

In accordance with notice to members of the Rhode Island Coastal Resources Management Council a meeting was held on Tuesday, November 25, 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
Larry Ehrhardt
Sen. Dan DaPonte
Neill Gray
Jerry Zarrella
Dave Abedon
Rep. Eileen Naughton
Sen. Susan Sosnowsk

STAFF PRESENT

Grover Fugate, CRMC Executive Director

Dave Reis, CRMC Biologist
Kevin Cute, CRMC Marine Resource Specialist

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. Coia, seconded by Mr. Zarrella moved approval of the November 12, 2003 minutes. The motion was carried on a unanimous voice vote.

2. **STAFF REPORTS**

There were no staff reports.

3. **SUBCOMMITTEE REPORTS**

Vice Chair Lemont reported that they had a Right-of-Way Subcommittee meeting last evening regarding the right-of-way on East Transit Street. Vice Chair Lemont noted that they have to do some research on the right-of-way and they will be having a workshop at the beginning of the year and file a report with the full council

Vice Chair announced there would be a workshop on Sakonnet Point on December 11, 2003.

Chair Tikoian announced that the retreat with staff and council members will be held on Tuesday, December 2nd from 2:00 p.m. to 7:00 or 8:00 p.m. at Alton Jones and that there were four items on the agenda. Mr. Sahagian asked if staff would be given comp time. Mr. Fugate replied no that would be adjusting their work day schedule to accommodate the retreat schedule.

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

5. **CONTINUANCES:**

'2001-07-091 NANCY TAYLOR & HARRY SCHULT – Freshwater Wetlands application requesting permit to construct an access road through freshwater wetlands to provide an alternative to an existing access road. Proposed alterations include: placement of fill in 1100 s.f. of wetland and 1125 s.f. of perimeter wetland; installation of culverts beneath the roadway. Located at Plat 124, Lot 12; Shore Road, Westerly, RI.

The applicants were not present. Chair Tikoian announced that due to receiving late notice of the hearing, the applicant's were going to be out of town and requested that the application be continued. Chair Tikoian continued the application at the applicants' request.

'2003-02-11 MOUNT DEVELOPMENT GROUP, LLC – A three bedroom dwelling (36' x 26') with an attached deck (10' x 12') to be serviced by RIDEM approved ISDS and town water. Located at Plat 362, Lot 2-6; Cove Avenue, Warwick, RI.

The applicant was not present. Chair Tikoian stated that they received a letter from the applicants' attorney, John Shekarchi stating that their expert witness was not available and requested that the application be continued. Chair Tikoian continued the application.

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

'1999-10-019 JOHN KEATING – Construct and maintain a single family dwelling. Dwelling will be serviced by an approved RIDEM ISDS and well. Also construct a 200 s.f. recreational structure on south portion of island with no electric or septic facilities. Located at Plat 15, Lot 2; Spectacle Island, Portsmouth, RI.

John Keating, the applicant was present. Kenneth Trembley, the applicant's attorney 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 for a six bedroom single family dwelling to be serviced by a well and denitrification system and a 200 s.f. recreational structure. Mr. Reis explained that the buffer requirement was a 200' buffer and the applicant proposed a 43' buffer requiring a 157' buffer variance. He said the setback requirement was 25' and the applicant proposed a 16' setback requiring a 9' setback variance. Mr. Reis said staff had reviewed the application and had no objection to the application or the variances required. Mr. Goldman explained that this application had been going back and forth regarding a legal issue since November 2001 on whether or not the restriction on the property was valid. Mr. Goldman said the applicant's attorney did not feel the restriction was valid and agreed to accept any claims against the title on the reverter clause and there would be no impact to CRMC. Mr. Goldman said the legal issue had been resolved. Mr. Sahagian asked if this would go with the title. Mr. Goldman replied yes it would be part of the council's decision and the decision would be recorded in the land evidence records. Mr. Abedon asked what a reverter clause was? Mr. Goldman explained that when the land was originally conveyed in 1900 there was a clause that said the land had to be open space. He said there was a question as to whether the clause was valid or not. Mr. Trembley stated that he agreed with legal counsel. Mr. Trembley said they had received a release on the

reverter clause from one of the heirs of the property. Mr. Trembley said any risk would be the applicants. Mr. Sahagian asked if they had read the staff stipulations and if they reviewed and accepted them. Mr. Trembley replied yes. Mr. Sahagian, seconded by Mr. Coia and Mr. Zarrella moved approval of the application with all staff stipulations and the variances and the stipulation that the applicant agreed to accept any claims against the title on the reverter clause and there would be no impact to CRMC. The motion was carried on a unanimous voice vote.

'2003-06-082 JOSEPH J. OLIVEIRA – Construct modifications to an existing residential boating facility by installing a boat lift system. Located at Plat 1, Lot 229 and 296; 1046 East Shore Road, Jamestown, RI.

Joseph Oliveira, the applicant was present. John Caito, the applicant's engineer was also present on behalf of the applicant. Mr. Reis gave council members a brief summary on the application. Mr. Reis stated that this was a request for a modification to an existing boating facility which had been approved in 1981. Mr. Reis said the applicant wanted to add a boat lift to an existing facility. Mr. Reis stated that staff was concerned with the area where the boat lift would be because of the eel grass. Mr. Reis explained that a July 2002 survey showed eel grass in this area. He said the boat lift would shade the eel grass bed. Mr. Reis said staff recommended raising the dock to provide light for the eel grass. Mr. Reis said the width of the facility exceeds the area needed for sufficient sunlight for the eel grass. Mr. Reis said a normal dock width is a 4' width. He said the boat lift creates a larger width and staff recommended denial or modification of the application. Mr. Reis said he was not sure they could modify the dock because there is eel grass around the dock. Mr. Reis explained Section 300.18 concerning eel grass regulations. Mr. Reis stated that in 1981 when the dock was approved there were no eel grass regulations. He explained that the eel grass regulations require that all impacts to eel grass be minimized or avoided. He said staff had no suggestion on how the applicant could minimize the impact on the eel grass. Mr. Oliveira explained that he proposed to put the boat lift on the east side of the dock. He said if there was shade it would still allow sun under the dock. Mr. Oliveira felt the eel grass in the area was spotty and was not all eel grass. Mr. Oliveira was not sure what harm would be done to the eel grass if he put a boat lift in. Mr. Oliveira felt it would be a hardship for him if he was not allowed to put a boat lift in. He did not see how the eel grass would be effective. Chair Tikoian asked if the applicant had met with staff to discuss the application. Mr. Oliveira replied no. Mr. Oliveira said he only met with Mr. Caito, his engineer, and had a survey done on the eel grass. Mr. Zarrella asked if he hired a biologist to look at the eel grass and see if they could modify the application to address staff's concerns. Mr. Oliveira replied no. Mr. Zarrella suggested that the council hold the application to allow the applicant to hire a biologist then come back before the council. Mr. Reis stated that the eel grass survey was in the agenda packet and that staff used the survey in their determination on the application. Mr. Reis said he did contact Mr. Caito regarding staff's concerns and asked if they wanted to proceed with the application. He said Mr. Caito had responded yes. Mr. Reis explained that the survey the applicant had done was done in May which showed the eel grass in patches as this was not the growth season for eel grass. Mr. Ehrhardt stated that there were a number of docks on the northeast coast of Jamestown and asked if their conditions were the same as the applicant's. Mr. Reis responded that there are a lot of docks in Jamestown which predated the eel grass regulations and CRMC. He said that the council had approved about 15 docks with eel grass beds and modified them to allow sunlight under the dock to allow the eel grass to grow. Mr. Ehrhardt asked if the application was approved and another applicant with the same circumstances asked to have a boat lift would this be a concern to staff. Mr. Reis replied yes because there

would be a cumulative impact on eel grass in this area. Mr. Gray asked if the boat lift was approved what size boat the applicant had. Mr. Oliveira replied that he had a 24' stingray. Mr. Gray asked if staff had contacted the manufacturer of the system to see if the lift could handle a 30' or larger boat. Mr. Reis replied yes. He said he did contact the manufacturer to check out the capacity of the model the applicant proposed and was informed that it could accommodate a 30' boat length. Mr. Gray was concerned because this was type 2 waters and the impact it would have on the scenic value. Mr. Gray said if the system was installed it could handle a larger boat than a 24' boat. Mr. Gray felt a boat lift would ruin the scenic value and become a storage area for boats. Chair Tikoian asked staff to address SAV and why CRMC has regulations to protect SAV. Mr. Reis explained SAV and its importance to the environment. Mr. Reis said the best eel grass bed in the state was in the Town of Jamestown. He said that light penetration is a big issue regarding docks because there needs to be light for the eel grass to survive. Mr. Reis said eel grass provides habitat for fish. Mr. Reis said the SAV regulations were developed to protect eel grass. Mr. Caito stated that he designed the boat lift application for the applicant and hired a diver to look at SAV. Mr. Caito said there is eel grass around the dock and the float. He said the applicant wants to construct a boat lift to locate his boat so he doesn't have to go out to a mooring. Mr. Caito stated that this was not new construction for a dock because it is already there and it predates the SAV regulations. He said it would be a hardship to the applicant if he could not install the boat lift. Mr. Caito said they could extend the dock 100' to go over the eel grass and then put the boat lift at the end of the dock. Mr. Caito said this was a unique situation. Vice Chair Lemont said the council had a subcommittee to study eel grass in the bay. Vice Chair Lemont felt that eel grass was important to the bay. Vice Chair Lemont said if the application was denied the applicant could come back to the council in 18 months with a new application. Vice Chair Lemont suggested that the applicant get a biologist to work with staff to see if they could resolve staffs' concerns. Mr. Zarrella asked if Mr. Caito personally met with staff. Mr. Caito replied yes. Mr. Zarrella felt that if they brought another expert in to work on this with staff they may be able to resolve this. Chair Tikoian suggested that the applicant withdraw his application without prejudice. Chair Tikoian was not sure the application could proceed on its current merits because they may not be resolvable. Mr. Reis agreed to work with the applicant and his experts. Chair Tikoian continued the application to allow the applicant to work with staff to address staffs' concerns.

7. BLOCK ISLAND HARBOR MANAGEMENT PLAN REVIEW:

Donald Packer, solicitor for applicant was present on behalf of the applicant. Martha Ball, the First Warden and Andre Boudreau, Vice Chair of the Harbor Council were also present on behalf of the applicant. Robert Goldberg, attorney for Champlin's, was also present. Chair Tikoian stated that there was a housekeeping matter to clear up as there were two harbor plans before the council, one in the packet and one that was sent to council members. Mr. Packer said the second plan had been approved by the town council on Wednesday, November 19, 2003. Mr. Cote said the original plan in the packet is dated June 7, 1999. Chair Tikoian asked if the plan dated 11/19/03 was the one the town council voted out. Mr. Packer replied yes. Mr. Cote stated that staff had received the plan dated 11/19/03 on November 20, 2003. Chair Tikoian said staff looked over the plan and sent it out to council members for their review. Mr. Cote replied yes staff looked over the plan and delivered a copy to council members on Monday. Mr. Goldman noted that the objectors had received a copy of the 11/19/03 plan on Friday and council members received it on Monday. Chair Tikoian stated that the council was only looking at the plan dated 11/19/03 which was voted out by the town council. Mr. Goldberg noted that he had received a copy of the 11/19/03 plan. Chair

Tikoian said there were still open items and deficiencies in the plan. Mr. Cute replied yes. Mr. Cute stated that he had prepared an amended check list on the plan and gave council members an update on what he did. Mr. Cute said he did a consistency determination review but the original comments raised had not been addressed and there were still deficiencies and comments that needed to be addressed. Mr. Cute recommended that if the council approved the plan that it only be approved for interim approval for one year so the town could bring the deficiencies in the plan in alignment with the CRMC program. Vice Chair Lemont asked what happens after one year if the deficiencies are not addressed. Mr. Goldman responded that if after one year the deficiency items were not addressed the assent would expire. Vice Chair Lemont said if the items were not addressed the town would have to start over. Mr. Goldman stated that they would have to request a continuance on the plan. Chair Tikoian noted that staff indicated that there were a lot of changes from the original plan in 1999. Chair Tikoian was concerned with the language that 600 feet beyond MLW would fall within the town's jurisdiction and stated that this was not so as part of the Supreme Court ruling in June 2003 which said CRMC had jurisdiction. Mr. Goldman said it was unclear whether this 600 feet applied to moorings and anchorages, which would be allowed, but it would not include other activities in the water. Mr. Goldman said the town's jurisdiction stopped at the MLW mark. Chair Tikoian noted that on page 12 the old plan mooring ratio of residents to non-residents was 2 to 1 ratio and it was changed in the new plan to a 3 to 1 ratio. Chair Tikoian said it would make it harder for non-residents to get a mooring. Mr. Cute stated that the 3 to 1 ratio was part of the CRMC guidelines but not a requirement. He said it was only recommended that there be no more than a 3 to 1 policy for moorings. Mr. Cute said this was consistent with the CRMC guidelines. Chair Tikoian stated that page 22, 23 and 24 had a lot of strikeouts which were not in the original plan. Mr. Cute responded that these pages dealt with right-of-ways and the map inserted in the plan was dated 1993 and needed to be updated. Mr. Cute said he recommended that the town replace the map with the map in their 1999 Shore Access Guide. Chair Tikoian noted that the water type, Class C, listed in the plan did not exist anymore and DEM no longer uses these classifications for water types. Mr. Cute said DEM has language on new classification. Mr. Fugate explained the different water types which are acceptable. Mr. Fugate said the problem with getting the plan so late is that they did not receive any comments from DEM or Army Corps on the plan so they do not know what their comments would be. Mr. Ehrhardt said that they deleted nine right-of-ways and then reinserted them on page 31. Mr. Zarrella said there were two letters from Ballards which were not dated and asked when they were received. Mr. Fugate replied that they are date stamped on the back of the letter and they were received last week. Mr. Zarrella asked if Ballard's was aware of this hearing. Mr. Fugate replied yes. Mr. Zarrella was concerned with not having DEM or the Army Corps comments on the plan. Mr. Zarrella asked if the right-of-ways were deeded. Mr. Fugate replied that some are CRMC right-of-ways and some were town right-of-ways. Mr. Zarrella wanted the issue of the right-of-ways to be addressed. Rep. Naughton was concerned with the 3 to 1 ratio for moorings. Rep. Naughton asked what the difference was from a resident to non-resident. Rep. Naughton stated that the plan said an in-state resident could transfer a mooring but an out-of-state resident could not transfer a mooring. Mr. Packer said he did not know the answer. Ms. Ball said she did not have a chance to look this over and was not sure. Mr. Zarrella was confused as to how they determined and defined a resident and non-resident. Mr. Cute stated that page 16 sub "h" had language that town added that mooring permits were issued on a ratio of 3 to 1 ratio. Chair Tikoian asked if three moorings were available and there were four non-resident applications and one resident application do the three non-residents get the moorings. Mr. Cute said it would be up to the town to decide who received the mooring. Chair Tikoian asked with the 3 to 1 ratio could the town give the moorings to the non-residents

versus the resident. Mr. Boudreau explained that there were 300 residential moorings and 100 non-residential moorings. He said if a non-resident gives up a mooring a non-resident would get that mooring and if a resident gave up a mooring it would be given to a resident. Mr. Gray said if it was a 3 to 1 ratio that they have to give moorings to three residents and one non-resident. He said this was not going to fly with the Army Corps. Mr. Boudreau said there were two waiting lists for non-residents and residents. Mr. Boudreau explained that if a non-resident gave up a mooring it would be given to a non-resident. Chair Tikoian noted that they were not following their own plan by doing this. Mr. Gray said the town divided the inventory of the moorings and he felt that the moorings should be open to all. Mr. Gray felt they needed to treat everyone on the same basis. Mr. Gray asked if a only a non-resident mooring was available and a resident wanted it would the town leave the non-resident mooring empty. Mr. Gray felt that this was not being done fairly. Mr. Cote explained that Rhode Island waters followed the CRMC policy and the federal channel moorings fell under the Army Corps policy. Chair Tikoian asked how they determined a resident versus a non-resident. Chair Tikoian said the definition on page 9 stated that only real property tax owners or by zoning ordinance defines a resident. Mr. Boudreau said a resident would have to reside on the island for 12 months. Mr. Packer said you could be a tax payer or a renter that lives on the island for 12 months of the year. Chair Tikoian asked if the Mr. Boudreau or the town issued the moorings. Mr. Boudreau replied no that the harbor master issues the moorings. Mr. Zarrella asked where the mooring funds go. Mr. Boudreau replied into the general fund. Mr. Zarrella asked if the 3 to 1 ratio takes into consideration renters. Mr. Boudreau and Mr. Packer said they use 3 to 1 ratio. Chair Tikoian asked them to address the 600' jurisdiction in their plan. Sen. DaPonte said the language was worded if someone owns property and pays taxes and rents out the property that both the tax payer and the renter are considered residents. Mr. Packer responded yes and there is a 9 month residency requirement. Chair Tikoian asked how many moorings they have now. Mr. Boudreau replied 290 moorings. Chair Tikoian asked how many were resident moorings. Mr. Boudreau replied 200 moorings. Rep. Naughton wanted to know how they determine who is a resident and if they took a survey. Ms. Ball responded that some owners go to Florida for a portion of the year and they now make their residency requirement nine months. Sen. Sosnowski said having a copy of the Block Island ordinance would be helpful for the council to have, it would help clear up the residency issue. Chair Tikoian was waiting for the applicant to address the 600' jurisdiction issue on page 10. Mr. Packer said they understood that the jurisdiction come to the council because of the recent litigation. He said they could change the language of the 600' jurisdiction off the island to meet the ruling of jurisdiction issued by the court. Chair Tikoian asked how they came up with the 600' jurisdiction. Mr. Packer replied by the Red Book. Mr. Fugate was concerned with the open-ended jurisdiction and felt it needed to be clarified. Mr. Gray said the Newport jurisdiction is along the shore and not only for the inner islands but the moorings and anchorages were the jurisdiction of the City of Newport. Chair Tikoian stated that the June 2003 Supreme Court ruling ruled what the CRMC and town jurisdictions were. Chair Tikoian stated the wording in the harbor plan raises questions and he did not feel it belonged there. Chair Tikoian said he was not sure the council could move on this tonight because there were a lot of unanswered questions. Chair Tikoian stated that out of an abundance of caution they just received the document and had not had a chance to review it completely and all interested parties may not have had a chance to review the document yet. Chair Tikoian suggested putting this in a working mode for three months to work out the issues and deficiencies in the plan that needed to be addressed. Mr. Coia, seconded by Rep. Naughton moved to table the harbor management plan for three months. Vice Chair Lemont asked if this would be considered interim approval of the harbor management plan. Chair Tikoian replied no the plan would be tabled for

three months. Ms. Ball asked if it the council's concern was with the whole plan or just the bold and stikeout portions of the plan that were of concern. Mr. Packer felt that these were not significant issues and said they were only asking for interim approval of the plan for now. Chair Tikoian said they could review this faster and asked if the town could address the concerns of the council within 30 days or 60 days. Mr. Packer was not sure they could do that. Mr. Gray was concerned with passing a document when it needs work. He felt the document needed to be at least 99 percent complete. Mr. Packer asked if the town would have a harbor management plan in effect if this plan was tabled. Chair Tikoian replied no. Chair Tikoian noted that Mr. Packer had indicated to the council at the last meeting that the Town was ready to proceed on the harbor management plan before the full council. Chair Tikoian said he was not sure the plan was ready. Chair Tikoian felt they needed to get the document right and answer all the questions of concern raised. Chair Tikoian stated that Mr. Goldman and Mr. Fugate agreed to meet with the Block Island officials at the Wakefield office to help move this along. Sen. Sosnowski said the objective was to get a plan in place. Sen. Sosnowski asked how the council could move forward on the Champlin's application if there was no harbor management plan in place. Sen. Sosnowski asked how many changes there were in the document and if they were substantial changes. Mr. Cute replied yes. Sen. Sosnowski said she was not sure much had changed in the document from 1999 to the November 19, 2003 document. Mr. Cute said there were not many changes in the two plans. Sen. Sosnowski said there was confusion on the issues of concern. Chair Tikoian said they could approve interim approval of the plan for now for a 3 month period and use the 1999 harbor plan in the packet except for the portion relating to Champlin's. Mr. Fugate said if you approve the plan without the Champlin elements you would allow time to have a plan to worked out. Mr. Goldman said you could treat the plan in limbo and go along with giving life to the plan for a limited period until the final harbor management plan is approved. He said the council could use the previously approved plan and have it expire when the status of this plan is determined. Mr. Goldberg said they had met for six hours with the town council and it was not their intention to tear apart the town's harbor management plan. He said they had two issues of concern: 1) the areas of jurisdiction and it not being in compliance with the court case ruling and 2) and the strip of water outside the mooring field which could be considered in the scope of their application. Chair Tikoian noted that this was the winter months and the plan would not effect them. Mr. Goldman said interim approval to the previous harbor management plan would be inconsistent with the town versus Champlin case. Mr. Packer requested that the 1999 plan in the packet be given interim approval not the previous plan from 1991. Mr. Gray said if the council is looking at the Champlin application in a few weeks and there was no plan in place now what would be the problem with hearing the application. Mr. Gray did not understand the urgency to get the plan approved. Chair Tikoian said the 1999 plan in the packet is more conforming with the CRMC current guidelines than the old plan and that he was not sure he was comfortable with the changes in the plan dated 11/19/03. Chair Tikoian suggested interim approval of the 1999 plan in the packet. Rep. Naughton could not see the urgency for getting the harbor plan approved. Rep. Naughton had a problem with granting interim approval of the 1999 plan when they have not had a chance to review it. Chair Tikoian stated that the policy and planning subcommittee had reviewed the 1999 plan and it had come before the full council. Chair Tikoian noted that staff and council members had had a chance to review the 1999 plan. Mr. Goldman said if the council goes with interim approval of the 1999 plan they can carve out mooring area "e" which pertains to the Champlin's application and add the language that it be consistent with the language from the June 2003 Supreme Court ruling regarding jurisdiction. Sen. Sosnowski, seconded by Mr. Sahagian moved interim approval of the 1999 plan carving out mooring area "e" for the Champlin's application and add the language that it be

consistent with the Supreme Court ruling on jurisdiction for four (4) months. Mr. Packer asked if they were going to give the town staff the council's areas of concern regarding the plan. Chair Tikoian replied yes. Chair Tikoian said the executive director and legal counsel would meet with the town staff at the CRMC office to go over their concerns. Mr. Ehrhardt stated that he was not sure all council members had a chance to review the 1999 plan and would be able to approve interim approval of the 1999 plan. Mr. Ehrhardt stated that staff said the 11/19/03 plan was a better plan than the 1999 plan and asked why they did not just approve the 2003 plan. Chair Tikoian responded because the policy and planning subcommittee had reviewed the 1999 plan and recommended approval of that plan and staff had reviewed the 1999 plan as well. Mr. Zarrella asked why they don't take the comments of staff and approve the 2003 plan with all staff comments. Chair Tikoian replied that the policy & planning subcommittee would have to review the 2003, staff received the 2003 plan at a late date to review fully and the town wanted to get a harbor plan in place for this short period of time it would take to review the 2003 plan. Mr. Abedon asked what happens after four months does the council have to approve the plan again. Rep. Naughton had a problem with the 1999 plan and felt that it was not reviewed by the council and felt the process was not followed. Rep. Naughton said no presentation was given on the 1999 plan to council members. Chair Tikoian noted the 1999 plan had been reviewed by the council and the town added new things in the 2003 plan which had not been fully reviewed by staff. Rep. Naughton asked if the town council approved the 1999 plan. Mr. Packer replied yes on June 7, 1999. Mr. Zarrella asked if there was a dispute with the plan would it come back to the council or go to the town to handle. Mr. Goldman replied that CRMC would handle the dispute. Mr. Coia withdrew his previous motion to table the application for 3 months. Rep. Naughton withdrew her second.. The motion carried on a unanimous voice vote.

8. **Enforcement Report – October, 2003**

There were none held.

9. **Category "A" List**

There were none held.

There being no further business before the council the meeting, the council adjourned at 7:52 p.m.

Respectfully submitted,