

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, February 28, 2006 at 6:00 PM at the Narragansett Town Hall – Council Chambers – 25 Fifth Avenue - Narragansett, RI.

## **MEMBERS**

Mike Tikoian, Chair  
Paul Lemont, Vice Chair  
Jerry Sahagian  
Jerry Zarrella  
Ray Coia  
Tom Ricci  
Neill Gray  
Dave Abedon  
Michael Sullivan  
Joe Shekarchi

## **STAFF PRESENT**

Grover Fugate, CRMC Executive Director

Jeff Willis, CRMC Deputy Director  
Ken Anderson, CRMC Senior Engineer  
Amy Silva, CRMC Environmental Scientist  
Dan Goulet, CRMC Dredging Coordinator  
Laura Ricketson, CRMC Public Educator & Information Coordinator  
Brian Kavanagh, CRMC Staff  
Ryan Moore, CRMC Staff

Michael Rubin, Special Assistant Attorney General, Legal Counsel  
Brian Goldman, Legal Counsel  
John Longo, Assistant Legal Counsel

1. Chair Tikoian called the meeting to order at 6:00 P.M. Chair Tikoian introduced the members of the council.

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

Mr. Coia, seconded by Mr. Zarrella moved approval of the February 14, 2006 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 subcommittee reports.

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

5. **APPLICATIONS REQUESTING EXTENSIONS OF EXISTING ASSENT:**

**2000-09-038 COSMO HARALAMBIDIS & DESPINA STEFANOPOULOS** – Extension of existing permit to build dwelling and ISDS. Located at plat 19, lot 76; Cottrell Road, North Kingstown, RI.

Mrs. Haralambidis, the applicant's wife was present on behalf of her husband. Mr. Fugate stated that the applicants had been granted a one-year administrative extension and this was their first council extension request. Mr. Fugate stated that the application had been checked out by the enforcement staff and that there was no enforcement action on any of the application. Mr. Fugate also stated that there had been no regulation changes that would effect the application. Mr. Zarrella, seconded by Mr. Coia moved approval of a one-year extension of the assent. The motion was carried on a unanimous voice vote.

**2005-09-125 MOTIVA ENTERPRISES** -- Install and maintain two (2) new breasting dolphins, and four (4) new mooring dolphins (monopiles), per plans. Located at plat 55, lots 17 & 18; 520 Allens Avenue; Providence, RI.

Chris Hogan of Motiva Enterprises, the applicant was present. Mr. Fugate stated that the applicant had been granted a one-year administrative extension and this was their first council extension request. Mr. Fugate stated that the application had been checked out by the enforcement staff and that there was no enforcement action on any of the application. Mr. Fugate also stated that there had been no regulation changes that would effect the application. Mr. Zarrella, seconded by Mr. Coia and Mr. Sahagian moved approval of a one-year extension of the assent. 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:**

**2003-05-155 CHAMPLIN'S REALTY ASSOCIATES and TOWN OF NEW SHOREHAM** – Expansion of existing marina facility consisting of an additional 2,990 linear feet of fixed pier, and 755 linear feet of floating docks, with corresponding expansion of existing marina perimeter limit (area) by approximately 4 acres, however, it should be noted that the requested marina perimeter limit ("MPL") sought approximately 13 acres. The stated increase in marina capacity is 140 boats. Additionally, this matter was consolidated with the Town of New Shoreham's request for CRMC approval of its Harbor Management Plan. The Harbor Management Plan issues were limited to the location and size of Mooring Field E. Project to be located at Plat 19; Lots 5 and 6; West Shore Road, New Shoreham, RI. The proposal was modified by CRMC Subcommittee Recommendation.

Robert Goldberg, attorney for the applicant was present. Attorneys Tom DiPrete and Kathy Monahan were also present on behalf of the applicant. Daniel Prentiss, attorney for the Committee for the Great Salt Pond; Joseph Priestly, attorney for the Block Island Land Trust and Block Island Conservancy; Joseph D'Ovidio, attorney for the Conservation Law Foundation and Donald Packer, attorney for the Town of New Shoreham, the objectors were also present.

Chair Tikoian stated that there was a Motion for Recusal filed requesting that he and Mr. Abedon recuse themselves from voting on this application. Chair Tikoian turned the meeting over to Vice Chair Lemont on the Motion for Recusal. Michael Rubin, Special Assistant Attorney General was present on behalf of the Chair. Vice Chair Lemont asked legal counsel to brief council members on this motion. Mr. Goldman explained after the October 24<sup>th</sup> workshop on the Champlin's Marina application, the applicant's attorney filed a motion requesting that the Chair and Mr. Abedon recuse themselves from voting on this application because of their statements made in the *Block Island Times* and *The Providence Journal*. Mr. Goldman stated that an ex-parte motion was filed for the depositions of Peter Lord (Providence Journal) , Peter Vascamp (Block Island Times), Chair Tikoian and Mr. Abedon. Mr. Goldman said he moved to quash the subpoenas of Chair Tikoian and Mr. Abedon and that the Superior Court agreed. Mr. Goldman stated they need to have a public hearing on the motion to recuse and allow Champlin's attorney and the objectors' attorneys ask questions of Chair Tikoian and Mr. Abedon. Mr. Goldman said the decision to recuse themselves from the application would be up to Chair Tikoian and Mr. Abedon not the council. Mr. Goldman marked Peter Lords' depo, Peter Vascamp's depo and Mr. Summer's affidavit as exhibits. Vice Chair Lemont asked if there was a limitation on the questions and the scope of the questions. Mr. Goldman replied that the Court said Champlin's has the to opportunity to ask on record the question as to bias, prejudice or pre-determination concerning their decision the Champlin's Marina application and it was up to them whether they choose to answer the question and whether to recuse themselves. Vice Chair Lemont asked if the Chair wished to make a statement. Chair Tikoian stated that he read the motion to recuse himself, the memorandums in favor of his recusal and opposed to his recusal, he has also read the depositions of Peter Lord and Peter Vascamp and the affidavit of Attorney Daniel Summer. Chair Tikoian read a statement of facts. Chair Tikoian addressed the statement that he made to Peter Lord of the *Providence Journal* that he was disappointed with the Champlin's subcommittee. Chair Tikoian stated that this was based on the majority of the subcommittee not considering his letter dated Feb. 23, 2003 to the subcommittee which marked as an exhibit at the subcommittee proceedings. Chair Tikoian said his disappointment stemmed from the fact that the majority did not discuss a more efficient utilization of the existing marina perimeter, removal of the obstructions to provide for more efficient use of the water space or possible reconfiguration of the existing marina rather than the proposed expansion. Chair Tikoian stated that his letter set out a number of items and this he did as an ex-officio member of the subcommittee and asked the subcommittee to consider these items. Chair Tikoian noted that he had read all the transcripts of the subcommittee and reviewed all the exhibits. Chair Tikoian stated that he attended almost all of the subcommittee meetings and workshops. Chair Tikoian stated that everything in his statement was derived from the administrative record before the subcommittee and he considered no other source other than what was before the subcommittee and on the record. He said his statement that he was disappointed the deliberations of the subcommittee majority but that in no way indicated that he had made up his mind on the final disposition of this matter. Chair Tikoian stated that he never indicated to Peter Lord what his final vote would be and at no point did he indicate that his mind was made up on this application. Chair Tikoian addressed the statements in Atty. Sumner's affidavit regarding the subcommittee action were essentially the same as those made to Peter Lord. Chair Tikoian addressed the statement in Atty. Sumner's affidavit that he was upset with Atty. Goldberg. He said he was not happy that Mr. Goldberg had gone to court ex-parte to try to take his deposition and Mr. Abedon's deposition without notice to CRMC legal counsel, Mr. Goldman, while he was court excused. Chair Tikoian said he did not say the council did not have the votes to get this passed and he did not know how the council would vote. Chair Tikoian

stated that no one outside of these proceedings tried to influence his vote on this matter. Mr. Goldberg wanted some documents marked as exhibits. Vice Chair Lemont asked how this complied with the 5-day rule to the council. Mr. Goldberg felt it complied with the court order. Mr. Goldman said there was no representation by Mr. Goldberg that he would be introducing documents all they talked about was asking questions of Chair Tikoian and Mr. Abedon. Mr. Goldman said they had met with Judge Fortunato in Chambers and Mr. Goldberg said he would not introduce the recusal forms before the council. Mr. Goldberg wanted them marked as identification and wanted to introduce documents from LLC Corp, the engagement of Piccerelli & Goldstein, the firm that Mr. Tikoian is a partner and are doing work for Mr. DiPrete, who is part of the application and 18 different recusal forms. Chair Tikoian noted upon learning of this, he said that no work was done and no money exchanged and immediately canceled the contract with LLC Corp. Mr. Packer stated that he was a party to this as well and that he was entitled to these documents as well and he did not see them and was not privy to any of these documents. Vice Chair Lemont stated that these were only marked as ID. Mr. Goldberg said it was not his intent that these be heard at the same time and requested that this be done at a separate hearing and not tonight. Mr. Goldberg said a motion to recuse was a difficult motion for an attorney to present and that this was not done lightly and is only to protect his clients rights. Mr. Goldberg said he had a lengthy conversation with Kenneth McKay from the Governor's office on Saturday afternoon and he told him that the Chair went to the Governor's office specifically to engage their aid in defeating this project. Atty. Rubin said the Chair could answer the questions as to going to the Governor's office but did not have to disclose the discussion of the meeting. Chair Tikoian replied he went to the Governor's office. Mr. Goldberg asked if he discussed the Champlin's application. Chair Tikoian replied yes. Mr. Goldberg asked if this meeting took place over the summer while the hearings were pending. Chair Tikoian replied no. Mr. Goldberg asked if he discussed with Mr. McKay his position and view on the project. Chair Tikoian said this was incorrect. Mr. Goldberg asked if he sought the Governor's aid to defeat this. Chair Tikoian replied no. Mr. Goldberg said Mr. McKay said he spoke to other council members on this and asked if he knew who those council members were. Chair Tikoian replied no. Mr. Goldberg said doesn't he normally recuse himself from an application if he has done work for an attorney on an application. Chair Tikoian replied yes. Mr. Goldberg asked if Piccerelli & Goldstein does work for LLC. Chair Tikoian replied that he became aware of this at 4:30 p.m. today. Mr. Goldberg asked if he read the ethic rules on recusals when a business associate comes before the council. Chair Tikoian responded yes and said that his firm terminated and resigned from the LLC partnership today and stated that they did no work and no money was received and requested that the letter be part of the record. Mr. Goldman marked this as part of the record. Mr. Goldberg objected as this was not done in accordance with the 5-day rule. Mr. Rubin explained that Mr. Goldberg had his documents for more than 5 days and that this document was generated today and requested that it be marked as a full exhibit. Mr. Goldberg objected. Mr. Goldberg asked about the tax documents delivered to his office over a month ago. Chair Tikoian replied that they resigned from that work and no work had been done and the documents would be returned. Mr. Goldberg had no further questions. Attorney Rubin asked the Chair to ask the objectors whether they objected to Mr. Tikoian's participating on the grounds of an alleged affiliation of his firm with the Champlin's application. Attorneys Packer, Prentiss, Priestly and D'Ovido had no objection and waived their objection. Mr. Goldberg said there is an objective standard here and the newspaper said how Chair Tikoian was going to vote on this application and this was not good for either side. Mr. Goldberg requested that Chair Tikoian recuse himself in this matter. Mr. Prentiss felt there was no basis for a recusal and had no problem with the Chair participating on the application. Mr. Packer, Mr.

Priestly and Mr. D'Ovido agreed. Chair Tikoian requested Atty. Rubin's advice on this matter. Mr. Rubin provided council members with a copy of the "Attorney General's Memorandum Regarding the Questioning of CRMC Members: Members can only be asked about their Observations of Events and not Their Thoughts or Motives". Mr. Rubin stated that council members are the decision makers on a panel. Mr. Rubin addressed the issue of "extra judicial source" and said this was material that was received from outside the record or proceedings and anything that they learned separate and apart from the hearings. Mr. Rubin said a disqualification was in order if information was received from an extra judicial source from outside the formal legal process. Mr. Rubin said if the decision is based on testimony and materials submitted there is no extra judicial source and there is no recusal needed. Mr. Rubin said on this basis it was the advice of the Attorney General that there was no extra judicial source in this case. Mr. Rubin said in viewing the facts that it was his advice that a recusal was not called for in this case. Chair Tikoian replied that he could make an unbiased decision on the application and he did not see a need to recuse himself. Vice Chair Lemont handed the gavel back to the Chair. Chair Tikoian addressed the motion for recusal of Mr. Abedon and asked if he wanted to make a statement. Mr. Abedon addressed a statement made after the October 24<sup>th</sup> subcommittee workshop, which he is not a member of the subcommittee, he spoke generally and he did not say he was in favor or not of the application and whether a less intrusive structure would be better. Mr. Abedon said he had not made up his mind as he had not read the entire record. Mr. Abedon said in order to make a decision he would have to read all the transcripts and hear all the arguments, which he had not done at that time. Mr. Abedon said he had not made up his mind as was stated in a *Providence Journal* article on October 25<sup>th</sup>. Mr. Abedon noted that he addressed this at the November semi-monthly council meeting. Mr. Goldberg wanted to submit a copy of the *Providence Journal* article as an exhibit. Mr. Goldman replied that this was already on the record and marked as an exhibit. Mr. Goldberg asked if he read the paper today on how he was going to vote today. Mr. Rubin advised Mr. Abedon not to answer the questions on the grounds of form. Mr. Goldberg asked if he read today's newspaper article. Mr. Abedon replied yes. Mr. Goldberg said the article stated that he would vote for a smaller project. Mr. Abedon replied he did not recall that in the article. Mr. Goldberg rested. Mr. Prentiss said the question was whether or not a council member had made up their mind without reading the record. Mr. Prentiss, Mr. Packer, Mr. Priestly and Mr. D'Ovidos had no objections. Mr. Rubin said based on facts as actually exist there was no firm determination made by Mr. Abedon and his decision was made on the application. Mr. Rubin stated that the Attorney General recommended that no recusal was needed. Mr. Abedon stated that he could make a fair and impartial decision on the application and did not see a reason to recuse himself and the motion is denied. Chair Tikoian thanked the Attorney General and Attorney General Rubin for their service and time they spent on this matter and their due diligence on this and the CRMC and state thank them for protecting the rights of Rhode Islanders. Chair Tikoian also thanked Mr. Goldman for his legal advice and protecting the rights of the members of the council and appreciated his work.

**Chair Tikoian called for a recess at 6:48 p.m. Chair Tikoian called the meeting back to order at 6:52 pm.**

Chair Tikoian noted that this was a contested case. Chair Tikoian stated that a subcommittee had heard all the testimony and received evidence and made a recommendation to the full council. Chair Tikoian stated that only new evidence would be accepted this evening and there would be a polling on the reading of the record for the vote. Chair Tikoian explained the process the council would follow. Chair Tikoian

stated that he would allow the applicants to speak for 20 minutes, the four objectors to speak for a total of 45 minutes, 5 minute rebuttal by the applicant and then open it up to council discussion with a limit a 5 minutes per council member and the council would make a decision to either adopt, deny or modify the findings of the subcommittee. Chair Tikoian called for a roll call vote on the reading of the record:

On the reading of the record.

Mr. Zarrella	Yes	Director Sullivan	Yes
Mr. Shekarchi	Yes	Mr. Abedon	Yes
Mr. Sahagian	Yes	Mr. Ricci	Yes
Mr. Coia	Yes	Vice Chair Lemont	Yes
Mr. Gray	Yes	Chair Tikoian	Yes

10 Affirmative      0 Negative      0 Absentation

Mr. Goldberg thanked the members of the subcommittee. Mr. Goldberg stated that he had two arguments the project itself and the work and efforts put in by the subcommittee and the standards to go by. Mr. Goldberg explained the process for the application. Mr. Goldberg felt the applicant met every test for development as proposed. Mr. Goldberg stated that the project was in type 3 waters where marinas are allowed and preferred. Mr. Goldberg said they were not asking for a change or reclassification of the water type. Mr. Goldberg said there was an issue raised regarding the public trust and felt that marinas were consistent with the public trust. Mr. Goldberg felt that the application matched up to the regulations in Section 300.4.B.11 for marina expansions which was all in the subcommittee recommendation. Mr. Goldberg said the findings of fact are supported in the record and evidence. Mr. Goldberg said there were no findings from the dissenter of the subcommittee just that he disagreed with the ultimate recommendation and did not say he objected to the findings of fact. Mr. Goldberg said the dissenter stated that he had a sweet spot in his heart for this area and that the Vice Chair did not disagree with the subcommittee findings. Mr. Goldberg said the objectors listed a number of objectors but they did not testify. Mr. Goldberg felt the objectors did not put credible evidence before the subcommittee. Mr. Goldberg said there was a huge need for marina space. Mr. Goldberg said the people who own property on the island did not want other people on the island. Mr. Goldberg stated that the water quality certification (WQC) was very difficult for DEM to issue. Mr. Goldberg noted that the town has not applied for their WQC for their harbor management plan. Mr. Goldberg felt there was nothing wrong with this marinas and noted that they were required to put in trash removal for the entire pond, bathrooms, pumpout facilities and a launch boat. Mr. Goldberg thanked the subcommittee for their very hard work on this. Mr. Goldberg felt the subcommittee recommendation should not be ignored and that the council look at the merits of the application. Mr. Goldberg rested.

Objectors.

Daniel Prentiss, attorney for the Committee for the Great Salt Pond, thanked the subcommittee and full council for their work on this application. Mr. Prentiss stated that he was speaking against the subcommittee recommendation and felt the subcommittee recommendation did lip service to the WQC. Mr. Prentiss felt the DEM had to look at the water pollution impact. Mr. Prentiss felt CRMC was the guardian of public trust resources. Mr. Prentiss felt they would be allowing part of the public trust to be privatized by allowing the marina. Mr. Prentiss stated that DEM found the activity level

could be increased by 1/3 without degrading the Salt Pond and this was based on the number of boats with a maximum capacity of 250 boats. He said this would allow 75 boats to Champlin's. Mr. Prentiss stated that the subcommittee recommended a 75% increase. Mr. Prentiss stated that the subcommittee report said the objectors failed to provide a viable alternative and they felt they did this. Mr. Prentiss felt a 1/3 expansion could be done without expansion of the marina. Mr. Prentiss felt the subcommittee ignored evidence that the expansion could be confined close to areas close to shore if dredging were done. Joseph Priestly, attorney for the Block Island Land Trust and Block Island Conservancy, felt the Salt Pond was a priceless natural resource and any change of use on any part of the pond would impact the pond. Mr. Priestly felt the council was poorly served by the subcommittee majority and felt the subcommittee recommendation would worsen the pond. Mr. Priestly felt Champlin's would influence the activity in Salt Pond and impact the docks in this area. Mr. Priestly felt there would be cumulative impact on the pond and that cumulative impact on the pond was not addressed by the applicant. Mr. Priestly said 4 ½ acres of the pond would be removed from use and felt CRMC must address the cumulative impact as the applicant had not. Mr. Priestly also felt there would be impact on navigation on the pond and that no navigational path had been determined. Mr. Priestly requested that the council deny the proposed expansion. Christopher D'Ovidio, attorney for the Conservation Law Foundation, stated that the question was whether this expansion is consistent with the state's public trust doctrine. Mr. D'Ovidio felt Champlin's operates in reverse of typical marinas, instead of providing public access to public trust waters it provides access to Block Island for boats. Mr. D'Ovidio felt that if this was approved it would affect public resources and have a significant impact on shellfish area. Mr. D'Ovidio felt the expansion should be denied. Mr. D'Ovidio felt \$50,000 fee proposed by the subcommittee for the use of public trust waters wouldn't even begin to repay the state. Donald Packer, attorney for the Town of New Shoreham, responded to a statement by Mr. Goldberg that the objectors did not present all their witnesses. Mr. Packer felt it was up to Mr. Goldberg to present his case and felt that they did not have to meet the applicant's burden. Mr. Packer stated that the town did not need a WQC for their harbor management plan and that there were no changes that would trigger a new WQC. Mr. Packer noted that they would not draw Mooring Field E on a perimeter line on the plan and they could not accommodate the 100 moorings they are entitled to as this would cut into the mooring field. Mr. Packer said that because of a legislative grant, the town owns the pond. Mr. Packer felt the riparian rights issues were not addressed by the subcommittee. Mr. Packer stated that the expansion of the marina goes into the town's property to the south. Mr. Packer felt the town's riparian lines would be infringed upon. Mr. Packer said if the CRMC gives four acres to the applicant it is confiscation without compensation. Mr. Packer felt the proposed \$50,000 fee isn't enough. Mr. Packer requested that the council deny the application.

Rebuttal.

Mr. Goldberg felt that there was no rebuttal testimony by Mr. Packer that their riparian lines would be infringed. Mr. Goldberg said to use the area to the south they would have to do 6' of dredging and it would be less than what Champlin's has now. Mr. Goldberg suggested that it was the council's job to follow the evidence and apply it to the rules and regulations of the program. Mr. Goldberg felt the applicant met the CRMC rules and regulations. Mr. Goldberg requested that Rhode Islanders be allowed to go to Block Island. Mr. Goldberg requested the council's approval of the application.

**Chair Tikoian called for a recess at 7:55 p.m. Chair Tikoian called the meeting back to order at 8:05 p.m.**

Chair Tikoian address the subcommittee report findings. Chair Tikoian addressed finding #42 which stated that no reasonable alternative to the Champlin's application was made by the objectors. Chair Tikoian felt it was not up to the objectors to offer an alternative that it was the applicant's responsibility for this burden of proof. Mr. Coia asked if he was saying this was not a factual statement. Chair Tikoian replied yes. Mr. Coia felt this was a factual statement and could stand on its own. Chair Tikoian addressed findings 13, 15, 16 and 17 and said based on what he read felt the applicant did not meet the burdens of Section 200.3.C.3. Chair Tikoian referred to his letter of Feb. 23, 2003 to the Vice Chair regarding the current configuration of the marina and allowing better utilization of the water space. Chair Tikoian felt the subcommittee addressed the marina expansion and not the better utilization of the water space. Chair Tikoian stated that these were his comments and felt that they were not addressed to his satisfaction. Mr. Zarrella replied that these were the findings of fact that the subcommittee found. Mr. Zarrella said he took an insult from Mr. Priestly that he did a poor job and felt that he did a good job and it should have not been on the table. Mr. Zarrella asked if the Chair could tear apart the findings of facts by the subcommittee. Mr. Gray said if he understood Mr. Zarrella correctly that he does not have to be here tonight. Mr. Gray felt the council and he were entitled to their opinions. Mr. Gray agreed with finding #13 and felt there was an alternative within the existing facility and it could have been truly explored to see where they could better design the facility and get a better use. Mr. Gray felt the applicant could have done a better job. Mr. Zarrella replied that they did look at going west but the cost of the dredging was around \$1 million according the applicant or \$126,00 according to CRMC. Mr. Zarrella felt neither of these figures were correct. Mr. Zarrella stated that if the applicant went west they would not get the depth that they needed and they would not be able to keep their water quality certificate. Vice Chair Lemont stated that as Chair of the subcommittee he paid close attention to all the evidence. Vice Chair Lemont said there was an issue of alternatives and there was an effort to discredit the alternative proposals and looking at them you could see why they would not work. Vice Chair Lemont said there was the question of whether a marina could extend to the west at reasonable cost and not interfere with the rest of the pond. Vice Chair Lemont felt the numbers for dredging by Mr. Goldberg were outrageous and the numbers by staff were reasonable much more acceptable. Vice Chair Lemont said he recommended that the applicant expand to the west, dredge, there was a place to take the spoils and the depth could have been increased. Vice Chair Lemont said they could determine what was a better utilization of the pond and would not interfere with other activities in the pond. Vice Chair Lemont stated that he did not agree with Mr. Zarrella on his position on this. Chair Tikoian referred to findings 29, 20 and 31 and felt there was confusion in the transcript on the 100' buffer in transcript #19. Chair Tikoian asked if there was a 100' or 50' minimum setback for moorings and what is the regulation on separation of the moorings. Mr. Fugate replied that the regulation states a minimum of 50', which is the minimum the towns cannot exceed based on the navigation in that area. Mr. Fugate said 50' is the bare minimum allowed for separation distance for navigation. Chair Tikoian referred to finding #32 regarding the 365' between the existing dock to the existing mooring or to the boundary of the mooring field. Mr. Fugate replied to the actual mooring ball. Mr. Gray felt on the 365' distance to the buoy and not the mooring field line. Mr. Fugate replied that the mooring field is an established line permitted by the Army Corps. Mr. Gray said the CRMC regulations require the town to keep their moorings and vessels attached to their moorings within the field that is approved. Mr. Fugate replied yes, all the mooring tackle has to be within the mooring field. Mr. Gray felt the 365' distance was not correct. Mr. Gray stated that he asked staff to look at this and measure the distance. Mr. Gray said staff found that there

was 340' at the north end of the pier and 310' at the south end of the pier between the mooring field line and the dock. Mr. Gray felt that this needed to be re-addressed as the channel would be narrow and there could be a congestion problem. Mr. Zarrella stated that the 365' was given by an expert witness and the testimony was not challenged. Mr. Gray felt the engineer's information was from the dock to the buoy and not to the edge of the mooring field and it was the edge of the mooring field that we cannot go past. Mr. Zarrella replied that he did not think it was the buoy, he thought it was the mooring. Mr. Sahagian asked the Chair if they could revisit the plan. Chair Tikoian replied absolutely. Mr. Gray felt the council needed to agree on what this area was because they need to know where they can go. Chair Tikoian asked staff to scale the distance from the dock to mooring field edge line on the plan. Mr. Anderson concurred with Mr. Gray that there is 310' to a maximum of 340' distance. Mr. Sahagian said it was his recollection that they considered relocating some of the moorings in this area and that was how they came up with the 365'. Mr. Zarrella also stated that testimony came in from the applicant that he was going to have to relocate those moorings and the subcommittee felt comfortable knowing that there were going to be some moorings and he based his decision on moving the moorings. Mr. Gray said he saw that the moorings were outside of the mooring field that was actually in the channel, in what they now use as a channel. Mr. Gray asked if they were talking about taking the approved mooring line by the Army Corps and saying push it back another 55 feet. He said he did not see this in the document. Mr. Gray said what they are working with is that the line was not going to encroach any closer to the applicant and they were not going to expand or go towards the applicant. Mr. Abedon asked about Mooring Field E and wherever the perimeter that the Army Corps delineated and if the council could move that line. Mr. Gray replied that you can petition the Federal Government. Mr. Fugate replied that the Army Corps is a separate permit. Mr. Fugate said the council can say we are going to move the mooring field to this point and the Army Corps can say no your not. Mr. Abedon asked if it was within the council's purview to do this. Mr. Fugate replied that the council does not have the authority to tell the Army Corps what to do. Mr. Gray stated that the council needed to determine if it was 340' to 310' feet because the last thing the council wants to do is have a narrow tight channel that big boats are going through then you will have a real congestion problem. Mr. Zarrella said the whole subcommittee went out to the sight and they knew where 240 feet was and knew where the mooring field was. Mr. Gray said he could not process the 365 feet because it did not compute. Mr. Sahagian addressed the figures of 310' on one side and 340' on the other side that Mr. Gray mentions. Mr. Sahagian said if you use these numbers and subtract 170' expansion that the subcommittee recommended and the 25' perimeter that leaves 115' which is 15' more than the Town of New Shoreham requires. Mr. Gray agreed that there was 115' distance left but said the council had to be careful because it was not just the buffer it was also the channel. Mr. Gray was concerned with 165' boats coming in the channel and the vessel taking up the channel and not leaving room for navigation. Mr. Gray had a concern with using the word "ensure" and ensuring that there would be no negative impacts in findings #26 and 28 and felt that the council could not guarantee this and felt they should change it to "there shouldn't be any negative impacts". Mr. Gray addressed the pump outs in finding #28 and felt that there should not just be pump outs but that there should be a plan for pump outs and felt that they should be promoted and they should have to create a plan with staff that shows they will promote their use so that we get good water quality. Mr. Zarrella stated that the subcommittee recommended that they put pump out at every slip. Mr. Gray stated that would be one pump out on the new docks. Mr. Gray said that was good he wanted to make sure the pump outs were promoted. Chair Tikoian address findings #19, 20, 21 and 22 which made references to language in type 2 waters and type 3 waters and he felt in reading the transcript and the

findings of fact, he got the impression that just because type 3 waters existed that you can expand the marina period. Chair Tikoian asked about the percentage of usage for the pond. Chair Tikoian asked Mr. Fugate how the council looked at type 3 waters and expansion. Mr. Fugate replied in type 3 waters that moorings and marinas need to balance the existing uses of the area. Mr. Fugate said you need to look at the public entity rather than the two private entities. Mr. Abedon asked if he was saying that the public use sometimes comes before the private use. Mr. Fugate explained that by statute when you look at the public trust doctrine and it comes down between private use and public use, the public use will always take precedent. Mr. Sahagian addressed the issues of percentages. Mr. Sahagian stated that right now there is 57 acres in the entire pond and 9% of the pond marinas are permitted. Mr. Sahagian stated that this expansion was adopted 22% of the 57 acres will be utilized for marinas, so it would be less than one quarter of what is zoned or classified for marinas. Mr. Sahagian felt this was a great balance of use of the pond. Chair Tikoian stated that it was not just marinas but the mooring fields too. Mr. Sahagian stated that there were 194 acres of type 2 waters where mooring fields are allowed. Mr. Ricci agreed with Mr. Sahagian regarding the balancing issue and said he signed off on the findings of fact and felt the subcommittee did this with finding of fact #16. Mr. Zarrella stated that they could have easily changed this by changing the water type so that they could not put in a marina but right now the regulations say you can have a marina. Mr. Sahagian stated that the Champlin's application has been around since the fall of 2003 and that when the people of Block Island should have petitioned CRMC for a water classification change. Mr. Abedon addressed the balance issue and said marinas can expand in type 3 water but you also have to balance off how well they're utilizing the space so you can determine how much they can expand or not. Mr. Ricci noted that the subcommittee recommendation denied any expansion to the west. Mr. Ricci stated that in a perfect world you could fit these boats in without any expansion. Mr. Ricci said they did look at other alternatives but some of them were laughable. Mr. Abedon said some of the exhibits showed the depths at low tide, they could not accommodate a 165' boat but could take certain size boats without dredging. Mr. Zarrella replied that they did look at this but there were two big boulders or ledge out there that hindered the ability to come in this area. Mr. Abedon felt there was a way to have an expansion and be viable for a different clientele or different reason in a different area. Chair Tikoian stated that Mr. Goulet stated that the area could be dredge and they could move the boulders. Chair Tikoian felt missing from the subcommittee's recommendation was the cumulative impacts this would have to the area. Mr. Sahagian read finding #31 which stated that the subcommittee majority found that notwithstanding the arguments of the objectors that no expansion would be acceptable and that position was nullified when their own expert said that an expansion of approximately 200' would be a viable plan." Chair Tikoian did not agree with finding #31. Mr. Gray asked if Mr. Sahagian was saying that the testimony of a witness that the 200' expansion would be viable. Mr. Sahagian replied that he dealt with the facts and the expert witness testimony that was presented. Mr. Sahagian stated that if the objector's engineer indicated under oath that a 200-205' expansion was viable that he was comfortable supporting a 170' expansion. Mr. Gray said experts make mistakes. Mr. Zarrella stated that he had tried to ask questions from day one of the subcommittee and he always wanted the parties to get together to come up with a compromise and the subcommittee was trying to find out where there was a compromise or a common ground. Mr. Zarrella stated that Chairman Lemont had asked the parties numerous times to get together and for one reason or another either group thought they were winning and did not want to talk to the other group. Mr. Zarrella said they wanted these fellows to get together and walk out with a compromise. Mr. Gray stated that the council has the responsibility to make sure that whatever compromise is

made and they are going to support in the real world will work. Mr. Gray did not feel that a 200' expansion would work because of the amount of space and also felt that the 365' figure had not been clarified. Chair Tikoian referred back to the Mr. Roberge's testimony regarding the 200' expansion and the questioning of him of what would be viable and felt that he would have answered a little bit differently if was working for the applicant than if he was working for himself. Chair Tikoian stated that Mr. Sahagian's question asking him if this was what he thought would be a viable alternative and the expert replied yes. Chair Tikoian felt that the expert was answering the question as if he were testifying for the applicants. Mr. Sahagian replied that he followed upon that with a question on the buffer and the expert replied that a 150' buffer could coexist. Mr. Sahagian then asked the expert if he were working for the applicant to come up with a viable plan would that make sense and the expert replied that was what he said. Chair Tikoian had no further question on the document at this time. Mr. Gray wanted to go back to the proper marine design and what you can do in this area. Mr. Gray stated that if there was 310' with the 35' beam of a 165' vessel that leaves you a 275' channel which is 1.67 times the length of a 165 footer. Mr. Gray felt the area would be tight. Mr. Gray said there still under the two times rule. Mr. Gray said you need to look at and determine how much of an expansion can physically fit. Mr. Gray had a major problem with the council trying to redesign the marina and approve something that was going to be squeezed into a tight area. Mr. Zarrella stated that this was presuming that a 165' vessel was going down that channel and not the main channel. Mr. Gray said it's the main channel to get to these facilities. Mr. Zarrella did not feel that the applicant would put a 165' boat on this slip. Mr. Gray said the only way around this would be to put a restriction on the facility on the size of the boats, have a certain size channel and limit the size of the expansion. Chair Tikoian asked council members for their comments on the report.

Mr. Zarrella wanted to explain the subcommittee report. Mr. Zarrella stated that when the Chair first put him on the subcommittee he thought it was going to be a real tough job with the letters received and knowing the people on the island. Mr. Zarrella said the only way out here for these folks is to compromise here and that can't happen so he listened to the evidence, listened to the experts. Mr. Zarrella felt the objectors did a terrible job trying to come in with the Kookaburra plan and insulting the subcommittee. Mr. Zarrella said Mr. Packer came in with a 100- plan from the Town and won him over but then withdrew the plan. Mr. Zarrella said he had to go by the evidence and there was no other plan in front of him and felt they should have put a plan in from the beginning. Mr. Zarrella noted that the island has a tendency to say no and they don't understand compromise. Mr. Zarrella said they oppose a project it gets denied and the people go to court and get larger projects than they originally applied for. Mr. Zarrella addressed Mr. Gray's concerns about navigation and felt it was going to be okay to navigate there and felt comfortable with this. Mr. Zarrella asked if Mr. Goldberg got anything under 100' would he take it to court. Mr. Goldberg replied in a minute. Mr. Zarrella asked if the objectors would appeal the application for a 100 feet. Mr. Prentiss replied that he could not answer without his client. Mr. Zarrella felt the council should base their decision on the evidence of the application. Mr. Zarrella felt the town should be ashamed of themselves for taking the 100' plan away. Mr. Zarrella was in favor of the subcommittee recommendation. Mr. Sherkarchi had a question of Director Sullivan and asked what the process of the department was when they issue water qualities and how in his mind, as director how signature is water quality. Director Sullivan replied that the water quality certification is based upon the written documents as submitted on the proposal submitted and is evaluated within the construction of the footprint and the estimation of impacts outside the footprint. Director Sullivan stated that if there were any modifications to the application would have to come back to DEM for reconsideration of

the water quality certification on the new plan or modification. Mr. Sahagian addressed some of the comments made by the objector's attorney, Mr. Prentiss indicating that the subcommittee gave lip service to the water quality certificate and disagreed with him. Mr. Sahagian noted that Mr. Prentiss tried to get the meeting continued several times because of the lack of a water quality certificate. Mr. Sahagian address Mr. Priestley's comment that the subcommittee's recommendation poorly served the full council and said the subcommittee could only go by the evidence and they did not offer any expert testimony concerning the water quality certification. Mr. Sahagain said Mr. D'Ovidio talked about the public trust doctrine and said he failed to say that marinas are consistent with the public trust doctrine and if this application was approved there is still approximately 598 acres where marinas will not be. Mr. Sahagian said Mr. Packer made some comments regarding the water quality certification and that he tried to stop the hearing several times because the applicant did not have the water quality certification. Mr. Sahagian said the applicants provided expert testimony to affirm DEM's water quality certification. Mr. Sahagian felt the application broke down to the biological and engineering evidence. Mr. Sahagian stated that the subcommittee recommended a 170' expansion, approximately 29 percent less. Mr. Sahagian stated that the applicant's attorney put on expert testimony to back this up. Mr. Sahagian stated that he was comfortable with the application the way the subcommittee recommended and urged other council members to feel the same way. Mr. Coia said not having been a member of the subcommittee, thanked Rebecca Forte, the council stenographer, for providing him with over 3,000 pages of stenographic record in detail for all 23 hearings and the workshops. Mr. Coia said without her, council members who were not a member of the subcommittee would not have had an opportunity to review the stenographic record. Mr. Coia thanked Mr. Fugate and CRMC staff for compiling the record and getting it out to council members in a timely manner. Mr. Coia thanked the subcommittee members for their time and dedication committed to this review. Mr. Coia commended the attorneys on both sides and felt that they did represent their clients zealously with the evidence that was available to them. Mr. Coia stated that the subcommittee recommendation was just a recommendation and not a compulsory conclusion to which the full council is bound but he believed that after 23 hearings and the time spent that the council could not dismiss the time, efforts and deliberation of the subcommittee. Mr. Coia said he takes each application on its face. Mr. Coia said after having reviewed all of the evidence, he felt confident with his decision and that it was fully supported by the evidence in the record. Mr. Gray echoed Mr. Coia eloquent thanks of everyone and said they did a great job. Mr. Gray felt the subcommittee put a lot of effort into this application. Mr. Gray asked for clarification and asked if something gets approved tonight that they were just approving the area and there are no plans. Mr. Fugate replied correct. Mr. Gray asked if something got approved tonight, they would have to come back before the council with plans. Mr. Fugate replied yes. Mr. Gray asked if Director Sullivan would then have to re-access the plans to how it would have changed the water quality certification. Director Sullivan noted that a water quality certification is based upon a full and complete set of plans and if there were changes to the plan that it would have to go back to DEM for reconsideration. Mr. Gray stated that he could not support based on his knowledge of what will be in place, the subcommittee recommendation as it stands. Mr. Ricci said to characterize this, as a difficult job was an understatement. Mr. Ricci said he was satisfied signing onto to this recommendation and thought they came up with a recommendation that everyone could live with. Mr. Ricci said it was clear from the beginning that not everyone would be happy. Mr. Ricci said he had no problem signing on to the recommendation of the modification as outlined in the subcommittee recommendation. Director Sullivan echoed the expressions of appreciation of the staff involved. Director Sullivan also acknowledged the work of the

people at DEM in the process of this application. Director Sullivan stated that he can agree with some of the finding of facts of the subcommittee but must disagree with others. Director Sullivan stated that it was the responsibility of the council to protect the public trust and that the council is obligated to review the proposals on a case-by-case basis and to examine any reasonable alternatives of a proposed activity. Director Sullivan stated that he is struggling with the proposal in terms of the facility and had to ask if it was consistent with the municipal harbor management programs. Director Sullivan also said in his opinion the potential benefits associated with a proposed project are small compared to the potential adverse impacts. Director Sullivan stated that he could not support the subcommittee recommendation as he felt it would diminish the public resource. Mr. Abedon had some of the same concerns Mr. Gray had. Mr. Abedon felt you had to consider the existing uses of the public waterways so the expansion into the fairway area is problematic for him. Mr. Abedon stated that he could not support the subcommittee recommendation. Vice Chair Lemont stated as Chairman of the subcommittee he echoed the sentiments of everyone else for all the time, work and dedication on this application. Vice Chair Lemont stated that he really thought that based upon the evidence, based upon everything that you heard, based upon the islanders and people that they talked to, based upon the legal requirements to make a decision based upon the right thing to do. Vice Chair Lemont felt that the expansion being sought was not justified and that there were other ways of skinning the cat. Vice Chair Lemont disagreed with Mr. Zarrella with regard to the issue of going west and said it was his recommendation to the subcommittee that they go west and the area be dredged. Vice Chair Lemont stated that he supported a limited increase out into the pond based upon the evidence because he did not think that no increase is justified. Vice Chair Lemont said based on the hours and the testimony that he could not support the subcommittee or the full application. Chair Tikoian personally thanked Vice Chair Lemont, Mr. Zarrella, Mr. Sahagian and Mr. Ricci for taking all the time that it had taken to listen to all this testimony and the patience they had exercised with respect to the arguments and objections. Chair Tikoian also thanked the council members this evening for raising the issue, discussing issue and sticking to the facts. Chair Tikoian opened the floor for any motions. Director Sullivan stated that if he understood the rules if the council was to reject the application as submitted there was nothing in the rules that would not allow a revised application to come back before the council. Mr. Goldman replied that if the application were rejected in order for the application to come back before the council there would have to be a substantial change in circumstances and be a substantially different application. Director Sullivan, seconded by Mr. Gray moved to reject the application as submitted. Mr. Goldman asked as submitted or as the subcommittee recommended. Director Sullivan replied the motion was to reject as submitted and that this would reject the recommendation of the subcommittee. Chair Tikoian replied that you could not do that. Mr. Goldman explained that the application submitted for the 240' increase was what the subcommittee rejected. Mr. Gray withdrew his second. Director Sullivan withdrew his motion. Director Sullivan, seconded by Vice Chair Lemont moved to reject the application as submitted. Chair Tikoian said the motion on the floor was to deny the application as submitted. Mr. Goldman explained as the application was submitted for the 240' expansion. Mr. Abedon asked what this did to the subcommittee recommendation. Chair Tikoian replied it was still on the floor. Mr. Zarrella said the motion was for the 240' not the subcommittee recommendation. There was discussion on the motion and what happens to the subcommittee recommendation. Mr. Coia asked if you reject the original application, how do you reopen it for another motion. Mr. Zarrella felt that the as a member of the subcommittee that voted against the 240' application. Chair Tikoian stated that it appears that the motion of the director is relatively moot. Chair Tikoian stated that he would prefer to vote on the actual

recommendation, make amendments or deny it. The previous motion was withdrawn. Mr. Zarrella asked what happens if there is a tie on the motion. Mr. Goldman replied that if there was a tie, the motion fails and then the full council can modify the subcommittee recommendation. Mr. Zarrella asked if another motion could be made for a smaller expansion. Mr. Goldman replied yes, if there was a tie. Mr. Ricci, seconded by Mr. Gray moved approval of the subcommittee recommendation. Chair Tikoian stated that there was a motion to approve the subcommittee recommendation. Chair Tikoian called for a roll vote on the motion:

On the motion to approve the subcommittee recommendation:

Mr. Zarrella	Yes	Director Sullivan	No
Mr. Shekarchi	Yes	Mr. Abedon	No
Mr. Sahagian	Yes	Mr. Ricci	Yes
Mr. Coia	Yes	Vice Chair Lemont	No
Mr. Gray	No	Chair Tikoian	No

5 Affirmative            5 Negative            0 Absentation

The motion failed.

Chair Tikoian called for a motion to adjourn. Director Sullivan, seconded by Mr. Gray moved to reject the original application as submitted with the understanding that the parties could go back and renegotiate and come back with an application that has substantially change. Mr. Zarrella stated that he was one of four people that heard the application and the application for the 240' was rejected. Mr. Zarrella stated that the 240' was rejected once already and if there was a tie vote it would end up in court and the judge would have to decide. There was discussion on the motion. Mr. Shekarchi stated that he wanted to modify the subcommittee approval, reduce the length from 165' to 150'. Mr. Gray withdrew his second. Director Sullivan suggested that they table the matter and allow the parties to work out a compromise. There was no second to the motion. Mr. Shekarchi, seconded by Mr. Coia moved to modify the subcommittee recommendation from 170' to 150' with the language change recommended by Mr. Gray for the word "ensure". Mr. Abedon felt it was up to the applicant to design the marina not the council. Mr. Zarrella stated that Mr. Shekarchi is trying to reach a compromise to see if there is a common ground. Mr. Zarrella said the parties are incapable of compromise. Chair Tikoian stated that there was a motion to modify the subcommittee recommendation. Chair Tikoian called for a roll vote on the motion:

On the motion to modify the subcommittee recommendation:

Mr. Zarrella	Yes	Director Sullivan	No
Mr. Shekarchi	Yes	Mr. Abedon	No
Mr. Sahagian	Yes	Mr. Ricci	Yes
Mr. Coia	Yes	Vice Chair Lemont	No
Mr. Gray	No	Chair Tikoian	No

5 Affirmative            5 Negative            0 Absentation

The motion failed.

Mr. Sahagian moved to adjourn there was no second. Director Sullivan felt that you need an affirming action on the application. Chair Tikoian stated that it was denied. Director Sullivan, seconded by Mr. Shekarchi moved to table the application for 60 days. Chair Tikoian called for a roll call vote:

On the motion to table the application:

Mr. Zarrella	Yes	Director Sullivan	Yes
Mr. Shekarchi	Yes	Mr. Abedon	No
Mr. Sahagian	Yes	Mr. Ricci	No
Mr. Coia	No	Vice Chair Lemont	No
Mr. Gray	Yes	Chair Tikoian	No

5 Affirmative            5 Negative            0 Absentation

The motion failed.

Mr. Sahagian, seconded by Mr. Coia moved to adjourn. Director Sullivan was opposed. The motion carried.

**7. Enforcement Report – January, 2006**

There were none held.

**8. Category “A” List**

There were no Category A's held.

There being no further business before the council the meeting, the council adjourned at 10:50 p.m.

Respectfully submitted,

Grover Fugate  
Executive Director CRMC

Reported by Lori A. Field