

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Friday, June 25, 2010 at 1:00 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

Grover J. Fugate, Executive Director
Jeffrey M. Willis, Deputy Director
Kenneth Anderson
Amy Silva
Brian Goldman, Legal Counsel

1. CALL TO ORDER

Chair Lemont called the meeting to order at 1:30 p.m. and discussed with Council members and parties the schedule for the next few meetings. It was agreed that meetings would be held on Thursday, July 15, 2010 at 9:30 a.m. in Narragansett; Wednesday, July 28th at 9:00 a.m. in Narragansett; and Monday, August 23rd at 1:00 p.m.

2. SUBCOMMITTEE REPORTS

Chairman Lemont made a report to the Council involving the Ocean SAMP chapters to which includes OSAMP Section 100, Chapter 1 – Introduction; OSAMP Section 1100; Chapter 11 – New Policies and Regulations; to be set up for rule making. Chair Lemont stated that the Policy and Planning Subcommittee met on May 18, 2010 and June 15, 2010 and is seeking concurrence to begin rule making on RICRMP Section 210.2 – Barrier Islands & Spits. The next item is the Stormwater Design and Installation of Standards Manual for adoption of new revisions. Chair Lemont stated that if there are no objections they above referenced changes will be put out to rule making.

3. STAFF REPORTS

No Report

4. 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 stated that the last Semimonthly Meeting for Champlin's was ended at 8: 57 p.m. with Mr. Goulet on the stand. Chair Lemont stated that Mr. Goulet was not available today and that the witnesses would be Angelo Liberti of RIDEM and Grover Fugate of CRMC. Chair Lemont stated that testimony would start with Mr. Liberti. Mr. Liberti was presented by DEM Legal Counsel Marisa Desautel.

Mr. Liberti took the stand and was sworn in and stated for the record that he is the Chief of Surface Water Protection at RIDEM. Attorney Goldman asked Mr. Liberti if he knew CRMC staff member Dan Goulet. Mr. Liberti stated that he did and confirmed a discussion that was had in 2005 concerning Champlin's application that's pending with the CRMC. Mr. Liberti relayed to the Council the subject of discussion which mainly pertained to the description of how the RIDEM had reviewed the Champlin's application for water quality certification. Mr. Liberti stated that Mr. Goulet mentioned having rough ideas on compromised solutions which would include a different footprint of the marina and asked how the department would look at that and if the compromised solutions would change the water quality certification requiring a new application. Mr. Liberti stated that no written materials were provided by Mr. Goulet just a description of the affected area. Mr. Liberti stated that he did not provide Mr. Goulet with any written information. Mr. Liberti stated that he provided Mr. Goulet with verbally in a telephone conversation the total number of boats that would have been allowable in the one or two compromised solutions that were described. Mr. Goldman stated that his questioning was concluded and that the order from the Supreme and Superior Court is to put on record any information that Mr. Goulet used outside of the record of information to design the plan.

Attorney Robert Goldberg cross examines Mr. Liberti. Mr. Goldberg questioned Mr. Liberti on whether he had an notes related to conversation with Mr. Goulet. Mr. Liberti stated that he had an excel file or two in electronic format, that he still has them saved and that he did not review the files prior to this hearing but that he did look at his directory of files to see if they remained. Mr. Goldberg asked Mr. Liberti to explain his job requirements. Mr. Liberti stated that he supervised a number of programs related to surface water quality, from issuing RIPDES permits, point source discharge permits, overseeing a group that monitors shellfish grounds set to water quality standards, water quality restoration studies. Mr. Liberti stated that he also assisted Russ Chateauneuf with the water quality certification program. Mr. Liberti stated that he had been involved in the water quality certification of the Champlins Marina application which set a number of vessels at 300. Mr. Liberti stated that the significance of the water quality certification meant that a review had been done and it was determined that the project is consistent with water quality regulations. Mr. Liberti stated that he had not seen the alternative plan and that his interaction with Mr. Goulet was by telephone but did not remember the dates of the conversations or the length of time for the conversations. Mr. Liberti stated that he and Mr. Goulet discussed a reconfiguration but that he was not aware of what the reconfiguration was. Mr. Liberti stated that he had no further discussions with Mr. Goulet regarding the Champlin's application but that he did discuss it with Mr. Chateauneuf of DEM. Mr. Liberti stated that his job requirements had not changed since the time of the conversations with Mr. Goulet.

Attorney Daniel Prentiss cross examines Mr. Liberti. Mr. Prentiss stated that he represented the Committee for the Great Salt Pond and the Block Island Conservancy and the Block Island Land Trust. Mr. Prentiss confirmed with Mr. Liberti that he explained to Mr. Goulet the water quality certification review process. Mr. Liberti stated that he mentioned to Mr. Goulet, in general terms, how the computer model worked in determining how WQ cert is issued. Mr. Prentiss asked Mr. Liberti to review Exhibit 3-3-2 which is a letter on DEM stationery dated February 26,

2004. Objections by Ms. Desautel and Mr. Goldberg; overruled by Chair Lemont. Mr. Prentiss asked Mr. Liberti if he participated in the preparation of the letter. Mr. Liberti stated that he participated in certain portions of the letter. Objection by Mr. Goldberg – beyond the purview of the Superior Court Order. Chair Lemont lets questioning proceed. Mr. Prentiss questions Mr. Liberti regarding a statement on gray water discharges. Mr. Liberti stated that the letter was written as a deficiency letter in the beginning process and that he explained to Mr. Goulet how gray water discharge was calculated. Mr. Prentiss introduced new exhibit marked as Committee for the Great Salt Pond A-1 for identification. Mr. Liberti is shown exhibit which is an e-mail document from Chris Mason with backup documentation. Objection by Mr. Goldberg. Discussion on whether to allow document and questioning. Chair Lemont asked Mr. Liberti if he has reviewed the document. Mr. Liberti stated that he had reviewed the document and reiterated that he described to Mr. Goulet the process of determining water quality and but not in detail the data on the spreadsheet. More questioning on information contained on excel spreadsheet (Committee A-1) and whether or not discussed in detail with Mr. Goulet. Chair Lemont questioned Mr. Liberti about the water quality certification's validity if the perimeter of the marina changed. Mr. Liberti stated that DEM would need to plug new numbers into spreadsheet for the perimeter of the marina and the depth and would have to recalculate and determine the allowable number of boats. Mr. Liberti stated that if you change the volume of water that you are doing an analysis for, it's going to change the answer. Mr. Liberti stated that he explained to Mr. Goulet that if you reduce the volume it would likely reduce the number of vessels. Mr. Liberti stated that he did not give Mr. Goulet an opinion as to whether a particular configuration would receive a water quality certification. Mr. Prentiss asked Mr. Liberti to describe the process of analyzing the new area to be occupied by the marina to determine the allowable number of vessels that could be accommodated there. Mr. Liberti stated that they would reapply the final spreadsheet model. Mr. Prentiss explains to Council why the questioning is important to the information on record and that the Council understands what a WQC means. Mr. Prentiss finishes cross-examination.

Attorney Jerry Elmer cross-examines Mr. Prentiss.

Mr. Elmer asked Mr. Prentiss if he had any further conversations with Mr. Goulet regarding gray water discharges from marine vessels that has not already been testified to today. Mr. Prentiss stated that he remembered the conversation as being brief and that he believes he has already described most of what the conversation entailed. Mr. Elmer asked if Mr. Prentiss remembered additional information discussed other than what was testified to concerning DEM's water quality certification process. Mr. Liberti stated that Mr. Goulet provided him with two areas of average depth asked him what the allowable number of boats would be if we applied the same analysis that would apply to arrive at the 300 vessels. Mr. Liberti stated that he ran the numbers but did not recall what they were. Mr. Elmer finishes cross-examination.

Mr. Prentiss asks to move Exhibit Committee A-1 to full. Chair Lemont states that exhibit will be ID only.

Mr. Goldberg Recross-examines Mr. Liberti.

Mr. Goldberg asks Mr. Liberti if he recalled the two areas and two average depths that were given to him by Mr. Goulet. Mr. Liberti stated that he did not remember.

Chair Lemont excuses Mr. Liberti and calls for a five minute recess.

Chair Lemont stated that he wanted to state for the record that Mr. Liberti was issued a subpoena to appear today. Mr. Goldman stated that he would provide a copy of subpoena for the record.

Mr. Grover Fugate is sworn in.

Mr. Goldman asks Mr Fugate to testify to the Council what his role was for the creation of the alternative plan. Mr. Fugate stated that he directed Mr. Goulet to actually prepare the plan which we will do in some cases where there is a staff denial indicated as there may be an alternative that would be permissible. Mr. Fugate stated that because Mr. Goulet had not been party to the proceedings, he asked him to review the record to see if there was a configuration that might be permissible that would seem to meet the criteria. Mr. Fugate stated that they had an initial conversation outlining the scope of what Mr. Goulet was to do; and after the plan was prepared, we had a conversation on how Mr. Goulet arrived at the revised perimeter and what it looked like. Mr. Fugate stated that his conversations with Mr. Goulet were about the review of the location of the mooring field; the review of the overall perimeter that was being proposed; the review of the existing configuration. Mr. Fugate stated that Mr. Goulet reviewed water quality information with Mr. Liberti. Mr. Fugate stated that Mr. Goulet only gave a general layout of the marina, not a specific design. Mr. Fugate stated that the he and Mr. Goulet had also had a general conversation with Bob DeSista and one other permitting staff of the Army Corps of Engineers. Mr. Fugate stated it was a very general conversation that did not involve plans. Mr. Fugate stated the conversation involved rough numbers regarding the expansion out towards the channel itself however no specific numbers were arrived at. Mr. Fugate stated that he did not provide Mr. Goulet with any information outside of CRMC's Administrative Record.

Mr. Goldberg Cross Examines Mr. Fugate.

Mr. Fugate states for the record his title is Executive Director of the Coastal Resources Management Council and that he had held that position throughout the Champlin's application process. Mr. Fugate states that he supervises the general duties of the staff on a day to day basis, everything from budget to interpretation of regulations to signing of permits and enforcement actions. Mr. Goldberg questions Mr. Fugate about the definition of the word "permissible" to which Mr. Fugate answered that staff looks at the regulations, testimony that may come in on the record relative to various uses within the area, and then trying to achieve a balance between the uses but certainly conformance with the regulations. Mr. Fugate stated that they try to achieve coordination with the ACOE. Mr. Fugate reiterated that he asked Mr. Goulet to review the existing plan and see what alternatives might be permissible in the area. Mr. Goldberg asked Mr. Fugate if he was familiar with the so-called "Goulet Plan." Mr. Fugate stated that he was. Mr. Goldberg asked who selected the area of the alternative plan. Mr. Fugate stated that Mr. Goulet did and that he discussed the plan with Mr. Goulet after it was completed. Mr. Goldberg asked Mr. Fugate if there was any indication between he and Mr. Goulet that this was the only plan that was permissible. Mr. Fugate stated that he and Mr. Goulet discussed the constraints that Dan was looking at when he developed the plan. Mr. Fugate stated that the constraints had to do with the property line extensions, the water depth and the boats that were in the marina. Mr. Fugate stated that he and Mr. Goulet also discussed seaward expansion while also trying to acknowledge the channel; also, providing for safe navigation in the channel area. Mr. Fugate stated that he and Mr. Goulet also discussed the mooring field that had been permitted by the Army Corps of Engineers. Mr. Goldberg asked to put up exhibit Applicant's Number 14, previously marked as a full exhibit. Mr. Goldberg questioned Mr. Fugate about the channel on the alternative plan. Mr. Fugate pointed out the area on exhibit Applicant's Number 14 where the channel is stating

that it is recognized by the marine community as a channel and was depicted on the alternative plan by Mr. Goulet from the evidence in the record. Mr. Fugate stated that he recalled a discussion with Mr. Goulet about the channel although did not recall the parameters of the discussion. Mr. Fugate stated that he recalled that he and Mr. Goulet discussed that there was a lot of marine traffic going back and forth between that area and that the alternative plan meant to provide a safe navigation point between the mooring field and whatever expansion may be allowed out in that area. Mr. Fugate stated that Mr. Goulet used a setoff of two times the length of the vessel for the turning radius of the largest vessel. Mr. Goldberg asked if Mr. Fugate discusses with Mr. Goulet that the two times the largest vessel was not within the CRMC regulations to which Mr. Fugate replied he did not recall. Mr. Fugate stated that he remembered a general discussion about the courtesy channel that existed between Mooring Field E and the area to the north and that he also remembered discussion on the two avenues of approach to Champlin's Marina. Mr. Fugate stated that during his discussion with Mr. Goulet about two means of ingress and egress, Mr. Goulet stated that there was still a substantial amount of traffic that ran in front of the area because of gas dock station and that Mr. Goulet was trying to accommodate a safe navigation area. Mr. Goldberg asked Mr. Fugate if he and Mr. Goulet discussed what part of the record Mr. Goulet relied on to come to the traffic conclusion. Mr. Fugate stated that it was based on Mr. Goulet's engineering experience, his familiarity of the area, and also based on evidence presented in the record by a navigational expert. Mr. Fugate stated that he and Mr. Goulet discussed water depth and that Mr. Goulet explained that the expansion area had sufficient depth in this area. Mr. Fugate stated that Mr. Goulet had a chart for water depth which was submitted with the application package. Mr. Fugate stated that Mr. Goulet indicated that for a certain class of vessel the water depths in that area would be sufficient as he was trying to accommodate the larger vessels indicated on the application. Mr. Fugate stated that Mr. Goulet researched boat sales on the internet looking at the various vessels and then using the vessels depths to ascertain water depth need. Mr. Fugate stated that he and Mr. Goulet talked about taking the tidal arrangement in the pond and added that the to water depth considerations. Mr. Fugate confirmed that he and Mr. Goulet discussed the ACOE process which related to federal consistency and that he and Mr. Goulet discussed with Mike Elliot and Bob Desista the expansion into Mooring Field E but only in general numbers. Mr. Fugate stated that he and Mr. Goulet had discussed uses in the water area to the west but did not recall specifics such as recreational use of shore area or displacement thereof. Mr. Fugate stated that he and Mr. Goulet had discussed the issue of dredging in the water area to the west for gaining water depth for deeper depth class vessels and that the disposal site just outside of New Harbor may be possible to use. (Review of chart.) Mr. Fugate relayed that he and Mr. Goulet had discussed expansion in other areas around Champlin's. Mr. Goldberg questioned Mr. Fugate on different topics of discussion with Mr. Goulet pertaining to the alternative plan after the release of the subcommittee report, expansion into Type 3 waters, and the water quality certificate. Mr. Fugate stated that he and Mr. Goulet discussed how the water quality information would change with the reconfiguration of the marina due to altering of the water depth and volume that boats are going into. Mr. Fugate stated that Mr. Goulet and he discussed the reasons for expansion of marina which was dockage of boats for average Rhode Islanders and also possibility for larger vessels in the marina. Mr. Fugate stated that he and Mr. Goulet discussed in general terms the dock configurations in certain areas of the marina but nothing very specific. Mr. Fugate stated that there was some discussion with Mr. Goulet about the large rocks in the recreational area of the marina and what options for expansion in the area regarding the rocks. Mr. Goldberg questioned Mr. Fugate further on the water quality certificate which provided for approximately 300 boats. Mr. Goldberg questioned Mr. Fugate about the subcommittee recommendation of 170' seaward expansion and the sequence of discussions. Mr. Fugate could not recall sequence

of discussion but stated that Mr. Goulet was of the opinion that the subcommittee recommendation did not allow for adequate space between Mooring Field E and the channel area that would provide for safe turning radius between the proposed expansion area and Mr. Goulet was trying to balance uses of water area. Mr. Fugate and Mr. Goulet discussed other uses of the water areas such as existing fishing uses and lobster pots being in the area where the subcommittee recommendation put the expansion. (Five minute break.) Mr. Goldberg asked for the alternative plan to be set up. Mr. Goldberg questioned Mr. Fugate on his discussion with Mr. Goulet regarding the relocation of the fuel dock. Mr. Fugate recalled discussing this but not specifics. Mr. Goldberg referred back to the subcommittee recommendation Exhibit 5-27-8. Mr. Fugate stated that he and Mr. Goulet had discussed moving the Army Corp mooring field but that since it was a permitted field the discussion did not go beyond that. Mr. Fugate stated that he and Mr. Goulet also discussed the Town's Harbor Management Plan which they were aware it was up for review. Mr. Goldberg ends cross-examination of Mr. Fugate.

Attorney Prentiss cross-examines Mr. Fugate.

Mr. Prentiss questioned Mr. Fugate regarding the his discussions with Mr. Goulet on the navigational problems perceived in the application and the calculations by Mr. Goulet that the minimum width of the channel should be two times the length of the maximum vessel to be utilizing the channel. Mr. Fugate stated that he and Mr. Goulet took the mooring field as a fixed boundary and accommodated two times the length of the maximum vessel. Mr. Fugate stated that Mr. Goulet felt that two times the length of the vessel was below standard. Mr. Prentiss asked for Exhibit 5-27-3. Mr. Prentiss asked Mr. Fugate if they discussed the fairway in regards to the 165' vessel. Mr. Fugate stated that the vessel had been at the marina but did not know how often it frequented the marina. Mr. Prentiss asked for Exhibit 5-27-10, the alternative plan. Mr. Prentiss asked is Mr. Fugate and Mr. Goulet discussed the fact that the 200' channel would not be enough to accommodate the twice the length of the largest 165' vessel. Mr. Fugate stated that Mr. Goulet felt that the navigation system of the vessel would allow for it to turn in the 200-foot area but was not sure of other vessels of that style. Mr. Prentiss questioned Mr. Fugate on the water quality certification and that it did not approve the expansion but merely counted a number of vessels that would be the maximum allowable if this Council approved the full expansion. Mr. Fugate stated that he and Mr. Goulet had discussed the fact that any change in the parameter or depth class would require recalculation for water quality purposes. Mr. Goulet tried to use that model and run numbers so that the configuration would still accommodate approximately 300 boats as the water quality certification indicated. Mr. Prentiss questioned Mr. Fugate on the permissible aspect of the application which Mr. Fugate agreed would include a valid water quality certification. Mr. Fugate stated that if any change to perimeter that DEM had looked at during their original analysis, the change would require DEM to reanalyze. Mr. Prentiss questioned Mr. Fugate on other areas that would make the project permissible such as CRMC regulations. Mr. Fugate stated that policy issues would be involved to balance the uses of the area. Discussion on mooring areas having an equally high priority in Type three waters. Mr. Prentiss questioned Mr. Fugate on the concept permissible as pertains to what redboom seems to be highest priority uses for a particular water type to which Mr. Fugate agreed. Mr. Fugate stated that he and Mr. Goulet being aware of the CRMC regulations and took into consideration efficient use of space, ecological and other uses of the area, public trust resources. Mr. Prentiss ends cross-examination.

Mr. Packer cross-examines Mr. Fugate

Mr. Packer questioned Mr. Fugate on the approval of CRMC for Mooring Field E in Town's Harbor Plan. Mr. Fugate stated that the mooring field was under discussion and that the Council had approved the Town's mooring plan except for field E. Mr. Fugate stated that the Corps permitted the mooring field. Mr. Packer questioned Mr. Fugate on the preparation of Mr. Goulet's alternative plan and whether it was at the subcommittee workshop which was before the subcommittee voted. Mr. Packer asked Mr. Fugate about the relevance of Mr. Goldberg's questions in regards to the subcommittee plan as the reason the application was sent back was to discover what was talked about to come up with the alternate plan not the subcommittee's plan. Mr. Goldberg objected. Mr. Packer ends cross-examination.

Mr. Goldberg recross examines Mr. Fugate.

Mr. Goldberg asked Mr. Fugate if he and Mr. Goulet had discussed potential uses of Type 2 waters. Mr. Fugate did not recall nor did he recall discussing any other areas of the Great Salt Pond where mooring would be allowable. Mr. Goldberg ends recross examination.

Mr. Fugate is excused subject to recall.

Chair Lemont asks if Counsellors have any other witnesses. It is uncertain until Mr. Goulet finishes his testimony.

Mr. Goldman asks the attorneys whether they had discussed the issue of what section of 300.4 is applicable. The attorneys stated that there had been no further discussion since the last meeting.

5. ADJOURN

Mr. Sullivan motioned to adjourn until July 15th, 2010 which was seconded by Mr. Dawson. Motion carried on unanimous voice vote. Hearing adjourned at 4:25 p.m.

Respectfully submitted,
Grover Fugate, Executive Director

Reported by Lisa A. Mattscheck