would cause unstable condition in already unstable situation; with type of foundation proposed. Mr. Little stated that the property will require armoring in future. Mr. Little respectfully requested that the application as proposed be denied.

Ms. Noonan stated possibilities were not probabilities and that there was no evidence in record to support instability of bluff. Ms. Noonan stated that perhaps the slope is 2:1 but there are no calculations to see that and it not supported by actual evidence. Ms. Noonan stated that the house was being put into bedrock and that the storm drainage situation was fixed. Ms. Noonan stated that the applicant was open to discuss bluff restoration. Ms. Noonan asked Council to deal with real evidence not possibilities.

### **Questions/comments deliberation:**

Chair Tikoian stated that he was faced with difficult decision and that he felt that property owners had the right to build on shoreline. Chair Tikoian stated that he wished that the town was more reasonable in their deliberations but that this Council has taken the position to work with all parties. Chair Tikoian stated that although it is a struggle, he does not feel he can vote for it. Chair Tikoian also stated that he wished the town would have been more cooperative with the applicant.

Vice Chair Lemont stated that the argument proffered by the objectors and Save The Bay were enlightening. Vice Chair Lemont stated that the applicant new full well going into the purchase what type of land they were buying. Vice Chair Lemont stated that based on staff observation he has concluded that the proposed dwelling is to big for the lot and would have to vote to deny project.

Mr. Gomez stated that both sides were well argued but that when all was said and one he agreed with staff. Mr. Gomez stated that Jamestown sent a strong message in their denial and that the Save The Bay message was clear. Mr. Gomez stated that if Jamestown had offered some relief he might have been able to look at the situation differently but that his intent was to vote to deny.

Mr. Abedon stated that the project was too big and that the Council's responsibility was to protect the coast. Mr. Abedon stated that a building should not be that close to the edge of the bluff. Mr. Abedon also stated that if the town of Jamestown had offered more relief it would have made it different for the Council. Mr. Abedon stated that he had to say nay to what is proposed.

Vice Chair Lemont motioned, seconded by Mr. Gagnon, to deny application. Motion carried on a unanimous voice vote. Application was denied.

## **9. COMMENTS TO CITY OF EAST PROVIDENCE PROJECT**

Eileen Moser, Stone Gate resident asked to be able to speak regarding the City of East Providence project as she was late getting to the meeting. She submitted written comments as well. Ms. Moser stated concerns regarding the disruption of the bike path with the laying of pipe for the project.

**10. CATEGORY "A" LIST**

None held.

**11. ADJOURN**

Vice Chair Lemont motioned, seconded by Mr. Coia, to adjourn. Motion carried on unanimous voice vote. Meeting adjourned.

Respectfully submitted,

Lisa A. Mattscheck  
Recording Secretary