

In accordance with notice to members of the Rhode Island Coastal Resources Management Council a meeting was held on Wednesday, November 12, 2003 at 6:00 PM at the Department of Administration – Conference Room C – One Capitol Hill, Providence, RI.

## **MEMBERS**

Mike Tikoian, Chair  
Paul Lemont, Vice Chair  
Jerry Sahagian  
Ray Coia  
Joe Paolino  
Larry Ehrhardt  
Rep. Jan Malik  
Sen. Dan DaPonte  
Joe Shekarchi  
Neill Gray  
Jerry Zarrella

## **STAFF PRESENT**

Grover Fugate, CRMC Executive Director

Ken Anderson, CRMC Senior Engineer  
Amy Silva, 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.

Vice Chair Lemont requested that page 4 of the minutes be corrected to show that the vote on the reading of the transcript was "9" affirmative not 7 and that he was shown as voting "Yes" on the motion to adopt the subcommittee recommendation. Mr. Gray also requested that the minutes be amended to show that he was in attendance. Mr. Coia, seconded by Mr. Ehrhardt moved approval of the October 28, 2003 minutes as amended. The motion was carried on a unanimous voice vote.

2. **STAFF REPORTS**

There were no staff reports.

3. **SUBCOMMITTEE REPORTS**

There were no staff reports.

4. Chair Tikoian announced that the council meeting in December would be held on the third Tuesday, December 16<sup>th</sup> to accommodate the Town of New Shoreham because the town would be hearing the Champlin's application on December 9<sup>th</sup>. Chair Tikoian stated that this would be the only application on the agenda for December 16<sup>th</sup>.

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

5. **ADMINISTRATIVE APPLICATION BEFORE THE FULL COUNCIL FOR DECISION:**

'2002-10-039 WILLIAM LORD – Construct a 26' x 30' single family dwelling with an attached 8' x 20' deck. The dwelling will be connected to municipal water and sewer service. Also, install a permeable driveway and fences as shown on the submitted plans. Located at Plat R, Lot 281; Saltaire Avenue, Narragansett, RI.

William Lord, the applicant was present. Donald Packer, attorney for the applicant was also present on behalf of the applicant. Mr. Anderson gave council members a brief summary on the application. Mr. Anderson stated that the application was for a dwelling with sewers on Saltaire Avenue in Narragansett. Mr. Anderson said the application needs a 100% buffer variance and an 83% setback variance and that staff deferred the application to the council for their decision on the variances requested. Mr. Anderson explained that they were not eligible for a variance at the local level previously but the local zoning variance was changed and they now can have an additional front yard variance from the town and this would increase the buffer area. Chair Tikoian explained that the applicant was awaiting local variance changes and they have been approved by the town. Mr. Anderson replied yes and the applicant is now eligible for relief on the front yard setback from the town and the application could be approved subject to the applicant getting an approval for a variance from the town. Mr. Gray stated that the addendum to the staff report stated that the application should be continued to allow the applicant to go back to the town for the additional variance then come back to the council. Chair Tikoian stated that the applicant's attorney requested that the council approve the application subject to them getting a variance from the town. Mr. Packer explained that the zoning variance change was approved in July 2003. Mr. Packer said the plan submitted to staff showed a 15' setback from the road. Mr. Packer said they had a 25' setback approval from the town. Mr. Packer wanted the council to approve the application subject to the applicant getting a 10' front yard variance from the town to get an additional 10' in buffer. Chair Tikoian asked legal council his opinion on this. Mr. Goldman explained that under the CRMC rules all local approvals had to be received before the council made a decision. Mr. Goldman felt that if the council approved the application subject to the applicant getting a variance from the town it may set a precedent. Mr. Sahagian said if the town did not change the ordinance the application could be approved as submitted. Mr. Sahagian felt the council should approve the application now subject to the applicant getting approval from the town to move the house closer to the road. Chair Tikoian felt that there was a broader issue here and that this may set a precedent. Mr. Sahagian felt the council should approve the application as is subject to the applicant getting a variance from the town to move the house 10' closer to the road. Vice Chair Lemont asked how long it would take to have the application heard before the town. Mr. Packer replied about three months. Vice Chair Lemont stated that it would take three months to get approval from the town and the applicant could not do anything until they got local approval. Vice Chair Lemont recommended that the applicant get local approval first and wait a week to get CRMC approval. Vice Chair Lemont did not feel that this was a hardship to the applicant. Mr. Zarrella said he was in favor of the application as submitted. Mr. Zarrella stated that it is a lengthy process to get local approval. Vice Chair Lemont felt that this was not the fault of the council because the applicant requested that the application be continued to allow them to get the town to make the zoning variance change. Mr. Packer requested CRMC approval subject to them getting a 10' variance from the town. Chair Tikoian stated that the issue is that CRMC is the last on the totem pole and the applicant needed to get local approval first. Chair Tikoian felt this was an issue at the local level. Mr. Paolino felt the council should go ahead with the request of the applicant and set a

precedent. Rep. Malik stated that the applicant's attorney knew the rules of the council and wanted to know if the council did approve this would this be adding another bullet to the gun so that they could get local approval because they now had CRMC approval and this would force the town to grant approval. Mr. Packer said the application has been pending since October 2002 and the variance change was in July 2003. Mr. Packer wanted to move forward with the application and not delay the application any further. Chair Tikoian took exception to Mr. Packer blaming the CRMC for the length of time the application was pending. Chair Tikoian stated that the application had been continued at the applicant's request so they could get the local variance change and felt the delay was at the local level not at CRMC. Mr. Gray asked why we have buffer zones if we grant 100% buffer relief. Mr. Zarrella felt that the council weighs the facts of an application and makes a decision. Chair Tikoian stated that the question on the table was whether the council wanted to vote on the application without all permits being in order. Mr. Sahagian felt that the applicant had all approvals in hand. He said the council could approve the application subject to the applicant getting a 10' setback variance for the house. Mr. Sahagian wanted to approve the application as is and have the applicant's attorney go back to town to get a 10' variance to move the house 10' away from the buffer area. Mr. Gray said that if the council approved the application as it they could not tell the applicant they had to go get a 10' variance from the town. Mr. Goldman explained why CRMC is last. Mr. Goldman said the statute and regulations require an applicant to have all local and state approvals before they come to CRMC. Mr. Zarrella said the council could approve the application as is. Vice Chair Lemont felt the application should follow the natural course of the permit process. Chair Tikoian stated that by getting CRMC approval first, an applicant could use this agency to get local approval. Mr. Packer felt the town was in favor of moving the house away from the coastal feature. Mr. Zarrella stated that if the applicant did not want to go back to the town they have all permits in place and the council could vote the application up or down. Mr. Goldman explained that CRMC requires you to get all reliefs at the local level first. He said they are asking CRMC to approve the application subject to moving the house 10 feet and if the applicant did not get the zoning variance from the town there would be no valid CRMC assent and they would have to come back to the council. Mr. Sahagian said if you approve the application with a 40-50' buffer and if the applicant is successful it would move the house 10' away from the coastal feature. Mr. Goldman stated that if the council approved the application with a 40' buffer it forces the town to give the applicant the 10' setback variance and if you approve it with a 40-50' buffer it could go either way. Mr. Sahagian asked if there were changes in the application to move the house 10 feet does the applicant have to come back to the council. Mr. Fugate replied yes because this was a modification of the application. Mr. Gray asked if this could be approved administratively. Mr. Fugate replied yes. Mr. Gray said the council could approve the application with a 40-50' buffer but could also approve it at a 50' buffer and if the applicant got a 10' variance from the town they could get a modification of the application which could be approved administratively by the executive director. Mr. Packer said the town is on the same page as CRMC to get a larger buffer from the coastal feature. Mr. Packer stated that this was an unusual situation. Mr. Packer said the application was submitted to CRMC in October 2002 and the zoning change was in July 2003. He said all permits were in place. Mr. Sahagian recommended approving the application at a 50' buffer and if the applicant got a 10' relief from the town they can get an administrative assent for modification from the executive director. Vice Chair Lemont felt they had to go by the rules and regulations. Vice Chair Lemont said he would like to see them speed this up but they were pointing the finger at CRMC and it was not CRMC's fault. Mr. Gray said the town has the same mind set as CRMC to get larger buffers. Mr. Gray stated they could grant a conditional 40' buffer and if the applicant did not get a 10' variance from the town they had to come

back before CRMC. Mr. Gray, seconded by Vice Chair Lemont and Mr. Zarrella moved approval of the application with a 40' buffer and that the applicant had to get a 10' setback variance for the house from the town and if they did not get local approval that they come back before the council. Mr. Sahagian felt the application meets all the CRMC criteria as submitted. Mr. Zarrella also felt that the applicant had all permits from the town and state. He said the new town rule changes would allow the house to be further away from the coastal feature. The motion carried. Mr. Sahagian, Mr. Coia, Mr. Paolino and Mr. Shekarchi were opposed. Mr. Gray asked where the house was now. Mr. Anderson said the house is 12 ½ feet back from the wetland edge and there was no setback. Mr. Anderson said the applicant requested 100% buffer variance and if they moved the house 10' it would be 22 ½ feet away from the wetland and staff wanted the additional 10 feet to be the buffer zone. Chair Tikoian said the rules for setbacks and buffer are two separate components. Rep. Malik suggested that they continue the application to allow the applicant to get local approval to get 10' relief of the setback variance. Mr. Gray withdrew his motion and Vice Chair Lemont and Mr. Zarrella withdrew their seconds. Mr. Gray, seconded by Mr. Ehrhardt moved to continue the application to allow the applicant to get local approval for the variance and then be placed on the CRMC agenda. The motion was carried on a unanimous voice vote.

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

'2003-03-040 RICHARD GORDON – Construct and maintain a 60' x120' single family dwelling, to be serviced by municipal sewer and water service, on (subdivided) northern portion of existing Lot 72. (Per Section 150, the structure requires a buffer zone of 200' from the top of the bluff. The proposal provides a minimum buffer of 33', requiring a maximum variance of 167'). Located at Plat 41, Lot (portion of) 72; 81 Ocean Avenue, Newport, RI.

Richard Gordon, the applicant was present. Patrick Hayes, attorney for the applicant and Blake Henderson, the applicant's engineer were also present. Mr. Anderson gave council members a brief summary of the application. Mr. Anderson stated that the application was for a single family dwelling serviced by sewers. Mr. Anderson said the lot was subdivided and the buffer and the setbacks were based before the subdivision. Mr. Anderson explained that the applicant was requesting 195' buffer variance from the 200' buffer requirement and a 167' setback variance from the 225' setback requirement. Mr. Anderson said staff felt the applicant created his own hardship for not leaving enough room for the buffer. Mr. Hayes made a brief statement on the application. Mr. Hayes said this was 9-acres of property on Ocean Avenue. Mr. Hayes showed council members an aerial photograph of the site. He said the property is zoned R20 for a 3-acre site and R48 zoning. Mr. Hayes said in 1992 the property was three lots with a small lot in the middle a 3-acre lot to one side and a large parcel on the other. He said they consolidated the lots into one lot to save on taxes. Mr. Hayes stated that they wanted to recreate one lot in the R48 zoning area. Mr. Hayes said the applicant wanted to build a house for his daughter. He said there was a zoning change on Jeffrey Road from R20 to R40 and the setback requirements changed from a setback of 20 feet to 50 feet and this made the lot difficult to build on. Mr. Shekarchi asked if the lot has been subdivided already. Mr. Hayes replied that they have preliminary approval from the town for the subdivision. Mr. Shekarchi asked if they could re-cut the property to make the buffers larger to address staff concerns regarding the buffer. Mr. Hayes said they can offer additional buffer on another lot to compensate for the lack of buffer on this lot. Mr. Shekarchi wanted to see a different cut on the subdivision to address staff's buffer concern and to conform to the CRMC guidelines. Mr. Hayes said the lot next to this is

not deep enough to get additional buffer. Chair Tikoian asked if they offered the changes in the plan to staff. Mr. Hayes said he had discussions with Mr. Anderson but has not had a chance to review the changes with staff. Mr. Zarrella asked what approval he has received from the town. Mr. Hayes replied that he had a letter from the building official which stated that they would approve the subdivision. Mr. Zarrella asked if they could redesign the lot. Chair Tikoian stated that if changes were being offered he felt they should work with staff before a decision is made by the council. Chair Tikoian recommended that the application be continued to allow the applicant to address the issues of the buffer with staff. Mr. Anderson stated that he had conversations with Mr. Hayes but he had not reviewed the proposed changes. Mr. Anderson felt even with the proposed changes they would not see any additional setbacks or buffers. Mr. Gray said the front yard setback was 50 feet from the road and asked if they could get the town to grant a variance for the front yard setback. He said this would allow for a larger buffer area. Mr. Hayes replied yes they could get a variance from the town. Mr. Gray asked if they could reduce the length of the house from east to west. Mr. Hayes replied yes about 15 feet. Mr. Gray said if you get the house closer to the road and reduce the size of the house you will gain buffer on the water side of the property. Chair Tikoian recommended that the application be continued to address some of these issues raised. Chair Tikoian asked how soon they could get local approval. Mr. Hayes said they could be ready in two weeks. Mr. Zarrella said the applicant needs to sit down with staff to work out these issues and felt that it was in the applicant's best interest to negotiate with staff. Mr. Gray, seconded by Mr. Coia moved to continue the application to the first meeting in January or if possible the November 25<sup>th</sup> meeting. The motion was carried on a unanimous voice vote.

**'2003-05-106 KAREN AMERO – Construct and maintain a residential boating facility consisting of a fixed pier and a ramp leading to a 150 vs. terminal float. The proposed structure extends 50 feet seaward of the cited Mean Low Water mark. Located at Plat 3, Lot 69; 137 Shady Harbor Drive, Charlestown, RI.**

Karen Aero, the applicant was present. Jerry Petros, the applicant's attorney and Raymond Cherenzia, the applicant's engineer were also present on behalf of the applicant. Mr. and Mrs. Irvin Crandall, the abutters and objectors were also present. Mr. Anderson gave council members a brief summary on the application. Mr. Anderson said the application was for a residential dock and that no variances were requested. Mr. Anderson stated there was a riparian line issue with the abutter and staff deferred the application to the council for their decision. Mr. Anderson said the application meets the design standards and CRMC standards for a dock. Chair Tikoian asked the applicant's attorney to focus on the riparian line issue. Mr. Ehrhardt stated that there were two letters of objection in the file from Stuart Kent and the Crandall's. Mr. Ehrhardt asked what happen to the Kent's objection. Mr. Petros stated that there was no valid reason for the Kent objection. Mr. Cherenzia was accepted as an expert witness in engineering. Mr. Cherenzia explained that the home was located on Shady Harbor Drive in Charlestown. Mr. Cherenzia said no variance or special exception was needed. He said he prepared the application on behalf of the applicant. Mr. Cherenzia showed council members where the property was depicted on the map. He described the property and the boundary lines. Mr. Cherenzia said the dock goes over the abutters' riparian line and to accommodate the Crandall's they put the dock about 25-30 feet on the other abutters' property, the Dessueaux's, and they had a letter of no objection from them. He explained that the red dock on the map, which he designed, shows a proposed dock on the Crandall's land which would meet the CRMC setbacks and standards. Mr. Cherenzia said they moved the dock as far away from the Crandall's property to allow them to be able to build a dock if they wanted. Mr. Zarrella said if they

wanted to put a dock where the proposed Crandall dock is on the map would staff object to the dock. Mr. Anderson replied that the dock would be less than 25' from the property line extension. He said staff would have no objection to the dock. Mr. Shekarchi asked if the applicant would file a letter of no objection if the Crandall's wanted to build a dock. Mr. Petros replied yes.

#### Objector.

Irwin Crandall, the abutter and objector, said you cannot see the dock now but if you clean out the overgrown portions you would see the dock. Mr. Crandall wanted to be able to put a dock in if they wanted to. Mr. Crandall felt the dock across the way made it difficult for others to put docks in. Chair Tikoian asked what the depth was of the proposed dock. Mr. Cherenzia explained that this was a shallow area and the applicant's depth at the end of the dock was only 2 ½ feet and the dock would be used as a dinghy dock. Mr. Zarrella asked if the Crandall's were opposed to their neighbor having a dock. Mr. Crandall replied no. Mr. Zarrella said their only objection was to a dock that was put in years ago. Mr. Zarrella said the applicant had made a provision so the Crandall's could have a dock. Mr. Crandall asked how many feet were between the docks. Mr. Anderson replied 28 feet. Mr. Crandall wanted the council to move the other dock across the way. Chair Tikoian said the council could not do this. Vice Chair Lemont, seconded by Mr. Shekarchi moved approval of the application as presented with all staff stipulations and a letter of no objection from the applicant if the Crandall's or their successors wanted to have a dock as depicted on the drawing presented to the council and that it be recorded with the town. Mr. Gray asked if the other dock that Mr. Crandall mentioned was approved by the council. Mr. Shekarchi felt this was not relevant to this application. Mr. Gray wanted the staff to look at this dock to see if the permit was still valid. Mr. Neill had a question on the riparian lines. Mr. Petros said they used the property line extensions of the applicant's property and the Crandall property. Mr. Gray said there were missing boundary lines on the plan. Mr. Cherenzia said no the boundary lines are on the plan. Mr. Gray asked if the Crandall dock would be in the property lines. Mr. Cherenzia replied no. Mr. Gray asked if the dock was 25' from the setback from the Crandall's riparian line. Mr. Goldman explained that the only 25' setback was from the property line. Mr. Gray wanted to make sure the Crandall's were protected and that this would go along with the deed. Mr. Fugate said there was no objection to the depicted footprint of the dock on the plan. Mr. Zarrella asked if this would legally bond a new property owner. Mr. Goldman replied yes it would be part of the council's decision as the dock was depicted on the plan submitted and it would run with the property. Mr. Goldman said the assent would be recorded in the land evidence records. The motion was carried on a unanimous voice vote.

#### 7. Category "A" List

There were none held.

There being no further business before the council the meeting, the council adjourned at 7:26 p.m.

Respectfully submitted,