

In accordance with notice to members of the Rhode Island Coastal Resources Management Council a meeting was held on Tuesday, October 28, 2003 at 6:00 PM at the Department of Administration – Conference Rooms B & C – One Capitol Hill, Providence, RI.

## **MEMBERS**

Mike Tikoian, Chair  
Paul Lemont, Vice Chair  
Jerry Sahagian  
Ray Coia  
Joe Paolino  
Larry Ehrhardt  
Jan Reitsma  
Dave Abedon  
Rep. Eileen Naughton  
Sen. Susan Sosnowski  
Rep. Jan Malik  
Sen. Dan DaPonte  
Tom Ricci

## **STAFF PRESENT**

Grover Fugate, CRMC Executive Director

Ken Anderson, CRMC Senior Engineer  
Dave Reis, CRMC Biologist

Brian Goldman, Legal Council

1. Chair Tikoian called the meeting to order at 6:05PM.

Chair Tikoian made a brief statement of clarification on the council's permitting process.

Mr. Reitsma, seconded by Mr. Paolino moved approval of the October 14, 2003 minutes. The motion was carried on a unanimous voice vote.

Chair Tikoian announced that he would be meeting with Vice Chair Lemont to schedule a date and time for the learning sessions with staff. Chair Tikoian stated that they are looking to have the learning sessions on Thursdays at 3:00 p.m. in November and a meeting notice will go out shortly to council members.

## **2. STAFF REPORTS**

Mr. Fugate passed out a copy of a letter from the Army Corps which gave a status of the Providence River Dredge Project.

## **3. SUBCOMMITTEE REPORTS**

There were no staff reports.

4. Chair Tikoian read through the agenda to see which applicants/attorneys were present.

5. APPLICATIONS THAT HAVE BEEN OUT TO NOTICE ARE BEFORE THE FULL COUNCIL FOR DECISION:

'2003-04-030 – BRISTOL COUNTY ELKS LODGE #1860 – Construct and maintain a commercial boating facility extending 45' +/- beyond the cited MLW mark. The facility shall consist of a 3' x 25' aluminum ramp that leads to a set of floats that total 528 s.f. Located at Plat 10, Lot 63; 1 Constitution Street, Bristol, RI.

Chair Tikoian recused himself. Vice Chair Lemont presided over the application. Bob White, president of the Elks Lodge, the applicant was present. Joseph DeAngelis, the applicant's attorney and Mr. Sirois, the applicant's engineer were also present on behalf of the applicant. Kristen Sherman, attorney for the objector Robin Rugg, was also present. Mr. Reis gave council members a brief summary on the application. Mr. Reis stated that the application was to construct a marina. Mr. Reis stated that staff recommended approval of the application. Mr. DeAngelis stated that he had nothing to add at this time to the application. Ms. Sherman stated that they objected to the application to construct a proposed dock and that they filed two letters of objection. Ms. Sherman said they felt the dock was too close to the property line. She said the dock would be 13.5 feet from the property line. Ms. Sherman stated that they proposed an alternate location for the dock but it had been rejected by the applicant. Ms. Sherman said the dock was considered a commercial dock and not a marina or a residential dock therefore the 25' setback was not being enforced. Ms. Sherman asked that the applicant consider the alternate design for the dock. Ms. Sherman requested that the application be continued so that they could negotiate the alternate design of the dock with the applicant. Vice Chair Lemont stated that he had a problem with that request as staff was on the record for supporting the application as submitted. Vice Chair Lemont felt that they were asking staff to get involved with renegotiating the dock. Ms. Sherman stated that she was not asking that staff get involved with the renegotiating of the dock the negotiating would only be between the applicant and the objector and then it would go back to staff for their review. Mr. DeAngelis stated that the application met all the criteria of the CRMC plan. Mr. DeAngelis explained that the application is to establish four touch and go floats for the Elk Club and there would be no overnight docking. He said the dock is 13.5 feet away from the property line extension to the abutter's property line. Mr. DeAngelis said the dock is about 40' in length. Mr. DeAngelis stated that the moorings had already been approved by the town. Mr. DeAngelis requested that the council approve the application as submitted. Mr. Reitsma agreed that the applicant did not fall into a particular category of the plan. Mr. Fugate explained that this was not a residential dock or a marina and that it falls under commercial activity. Mr. Reitsma asked what the alternate proposal was. Ms. Sherman explained that the alternate proposal would relocate the pier 25' from the property line and put the finger floats on the other side of the dock and this would increase the setback area. Mr. Reitsma said Ms. Sherman raised the issue that staff was not sure where this application fell and asked what she meant by this. Ms. Sherman said the categories for the application were not the same standards under the plan and review of a commercial facility has no setbacks or parking issue. Mr. Ehrhardt asked about the definition of a facility with a four-boat capacity proposed. Mr. Ehrhardt said rule 15 talks about rafting dinghies and asked if a dinghy was not a boat. Mr. Ehrhardt raised the question whether this would be the same and would there be more than four floating objects on the dock. Mr. Fugate explained that a number of watercrafts were not considered boats on a dock such as a dinghy, canoe or sunfish. Mr. Fugate said they are looking at motorized vessel usage on a dock and not assisted watercraft. Mr. Ehrhardt asked about the setback to the southern end, which abuts the Constitution

Street right-of-way and asked if there was any use of the right-of-way by the town now. Mr. White replied that the public does not use the right-of-way it is only used by the Coast Guard. Mr. White said the Coast Guard did not object to the application. He also stated that they received approvals from the town and the harbor commission. Mr. White stated that they only requested that the applicant stay within their own property line and leave the waterway clear. Mr. Gray did not agree that this was a commercial dock. He felt the facility acted more like a marina and it was not reviewed under a marina because of the number limit on boats. Mr. Gray also said this was not a residential dock. Mr. Gray felt that the policy and planning subcommittee should look at this issue. Mr. Gray asked if the 25' setback was only for residential docks. Mr. Reis replied yes. Mr. Gray said the only issue is the 25' setback with the objector. Mr. Gray stated that the abutters had no bearing on this because it is not a residential dock and setbacks are not required. Mr. Gray felt this could create a problem down the line if the objector's wanted to put a dock in too close to the property line. Mr. Gray felt the setback issue could be worked out. Mr. Fugate explained that if this was a marina that other regulations such as pumpout and parking issues would fall into place. Mr. Fugate said that this dock would only be used for touch and go. Mr. Sahagian, seconded by Mr. Paolino moved approval of the application as submitted with all staff stipulations. The motion was carried on a unanimous voice vote.

6. **APPLICATIONS WHICH HAVE HAD A PUBLIC HEARING AND ARE BEFORE THE FULL COUNCIL FOR FINAL DECISION:**

'1999-10-058 MARGARET SLOSBERG – Perform Buffer Management by mowing a previously approved buffer zone three times a year to control invasive species and minimize tick infestation. Located at 15 Timothy Drive, Westerly, RI.

Chair Tikoian recused himself. Vice Chair Lemont presided over the application. Joseph DeAngelis, attorney for the applicant was present on behalf of the applicant. Mr. DeAngelis stated that he was pleased with the subcommittee recommendation and requested that the council approve the subcommittee recommendation. Mr. Goldman explained that there had been a number of public hearings and two workshops on this application. Vice Chair Lemont stated that recommendations #21 and 22 were the main recommendations by the subcommittee. Mr. Reis stated that there was no plan in the file, which is consistent with the subcommittee recommendation. Mr. Reis requested that the applicant submit a plan consistent with the subcommittee recommendation. Mr. Goldman agreed as this was part of the subcommittee recommendation. Mr. Gray, seconded by Mr. Reitsma moved approval of the subcommittee recommendation, that the applicant work with staff to create a plan for a 50% managed buffer zone and a 50% untouched buffer zone. Mr. Reitsma highlighted the fact that the subcommittee hearings began in November 28, 2000 and it's now October 28, 2003. Mr. Reitsma felt that this was too long a period of time for a subcommittee. Mr. Goldman explained that the delay was due to the applicant not CRMC and that CRMC reconvened the subcommittee because they did not hear from the applicant. Vice Chair Lemont called for a roll call vote:

On the reading of the transcript.

Rep. Malik

No

Mr. Sahagian

Yes

Mr. Abedon	Yes	Mr. Coia	Yes
Mr. Reitsma	Yes	Sen. Sosnowski	No
Rep. Naughton	Yes	Sen. DaPonte	Yes
Mr. Ehrhardt	No	Mr. Ricci	Yes
Mr. Paolino	No	Vice Chair Lemont	Yes
Mr. Gray	Yes		

7 Affirmative            4 Negative            0 Absentation

On the motion to adopt the subcommittee recommendation.

Mr. Abedon	Yes	Mr. Sahagian	Yes
Mr. Reitsma	Yes	Mr. Coia	Yes
Rep. Naughton	Yes	Sen. DaPonte	Yes
Mr. Gray	Yes	Mr. Ricci	Yes
		Vice Chair Lemont	

9 Affirmative            0 Negative            0 Absentation

The motion carried.

**7. MOTION TO CONSOLIDATE BEFORE THE FULL COUNCIL:**

'2003-05-155 CHAMPLIN'S REALTY ASSOCIATES – Applicant motions that the RICRMC consolidate the instant action with the Town of New Shoreham's pending proposed Harbor Management Plan.

Robert Goldberg, the applicant's attorney was present on behalf of the applicant. Donald Packer, solicitor for the Town of New Shoreham and Daniel Prentiss, attorney for the Great Salt Pond Commission, the objectors were also present. Chair Tikoian stated that only the motion to consolidate the application and the Town of New Shoreham Harbor Management Plan was before the council. Chair Tikoian stated that the Harbor Management Plan before the council had not been approved yet and the Champlin's application to expand their marina had not been approved. Chair Tikoian said there are conflicting issues between the application and the harbor management plan. Chair Tikoian said the motion to consolidate both processes was before the council. Mr. Reitsma asked if there were any precedents for this or any CRMC policy on this. Chair Tikoian noted that the council could consolidate them. Mr. Goldman replied yes the council could consolidate them under 5.5 of the management procedures. Mr. Goldberg explained that there were two matters before the council and they overlap into two sections of water. Mr. Goldberg said that common factors of law need to be looked at. He felt that consolidation of both would help both parties and felt they should hear all the testimony at once and make a decision. Mr. Goldberg stated that there were two objections on file by the Town of New Shoreham and the Great Salt Pond Commission. Mr. Goldberg said it was the same water and the same issues would be raised and felt they should hear both at one time and this would save time. Mr. Packer explained that the only reason the town objected was because they wanted to have the harbor management plan approved first since it has been pending since 1999. Mr. Packer said the harbor management plan could be ready to be heard by the council in two weeks and that staff changes could be done. Mr. Packer stated that Champlin's application is not ready and is short on the merits. He said the applicant had not

received approval from the Army Corps and the Historical Preservation Commission had requested information. Mr. Packer said the town has also prepared a list of questions on the marina expansion that need to be answered before the town could take a position. Mr. Packer stated that this was a significant expansion of Champlin's. Mr. Packer felt the town should not be held up on approval of their harbor management plan. Mr. Packer said if there is a conflict in the plan regarding Champlin's and the town's mooring field "e" and the expansion of the marina it could be addressed at that time. He felt it was inappropriate to hold up the town's harbor management plan. Mr. Prentiss echoed Mr. Packer's statement. Mr. Prentiss felt this was a policy issue and it needed to be addressed by CRMC not the applicant. Mr. Prentiss felt the council should act on the town's harbor management plan then consider the applicant's plan. Mr. Gray said it was his understanding that a harbor management plan was a recommendation or a guidance document to the council. Mr. Gray asked what authority a harbor management plan had to the council. Mr. Fugate explained that a harbor management plan had elements of both managing and establishing mooring fields in accordance with the CRMC plan. He said CRMC makes sure they follow the criteria of the plan. Mr. Fugate said that setbacks and other areas could either be adhered to by the council or overridden. Mr. Fugate said the municipality has very limited authority for mooring fields and anchorage areas. Mr. Ricci noted that in Item #6 of the applicant's motion stated that they had volunteered to help the town with the mooring field design but the town had refused. Mr. Packer stated that paragraph 7 of their objection noted that there had been a number of meetings and request for information from the applicant which had not been received. He also stated that item #26 stated an alternate proposed plan, which will not reduce the mooring field, and they have not seen an alternate plan. Mr. Packer said the only plan is to put a marina out into mooring field "e" and leave every man for themselves. Mr. Packer said the applicant wants to encroach into the mooring field and the town was opposed to this, but are willing to look at an alternative. Mr. Ricci asked if the town's harbor management plan would be ready in two week. Mr. Packer replied yes. Mr. Reitsma said they are asking the council to adjudicate the conflict in two areas and felt it was inappropriate for the council to do this. Mr. Goldberg felt there was no current harbor management plan in place and that a harbor management plan has many uses. Mr. Goldberg said this was a suggestion on motion to consolidate and felt that both issues could be addressed at the same time. Sen. DaPonte asked what the status was on the 1999 plan and asked if it was still pending. Mr. Goldman explained that litigation had just been concluded this spring with the town regarding jurisdiction on the Great Salt Pond. He said the town felt that CRMC had no jurisdiction on the pond. Mr. Goldman said the town did not move forward with their harbor management plan because it would be an admission that CRMC had jurisdiction. Mr. Goldman said the ruling of the court was that CRMC had jurisdiction on Great Salt Pond beyond MHW. Sen. Sosnowski said the case was recently decided. Mr. Goldman replied yes on June 12, 2003. Mr. Gray asked if there was an old harbor management plan prior to 1999. Chair Tikoian replied yes there had been a plan prior to 1999 but it had expired. Mr. Goldman said they had received the request to renew the plan after the expiration date of the plan. Mr. Gray asked what the status was on the original plan. Mr. Goldman replied there is no status.

#### Rebuttal.

Mr. Goldberg said they tried to work with the town three or four times and there was no answer as to what the town doesn't like about the applicant's plan. He said they only received the list of 29 questions from Mr. Packer two weeks ago. Mr. Goldberg stated that the town only requested interim approval of their harbor management plan as the final plan was not all set and requested a 6-month review of the plan. Mr. Goldberg

stated that there were common questions on fact and law on both applications. Mr. Goldberg requested that the council consolidate both applications. He also noted that their Army Corps application had gone out to notice. Chair Tikoian stated that there are various components of the harbor management plan. Chair Tikoian asked if there were any other issues of the plan that were in conflict with the applicant's request for a marina expansion. Mr. Goldberg replied the anchorage and natural resource areas and if they displace some of the moorings they have suggested that the moorings could be moved around. Chair Tikoian asked if there was an alternative if the recommendation to consolidate both was not approved. Chair Tikoian suggested that they only consolidate the component of the mooring field aspect of the harbor management plan. Mr. Goldberg said this was fine with them if they did this before they approved the entire harbor management plan and addressed the anchorage area and move some of the other moorings. Chair Tikoian stated that if the council gave interim approval and something affects another area that they could come back to the council to modify the plan. Mr. Reitsma said he was not sure if the applicant was in conflict with the harbor management plan. Mr. Reitsma said a private use was not relevant in reviewing a harbor management plan and a harbor management plan was not based on a particular application. Mr. Coia said this may be the reason to consolidate them. Mr. Reitsma did not agree with consolidating them. Mr. Fugate explained that the council has exclusive jurisdiction over marinas and other structures in the water and that they can override the harbor management plan. Mr. Fugate suggested that they look at them jointly rather than separately. Sen. Sosnowski asked if the harbor management plan had a public hearing the public could address their issues of concern. Mr. Goldman replied yes. Mr. Gray said a harbor management plan designates anchorage and mooring but the CRMC can override and change this. Mr. Fugate replied that CRMC has the final say. Mr. Reitsma was concerned with approving the harbor management plan and having an applicant make sure their interests are being protected. Mr. Fugate said there was a question as to whether there is a harbor management plan. Chair Tikoian asked if the mooring areas were the same in both the old plan and the new plan. Mr. Anderson said yes. Mr. Gray said they need to find out if the old plan was still in effect. Mr. Ehrhardt stated that 5.5 of the management procedures said the council may order them to consolidate but not order them to consolidate. Mr. Ehrhardt felt that there were a lot of murky issues that needed to be addressed. He felt the cleanest way to do this was to try to get a new harbor management plan in place and then fall into a natural process of the plan. Mr. Packer and Mr. Prentiss had no rebuttal statements. Mr. Goldberg said it did not matter how they take these application there would still be dissatisfaction and they will hold each other up and this would set up the appeals by both parties. Mr. Goldberg requested that they be consolidated and addressed all at once. Mr. Coia said there were overlapping instances and facts and felt the council should hear them all at once. Mr. Coia, seconded by Mr. Ricci moved to approve the motion to consolidate. Vice Chair Lemont stated that he was persuaded by Mr. Prentiss' argument. Vice Chair Lemont felt the town should have the first crack at the plan then the applicant could come in. Vice Chair Lemont was not in favor of consolidating the applications. Sen. Sosnowski said she would have to vote to deny the motion to consolidate as she felt the town needed to have a harbor management plan and this would be putting the cart before the horse. Mr. Abedon did not feel it was appropriate to consolidate the applications. Chair Tikoian stated that he was not in favor of a consolidation of both in total but did agree that they could consolidate the issue of the mooring field plan portion that was in conflict. Chair Tikoian called for a roll call vote on the motion to consolidate:

On the motion to consolidate in total.

Rep. Malik	Yes	Mr. Sahagian	Yes
Mr. Abedon	No	Mr. Coia	Yes
Mr. Reitsma	No	Sen. Sosnowski	No
Rep. Naughton	Yes	Sen. DaPonte	Yes
Mr. Ehrhardt	No	Mr. Ricci	Yes
Mr. Paolino	Yes	Vice Chair Lemont	No
Mr. Gray	No	Chair Tikoian	No

7 Affirmative      7 Negative      0 Absentation

The motion failed.

Chair Tikoian stepped down as chair. Vice Chair Lemont presided. Chair Tikoian, seconded by Mr. Coia moved approval to consolidate the mooring field aspect of the plan. Vice Chair Lemont asked what impact this would have. Mr. Ehrhardt stated that he was frustrated as there was no application before the council and he has not seen the application and could not make a decision without seeing the application. Chair Tikoian stated that the application was being reviewed at the staff level. Mr. Abedon felt that this might set bad precedent and make the water murky. Mr. Reitsma said he had some concerns on policy and legal concerns. Mr. Packer stated that he was concerned with duplication of same issues and not opposed to getting the harbor management plan approved and interim approval for mooring field "e". Mr. Prentiss felt that you could not do this. He said you have to legislate first and adjudicate after. Vice Chair Lemont called for a roll call vote on the motion

On the motion to consolidate the mooring field portion of the plan.

Rep. Malik	Yes	Mr. Sahagian	Yes
Mr. Abedon	No	Mr. Coia	Yes
Mr. Reitsma	No	Sen. Sosnowski	No
Rep. Naughton	Yes	Sen. DaPonte	Yes
Mr. Ehrhardt	No	Mr. Ricci	Yes
Mr. Paolino	Yes	Vice Chair Lemont	Yes
Mr. Gray	No	Chair Tikoian	Yes

9 Affirmative      5 Negative      0 Absentation

The motion carried.

8. **PUBLIC HEARING ON PROGRAM CHANGES TO THE PROVIDENCE HARBOR SPECIAL AREA MANAGEMENT PLAN:**

1. Revise Section 110: Providence Harbor: A Special Area of Concern to Rhode Island.
2. Add Section 520.5: Capital Center District

Chair Tikoian opened the public hearing. Mr. Fugate explained the program change and said this was an amendment to the Providence SAM plan as the plan was out of date and this would update the plan. He said they would address the Capitol Center point

first, then the Eastside, then the I-95 piece and then field's point. He said the university had reviewed the plan. Mr. Fugate said the change was to clarify the buffer language and staff agreed as it would bring section 2c in conformance with the plan. Chair Tikoian called for public comment. Debra Merlino, Capital Center thanked CRMC for their efforts. There was no other public comment. Chair Tikoian closed the public hearing. Mr. Abedon seconded by Rep. Naughton moved approval of program changes to the Providence Harbor SAM plan. Mr. Reitsma asked if the question raised by the Capitol Properties in the language regarding CRMC jurisdiction on their property had been addressed. Mr. Fugate replied yes there is limited jurisdiction by CRMC. Mr. Reitsma felt the replacement language was confusing and raised questions on buffer requirements. Ms. Merlino said there are no setbacks on the water only setbacks for buildings. She said buffer setbacks would cause additional hardship to develop the area. Mr. Reitsma suggested the language "buffer zone requirement, if applicable, shall be met within the 20' wide setback". All council members agreed. The motion was carried on a unanimous voice vote.

**Chair Tikoian called for a recess at 8:45 p.m. Chair Tikoian called the meeting back to order at 8:51 p.m.**

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

'2003-05-160 RIVERVIEW PARTNERS – Subdividing the existing two lots into three lots and constructing three residential family houses. Located at Plat 31, Lots 58 and 62; Sowans Road, Barrington, RI.

Chair Tikoian recused himself. Vice Chair Lemont presided over the application. David Gardner, a partner of Riverview Partners, the applicant was present. Joseph DeAngelis, the applicants' attorney and Scott Rabideau, the applicants' biologist were also present on behalf of the applicant. Edward Pimentel, East Providence Zoning Board was also present on behalf of the applicant. Mr. Reis gave council members a brief summary on the application. Mr. Reis stated that the application was to create a 3-lot subdivision which was previously a 4-lot subdivision. Mr. Reis stated that the land would be subdivided into three house lots serviced by public water and sewer. Mr. Reis stated that the reduced buffer plan had been received on October 22<sup>nd</sup>. Mr. Reis said based on the plan staff did an addendum dated 10/23/03. Mr. Reis stated that staff reviewed both plans and still recommended denial of the application. Mr. Reis stated their primary concern was the failure to meet the variance criteria. Mr. Reis stated that staff had no problem with the 2<sup>nd</sup> lot meeting the variance criteria but the creation of the 3<sup>rd</sup> lot did not meet the variance criteria. Mr. Reis said the problem with the creation of the 3<sup>rd</sup> lot was the large variance requested. Mr. DeAngelis explained that three friends found a 10-acre parcel of land and they purchased it so they could build their homes. Mr. DeAngelis stated that 80% of the property would be left in a natural state. He said the buffer line was designated by the wetland flag. Mr. DeAngelis stated that whether there is 2 or 3 houses the buffer relief would be the same. Mr. DeAngelis explained that the Barrington subdivision regulations require that when subdivision is approved that the applicant's needed to get CRMC approval before the town would stamp the plan. Mr. DeAngelis said the lots are all 60,000 s.f. and would only require a 100' buffer not the 200' buffer. Vice Chair Lemont asked staff if the town did not require CRMC approval what their recommendation would be. Mr. Reis replied it would be the same. Mr. Reis explained that if the lot was recently subdivided the applicant created the need for a variance and created their own hardship. Mr. Paolino asked if this was zone R25 and

felt this was a local issue. Mr. Paolino felt that CRMC had jurisdiction over a 6-lot subdivision not a 3-lot subdivision. Mr. DeAngelis stated that they would be giving 60% of the land to the Town of Barrington Land Trust. Mr. Gardner explained that Riverview Partners consisted of himself, his office manager and her husband and a friend. Mr. Gardner said their proposal was to construct three residential houses on a 10-acre parcel. Mr. Gardner said he is a registered land surveyor. Mr. Gardner stated that the Town of Barrington approved the 1<sup>st</sup> plan with the 6-acre piece of land going to the Town of Barrington Land Trust and the 3 lots along the road being 60,000 s.f. He said the plan was not recorded because they had to obtain a CRMC assent. He said they had a number of discussions with staff and they revised the plan and increased the buffer. Mr. Gardner stated that the buffer on lot 2 is now 200', the buffer on lot 3 is 175' and the buffer on lot 1 is 100' from the wetland flag then extends to 180-190 feet. Mr. Gardner stated that lot 1's buffer on the southern end is 75' at the northern line. He said the 60,000 s.f. lots would require a 100' buffer. Mr. Gardner said they would be deeding 6 acres to the Barrington Land Trust and there would be a 200' wide easement deeded to Greenway. Mr. Gardner stated that they were not seeking any view corridors, recreational areas on the water or walking paths in a view corridor. He said staff was opposed to the walking paths and they took them off of the plan. Vice Chair Lemont asked if it would be deed in fee or an easement. Mr. Gardner replied deeded in fee. Vice Chair Lemont asked if the offer to deed over 6-acres of land still stood. Mr. Gardner replied yes. Mr. DeAngelis qualified Edward Pimental as an expert in zoning. Mr. Sahagian, seconded by Mr. Coia moved to accept Mr. Pimental as an expert in zoning. The motion was carried on a unanimous voice vote. Mr. Pimental testified that he was familiar with the zoning ordinance for the Town of Barrington. Mr. Pimental said the original 6-lot plan with an open lot would meet the zoning regulations and they could have built more than three houses. Mr. Pimental stated that this was a unique review process. Mr. DeAngelis submitted a copy of Mr. Pimental's report regarding the 7-lots and 4-lot proposals to the council. Mr. Reitsma asked if the 6-lot subdivision met all the zoning regulations and if all 6 lots were buildable. Mr. Pimental replied no. Mr. Rabideau testified that the wetland was delineated by DEM and approved by CRMC. Mr. Rabideau said there are unique characteristics on the site. Mr. Rabideau stated that the development would be closer to the road and the rest would be left in a natural state. Mr. Rabideau said a 100' buffer was proposed and he did base his May 2003 report on a 200' buffer. Mr. Rabideau said staff was concerned with the paths crossing over the wetland area and they took them out. Mr. Rabideau stated that the original plan had 50% buffer protection and they now have 70% buffer protection. Mr. Rabideau stated that 6-acres would be deeded over to the Barrington Land Trust and there would be no view corridors or walkways in the easement area. Mr. Rabideau stated that they were only requesting a 30% variance. Mr. Fugate clarified the freshwater wetland and stated that view corridors were not allowed and this was the same as DEM regulations. Mr. Rabideau addressed the buffers on lots 2 and 3. He said if a 2-lot subdivision was approved and not the 3-lot subdivision by CRMC the buffer would still be the same and a 20-30% buffer variance request would be needed because of wetland flag A10. Mr. Rabideau said the applicant meets 2 and 3 of the variance criteria and he felt there would be no adverse impact or use impacts. Mr. Rabideau stated that a 75-100 foot buffer on lot 1 would have no adverse environmental impact. He said whether this was a 2-lot or 3-lot subdivision they could not meet the buffer standards. Mr. Rabideau felt this was the minimum buffer variance necessary. He said the site conditions caused the applicant undue hardship. Mr. Reitsma asked if applicable standards could be met whether this was 2 or 3 lot subdivision. Mr. Rabideau explained that if this was a 2-lot subdivision it would require a 20% buffer variance and if 3-lots it would require a 30% buffer variance. Mr. Reitsma said they would have to move the location of the two

houses to minimize the buffer variance. Mr. Rabideau replied yes but they would still need a buffer variance. Mr. Reitsma asked if there was an additional setback beyond the 75' buffer. Mr. Rabideau said yes a 25' construction setback was beyond the 75' buffer. Mr. Reitsma asked about the stormwater runoff. Mr. Rabideau stated that the runoff would percolate before it hits the water. Mr. Reis recapped the comments made. He said staff did a lot of work on this application. Mr. Reis stated that the point staff was trying to make was the applicant's failure to meet variance criteria number 5 and the hardship was caused by the applicant. He said staff would support a variance for the second lot. Mr. Reis stated that if the lot was replatted it would be different but these lots were recently replatted and need to meet different standards. Mr. Reis said they would have still contacted the town to see when the lots were platted. Mr. Reis felt the applicants created their own hardship. Mr. Reis felt the council needed to consider the whole picture and that other applications with the same situations were pending. Mr. Reis felt the application did not have merit. Vice Chair Lemont asked them to address the applicant creating their own hardship. Mr. Goldman stated the if the council found the applicant created their own hardship then they would have to deny the variance request. He said they would have asked staff to look over the history of the lot. Vice Chair Lemont asked if by creating 3 lots instead of 2 lots have they created their own hardship. Mr. Goldman said the council would need to look at the whole variance criteria standards and make a determination. Vice Chair Lemont asked if they created their own hardship and deed 6-acres of land in fee to the town could they approve the variance. Mr. Goldman replied they have to weigh all the other criteria's and if they felt the applicant met other parts of the criteria they could approve the variance request. Mr. Reitsma disagreed. Mr. Reitsma felt this was not a fact-finding issue. Mr. Reitsma said the deeding of the 6-acres was not necessary a condition of the approval of the variance. He said the council could approve the variance even if the applicants created their own hardship. Mr. Goldman said that this would have been approved by the town. Mr. Reitsma asked if he believed this was one case and other cases that are legally the same but different in environmental impact and this decision could not be used in other cases. Mr. Goldman replied yes. Mr. Reitsma said they needed to look at the hardship issue and look at the land from the local approval and the protection of a large portion of land. Mr. Reitsma said if this was the case they don't have to find the applicant created their own hardship. Mr. Abedon said the original proposal had six lots and asked if whether this was 2 or 3 lots were there degrees of hardship. Mr. Goldman said this was a hard question to answer. Mr. Reis stated that staff felt that under Section 120 all six criteria's for a variance had to be met. Mr. Gray asked if the staff was referring to the orange colored buffer line on the 2-lot plan and if this supported by staff. Mr. Reis replied yes because the 2 lots pre-existed the subdivision. Mr. Gray asked if the buffer line for the 3-lot plan was the same as the buffer line in the 2-lot plan. Mr. DeAngelis replied yes. Mr. Reis said yes but they created the third lot. Mr. Gray said they are still getting the same buffer protection with 2 or 3 lots and the variance loss was the same. Mr. Reis said it was very close to the same. Mr. Gray asked what the impact was to the line whether there was 2 houses versus 3 houses. Mr. Rabideau explained that this was originally 4 lots with a 100' buffer. Mr. Reitsma said if you look at it this way the only determination was that all 6 criteria's need to be met. Mr. Reitsma asked if the applicant was aware of the problem with CRMC. Mr. Gardner replied they were not aware that CRMC was part of the planning process with the town. Mr. Sahagian said this was R25 zoning. Mr. Pimental replied yes. Mr. Sahagian said this applied to 25,000 s.f. lot. Mr. Pimental replied yes. Mr. Sahagian asked what the road requirement was per unit. Mr. Pimental stated a 140' front setback. Mr. Sahagian asked what the entire frontage of the property was. Mr. Gardner replied 140', 140' and 162 feet frontage for the 3 lots. Mr. Sahagian asked if they could build two houses on lot 1. Mr. Pimental replied no only

one house could be built on a recorded lot. Mr. DeAngelis stated they would still have to request a variance whether the lots were subdivided or not and the hardship was not created by the applicant. Mr. Goldman stated that it was the interpretation of Mr. Reis and Mr. Reitsma that all 6 variance criteria's needed to be met. Mr. Goldman said the council needed to look at the overall application and the impact it would have and if there would be damage to the coastal environment. Mr. Reis stated that staff needed to know what plan was before the council, the 2-lot, 3-lot or 4 lot plan so they could prepare stipulations. Mr. DeAngelis stated the last week's plan submitted showed the increase buffer for 3 lots and an easement to deed the 6-acres to the Barrington Land Trust. Mr. Gray, seconded by Mr. Ehrhardt and Rep. Malik moved approval of the 4-lot plan with the buffer zone depicted on the 3-lot plan dated 10/23/03 and with the 4<sup>th</sup> lot being given in fee simple to Barrington Land Trust and this decision was based on taking the project as a whole for the applicant to subdivide into 3-lot and preserve a large portion of the property in a natural state and that the applicant did not create their own hardship. The motion was carried on a unanimous voice vote.

'2003-09-010 – DUNELLEN, LLC – Repairs improvements to concrete breasting dolphin consisting of new timber fendering system and steel H-piles to provide additional support; install two (2) new barge breasting dolphins (steel), per plans. Located at Plat 7, Lot 2.2; Pier Road, East Providence, RI.

Todd Turcotte, the applicant was present. Mr. Anderson gave council members a brief summary on the application. Mr. Anderson stated that the application was for improvements to concrete breasting dolphins, pier and to add a smaller fendering system. Mr. Anderson said staff recommended approval of the application. Mr. Sahagian, seconded by Sen. DaPonte and Rep. Malik moved approval of the application with all staff stipulations. The motion was carried on a unanimous voice vote.

There being no further business before the council the meeting, the council adjourned at 9:10 p.m.

Respectfully submitted,