

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Thursday, May 27, 2010 at 6:00 p.m. in Council Chambers, Narragansett Town Hall, 25 Fifth Avenue, Narragansett, RI.

**MEMBERS PRESENT**

Paul Lemont, Vice Chair  
Raymond Coia  
Bruce Dawson  
Donald Gomez  
Michael Sullivan, DEM  
Robert Driscoll  
David Abedon

**STAFF PRESENT**

Jeffrey M. Willis, Deputy Director  
Danni Goulet,  
Kenneth Anderson  
Amy Silva  
Brian Goldman, Legal Counsel

**1. CALL TO ORDER**

Chair Lemont called the meeting to order at 6:00 p.m. and stated that there were no other meeting dates scheduled for this matter but the Council would be setting up additional meetings for the Champlin's application.

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

Mr. Coia, seconded by Mr. Sullivan, moved to approve the minutes of the previous meeting, April 27, 2010. Minutes approved on a unanimous voice vote.

**3. SUBCOMMITTEE REPORTS**

Chairman Lemont made a report to the Council involving the Ocean SAMP chapters which were approved by the Ocean SAMP Subcommittee at its May 6<sup>th</sup> and May 20<sup>th</sup> meetings. Chair Lemont asked the Council to consider rule making on the following Chapters of the Ocean Special Area Management Plan: Chapter 4: Cultural and Historical Resources; Chapter 5: Fishery Resources and Uses; Chapter 8: Renewable Energy; Chapter 9: Other Future uses. Chair Lemont stated that Chapter 9 required more time to review before voting to approve it and that the Subcommittee would do so during the Public Notice period. No objections to putting OSAMP Chapters out to Public Notice.

**4. STAFF REPORTS**

No Report

Chair Lemont introduced Council members. Discussion of Council member's availability for rescheduling of next meeting. Lisa Mattscheck to send e-mail to Council members with dates for consideration. Chair Lemont states that he would like to hold the final meeting on Block Island for convenience of the people of Block Island.

**5. Application before the Full Council in accordance with Remand Order from the Rhode Island Supreme and Superior Courts:**

**2003-05-155 CHAMPLIN'S REALTY ASSOCIATION -- 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.**

Chair Lemont read the project description and Mr. Goldman explained that this matter had been remanded back to the CRMC as a result of a February 18, 2010 decision of the RI Supreme Court which reversed the remedy that was imposed by the Superior Court as to what the final agency decision was. Mr. Goldman stated that the remand was for a fairly limited purpose. Mr. Goldman read the remand order stating that the Council was ordered to expand the record to include the "Goulet" plan; CRMC shall afford the parties and interveners the opportunity to test the 'Goulet' plan; CRMC shall make the people involved in the creation of the "Goulet" plan available for cross-examination by parties and interveners. Mr. Goldman read that the members of the Council had to certify that they had read the entire record. Mr. Goldman stated that a pre-hearing conference was held to go over the remand order and how we should proceed. Mr. Goldman stated that the hearing package contained all the information associated with the "Goulet" plan. Mr. Goulet gave a Powerpoint presentation on the information on the record consistent with the remand order as to what he considered in the formation of the plan, who he spoke to and what evidence he may have considered outside of the record. Mr. Goldman stated that he had e-mailed all the slides from the power point presentation to all attorneys of record. Mr. Goldman marked the record as follows: 5-27-1 Meeting Notice; 5-27-2 Order on Remand (unsigned); 5-27-3 Champlin's Existing Marina Perimeter Limit, Existing Mooring Field Permit; 5-27-4 Great Salt Pond aerial photo with no markings; (discussion on packet of information); 5-27-5 Champlin's Proposed Marina and Perimeter Limit from their Application; 5-27-6 Land Trust Exhibit K; 5-27-7 excerpt from one of the charts submitted; 5-27-8 CRMC subcommittee recommendation; 5-27-9 from application package aerial photograph; 5-27-10 alternative plan; 5-27-11 "modified mooring Field E"; 5-27-12 Source Soundings on Line for Sale, All Vessels 2000-2005, Random Selection Vessels for Sale; 5-27-13 notice of pre-hearing conference; 5-27-14 postponement notice for May 11, 2010 meeting. Mr. Goldman asked all parties to identify themselves – Attorney Robert Goldberg representing Champlin's Marina along with Thomas DiPrete and Kathleen Managhan as co-counsel; Attorney Dan Prentiss representing Committee for the Great Salt Pond, Block Island Conservancy and Block Island Land Trust; Attorney Donald Packer, solicitor for the Town of New Shoreham; Attorney Jerry Elmer representing Conservation Law Foundation.

Danni Goulet is sworn in. Discussion on the status of the remand decision before the Council and what the Council would be voting on, to which Mr. Goldman clarified by stating that the Council would be reviewing the record de novo, taking the existing and the new evidence and the Council will make a decision de novo.

Mr. Goldman begins direct examination of Mr. Goulet, first asking him to go through the Powerpoint presentation and advise the Council what was considered in the creation of the slides and whether evidence outside the record was considered in preparation of the slide

presentation. Mr. Goulet presented using PowerPoint. Mr. Goulet stated that in preparation for the Council meeting he had read all of the transcripts of the meetings, looked at all exhibits so that he could understand the constraints and needs/goals that were part of the expansion but also the goals of the Town of New Shoreham regarding the mooring field. Mr. Goulet stated that in his determination, Champlin's goals were to accommodate six mega yachts, have a small ferry or coastal vessel call at the marina, accommodate more boats using less rafting, and the Town of New Shoreham wanted to preserve its mooring field as shown in the HMP having at least 100 ACOE approved moorings. Mr. Goulet stated that the constraints found were the water type limits, water depths, federally-recognized anchorage and dimensional issues such as a 100-foot offset for commercial structures. Mr. Goulet also pointed out that there is a 300 vessel limit proposed in the expansion request. Mr. Goulet stated that taking into consideration all those constraints, he worked at laying out the expansion. Mr. Goulet stated that the first difficult constraint was the ACOE mooring field. Mr. Goulet stated that he phoned the ACOE to get clarification on their correspondence. Attorney Prentiss requested the Mr. Goulet reveal who he spoke with at ACOE in accordance to the order by Supreme Court and Superior Court; discussion and clarification of court order. Mr. Goulet clarified for the record that the spoke with Michael Elliott at the Army Corps of Engineers Regulatory Branch and the Mr. Elliott reiterated that Mooring Field E and the coordinates that were in the permit were the recognized mooring field by the ACOE and not the mooring field that was in the Harbor Management Plan that went around the marina. Mr. Goulet stated that Mr. Elliot confirmed that the total number of moorings was 100. Mr. Goulet stated that he used the coordinates that were also in the record to start as a base for Mooring Field E. Mr. Goulet stated that the slide was 5-27-3. Mr. Goulet moved to slide exhibit 5-27-4 showing the marina in its current configuration on July 4<sup>th</sup> weekend to show the boat count, which Mr. Goulet stated was between 175 and 185, also showing the 165-foot yacht moored off the dock. Mr. Goulet moved to slide exhibit 5-27-5 which was the applicant's proposal stating that there was westward expansion proposed as well as extension of dinghy dock. Mr. Goulet moved to slide exhibit 5-27-6, the land trust exhibit hydrographic survey. Mr. Goulet stated that for clarification of boat draft, he went outside the record (exhibit 5-27-12) to "Soundings Online" for boats for sale to get a random sampling of boats to write down their drafts to come up with an average draft as there was discussion on dredging depths and expense. Mr. Goulet stated that the surveys showed two substantial rocks with water depths around them. Mr. Goulet stated that slide exhibit 5-27-7 was an enlargement of 5-27-6 to point out the water depths inside and outside of the marina. Mr. Goulet pointed out that various sized boats used the marina areas. Mr. Goulet stated that the rocks are an impediment to navigation and any expansion in this area, but that if they decided to expand in this area the rocks could be removed or a fixed structure put over the rocks. Mr. Goulet moved on to 5-27-9 stating that this slide was his attempt to put the subcommittee recommendation on the photo. Mr. Goulet moved on to slide exhibit 5-27-10 stating that it was the so-called "Goulet Plan" and explained how he developed the plan using the information at hand. Mr. Goulet talked briefly about the boat count in regards to the RIDEM Water Quality Certificate mentioning that he had spoken to Angelo Liberti who is the Chief of Surface Water Quality, RIDEM, who clarified DEM's method of determining boat count. Mr. Goulet moved on to slide exhibit 5-27-11 which he used to try to find the limits of Mooring Field "E" showing how the mooring field can be reconfigured and still keep the same mooring count. Mr. Goulet stated that a courtesy channel needed to be formalized. Mr. Goulet stated that besides Mr. Elliott and Mr. Liberti, he also talked with Mr. Fugate in the development of the alternative plan. Mr. Goldman finished with his direct examination and opened the floor for Council to ask questions. Mr. Dawson asked Mr.

Goulet about Mediterranean mooring in which Mr. Goulet stated that in using the alternative plan there would be no med moorings. Mr. Dawson asked if Mr. Goulet had looked into sailboat drafts, to which Mr. Goulet answered that there did not appear to be too many sailboats in the picture which tend to be on the outside.

Attorney Robert Goldberg cross-examined Mr. Goulet. Mr. Goldberg had Mr. Goulet clarify his qualifications. Mr. Goulet stated that his title changed from Dredge Coordinator to his current title Marine Infrastructure Coordinator meaning the responsibilities of his position increased to include the review of applications for large marine infrastructure projects (port facilities) and a significant number of marinas and dredging projects. Mr. Goulet explained his professional qualifications stating he is a licensed professional engineer in Rhode Island, Massachusetts and New Hampshire, having a Bachelor of Science degree in Civil Engineering. Mr. Goulet stated that he also had 20 years of experience in the field. Mr. Goulet testified that he had read the Champlin's record in preparation for the meeting, stating that he paid particular attention to the transcripts with Mr. Melchiori, Mr. Grillo and Mr. Bourne. At Mr. Goldberg's request, Mr. Goulet explained that his specific charge at the time relating to the "Goulet Plan" was to see if there was an alternative design for the marina as well as moorings. Mr. Goulet stated that he had experience designing marinas of similar size while he was Vice President of Bourne Consulting. Mr. Goulet stated that he had consulted and stayed within the parameters of the "Red Book" when designing the alternative plan. Mr. Goulet, in answering Mr. Goldberg's inquiries on rafting, stated that because the boat densities would not change greatly with revised marina layout as they would increase the boat count that rafting was not likely to be eliminated. Mr. Goldberg stated that boat densities were not specifically mentioned during testimony. Mr. Goulet stated that he did not use an average boat size in calculation for the alternative plan; just the number of boats divided by the area, stating that maximum boat size was a factor when designing fairways. Mr. Goldberg read from Section 300.4 of the RICRMP (Red Book), bringing about a discussion on which version of the Red Book Section 300.4 should be used as there were substantial revisions to Section 300.4 in 2008. Mr. Goldberg stated that the applicant is asking to be issued a permit at this time based on current law. Mr. Goldman stated that the rules that would apply based on law would be the old Section 300.4 unless all parties are agreeable to applying the most recent version as an issue of mutual agreement. It was determined that for the line of questioning of safety standards that the current version of 300.4 would be acceptable to use until such time it is decided which version of 300.4 would be used as reference. Mr. Goulet explained his methodology of designing the fairway, stating that because the fairway is not within the confines of the marina, that the formula of one-and-a-half times the average length is a prudent navigational standard. Mr. Goulet stated that he did not put any specific boat or boat sizes in his plan, as there is no dock layout. He explained that with the unusual shape of the marina and with the amount of rafting, rather than provide a layout he provided a marina perimeter limit and a boat count leaving the boat layout to the operator to come up with what works best for the operation. Mr. Goulet again stated that his plan did not include rafting, reiterating that if boat counts increased, rafting may not be able to be eliminated, but if there were fewer vessels, rafting could be eliminated. It would be a management decision, however, he said. Mr. Goldberg questioned Mr. Goulet on water depth in regards to the alternative plan (looking at exhibit 5-27-7) in the western area where the rocks were located. Mr. Goulet explained that dredging may not be required other than the removal of the rocks if desired. Mr. Goulet was questioned on computation of the volume of dredging required. Mr. Goulet stated that his alternative plan was to show available areas that could currently be used without dredging

and that even more expansion could be done with some dredging. Mr. Goldberg questioned Mr. Goulet on the exhibit 5-27-12 Soundings list regarding boat size, draft and random selection of boats. Mr. Goulet stated that he took the first six boats that came up from the search to verify Mr. Bourne's numbers. Mr. Goulet stated that his point was that there is deeper water available for Mr. Grillo to use now and if he chose to, he could also dredge the more shallow area. Mr. Goldberg questioned Mr. Goulet on Type 3 waters. Mr. Goulet stated Type 3 waters are for high intensity, recreational boating. Mr. Goldberg and Mr. Goulet discussed slide exhibit 5-27-10 regarding the current and future uses of the area. Mr. Goldberg questioned whether the alternative plan would displace the current uses of this area. Mr. Goulet stated that the usage of the area is an operational issue to be determined by Mr. Grillo. Discussion on possible berthing in the area and whether dredging would be necessary followed. Mr. Goldberg asked Mr. Goulet if in the boat drafts he included the ground beneath the hull. Mr. Goulet stated that Soundings would have given the maximum draft on the boat but did not verify it nor did he check on the load of the boat for determining draft. Mr. Goulet stated that the Soundings list was merely to point out that boats of all varying configurations and drafts and are very similar to water depth at marina except for the one western corner. Mr. Goldberg asked Mr. Goulet about consideration of draft and water depth of docking a boat when creating the plan, to which Mr. Goulet stated that the plan was created without a layout plan because that would be up to management to lay out their space. Mr. Goldberg asked Mr. Goulet if he looked into natural resources prior to the creation of the plan. Mr. Goulet stated that there was no vegetation in the area, shellfish resources were considered and the area was open and that finfish were transient.

Ten minute recess.

Mr. Goldberg distributed copies of a report from Natural Resources Services Inc. by Scott Rabideau (Exhibit #22) and it was reviewed by Counsel and Council. Mr. Goldberg readdressed the subject of natural resources such as aquatic vegetation, to which Mr. Goulet stated the report mentioned rockweeds and sea lettuce, and a shellfish bed in area B. Mr. Goulet stated that the regulations suggested minimizing the disruption of natural resources when dredging and to balance the competing uses. Mr. Goulet stated that shellfish beds can be transplanted. Mr. Goldberg asked if it was preferable to go to an area without shellfish according to the Red Book. Discussion on the area where the bumper boats, dinghy dock, and bathing is set up and others uses for this area and whether displacing these activities for additional dock space would be beneficial. Mr. Goulet stated that, again, layout of the marina was a management decision and it would be up to Mr. Grillo as to where he wanted to place additional dockage to accommodate the size boats the marina attracts. Mr. Goldberg asked Mr. Goulet about the subcommittee proposal and the depth of water the area. Mr. Goulet answered that the water depth is 17 and 18 feet but that a water depth issue would pertain to the size boats that dock in this area. Mr. Goulet stated that the alternative plan also encompassed this area and that he determined the dimensions by starting at the mooring field and went one-and-a-half times the 165-foot boat, coming up with a 250-foot channel. Discussion on the fairway and the average lengths of boats in both the marina and the Town Mooring field followed. Mr. Goldberg asked Mr. Goulet how close a marina can be to a mooring field. Mr. Goulet stated that the New Shoreham Harbor Management Plan stated that it is 100 feet. Mr. Goulet stated that ending of the fairway is up in the air because the limits of Mooring Field "E" are not yet defined in the Harbor Management Plan. Mr. Goldberg stated that they would get back to this subject when the Mooring Field exhibit was available. Discussion between Mr. Goldberg and Mr. Goulet on slight modifications to the alternative

plan because of the extension of a pier into the fairway followed. Mr. Goldberg asked Mr. Goulet how boats should get around the rocks. Mr. Goulet stated that the layout of the facility would be up to management and the avoidance of the rocks would be dependent on the layout of the facility. Mr. Goldberg questioned Mr. Goulet on the Soundings listing and whether Mr. Goulet had checked the manufactured specifications or relied on the advertisement in Soundings. Mr. Goulet stated that he did not research the boat specs and that was why he was clear about the source and the vessel as the reason for using the numbers was to gain an average of the boat draft. Mr. Goldberg questioned Mr. Goulet about the process for receiving dredge permits. Mr. Goulet explained that a permit is needed from RIDEM, USACE and RICRMC. Mr. Goulet stated that the dredge application for the area that needed to be dredged would be a new dredge application as opposed to a maintenance dredging application. Mr. Goulet went through the steps to the dredging process, stating that CRMC and DEM had a joint application process and that the same information was sent to the ACE with the exception of having a different application sheet. Mr. Goulet stated that if necessary, the application would be put out to public notice and if comments were to come in they would be handled. Mr. Goulet explained the different type of dredge materials and where the materials could be disposed of properly. Mr. Goldberg and Mr. Goulet discussed time frame of the dredging permit process and the documentation required for an application to be deemed complete, also explaining that the dredge disposal location does not have to be in place at the submittal of the application. Mr. Goulet discussed the two different methods of dredging – mechanical and hydraulic – explaining that the method is usually dependent on the disposal choice and location. Mr. Goldberg asked Mr. Goulet to explain the separate review of each agency that does not overlap. Mr. Goulet stated that DEM looks at the fisheries and water quality aspects of the application on a state regulatory level and the ACE looks at fisheries and water quality through its federal regulations. Mr. Goldberg questioned Mr. Goulet on areas within the Champlin’s Marina that had water depth and would not require obtaining dredging permits, to which Mr. Goulet stated that there were areas with water depth but that again the layout of the marina was up to management. Mr. Goldberg ended questioning here for time purposes.

Chair Lemont asked Ms. Mattscheck to work with the Council members to schedule the next Champlin’s meeting.

Mr. Goldman stated that a determination needed to be made on the applicability of which Section 300.4 applies, explaining that the case law on the law of remand is that when a matter is remanded it is remanded under the existing rules and regulations that were in effect at the time of application unless the parties agree differently. Mr. Goldman requested that the parties get the definitive position as to which section they all think applies and hopefully give the Council a response before the next hearing. Chair Lemont gave all parties a few weeks to get back to Mr. Goldman on preference of Section 300.4. Mr. Goldman also requested of parties to let us know in advance which exhibits will be used that that staff can have them readily available.

## **8. CATEGORY “A” LIST**

Accepted as presented.

9. **ADJOURN**

Hearing adjourned at 8:57 p.m.

Respectfully submitted,  
Grover Fugate, Executive Director

Reported by Lisa A. Mattscheck