

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Thursday, July 15, 2010 at 9:30 a.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

STAFF PRESENT

Jeffrey M. Willis, Deputy Director
Danni Goulet, Marine Infrastructure Coord
William J. Mosunic, Administrative Officer
Kenneth Anderson, Spv Civil Engineer
Amy Silva, Sr. Environmental Scientist
Brian Goldman, Legal Counsel

1. CALL TO ORDER

Chair Lemont called the meeting to order at 9:30 a.m. and made opening statement.

2. SUBCOMMITTEE REPORTS

No Report

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 at the previous Champlins Semimonthly Meeting, Grover Fugate's testimony was completed and Danni Goulet's testimony would resume at this meeting.

Mr. Goldberg continues cross-examination of Mr. Goulet by clarifying as to whether Mr. Goulet had reviewed any further documents regarding the Champlins case. Mr. Goulet stated that in preparation for today's semimonthly meeting, he had read the transcript from the previous meeting with Mr. Liberti and Mr Fugate's testimony. Mr. Goulet stated that he had also reviewed his previous testimony. Mr. Goulet stated that he had not spoken to anyone else since he was last questioned at the meeting.

Mr. Goulet stated that he was asked by Mr. Fugate to read the record to see if there was a permissible alternative. Discussion on Mr. Grillo's testimony regarding Mr. Goulet's understanding of the purpose of the expansion of the marina. Vice Chair Lemont clarified that the purpose of the current hearings was for the limited scope of dealing with how Mr. Goulet formulated the plan. Mr. Goldberg stated that the order also says "and to contest the Goulet Plan." Mr. Goulet stated that they would like to contest the plan, make an offer of proof and have on the record the problems with the Goulet plan as they pertain to the redbook regulation and the testimony. Chair Lemont stated that Mr. Goldberg could confine questions to the Red book but not Mr. Grillo's testimony. Mr. Goldberg complied but asked to put an offer of proof on the record using discrepancies concerning testimony. Mr. Goldberg stated for the record that Mr. Grillo stated that the purpose of the requested expansion was to eliminate rafting or to minimize rafting. Mr. Goldberg stated that Mr. Goulet testified that his plan does nothing to minimize rafting. Mr. Goldberg stated that the testimony of the captain of the Montauk ferry stated that there was no problem in the navigational area with the expansion as requested and explained why. Mr. Goldberg offered wording from the Harbor Management Plan regarding the 100-foot buffer from the mooring field to the dock. Mr. Prentiss objected to the extent of the offer of proof. Mr. Prentiss asked for clarification on which version of the Red Book they were using. Mr. Goldman stated that it would be the Red Book in effect at the time. Copy of that Red Book given to Danni Goulet. Mr. Goldberg questioned Mr. Goulet on access area where dinghies are tied up asking how the Goulet Plan handles that area. Mr. Goulet stated that the access area could be used for Mr. Grillo's expansion and it would be up to Mr. Grillo to create the layout. Mr. Prentiss objected as this subject was already discussed at length. Mr. Goldberg distributed copies of 300.4.B.10, version 6/28/2001. Mr. Goulet read Section 300.4.B.10 into the record. Mr. Goldberg questioned Mr. Goulet regarding the Goulet plan and the public access area and how Mr. Grillo could use this area without losing the public access. Mr. Goulet responded as before stating that it was Mr. Grillo's prerogative as to how the marina is laid out. Mr. Goldberg pointed out to subcommittee members that the area is an illusionary grant that could not be occupied and still comply with provisions. Mr. Goldberg questioned Mr. Goulet on CRMC's review process regarding the consideration of existing uses. Mr. Goldberg read Section 300.4.J which had to do with mooring field setbacks. Mr. Goulet stated that his recommendation of a 250' setback was based on his professional judgment and his understanding of the testimony and record. Mr. Goldberg reviews Mr. Goulet's experience in vessel operation. Discussion on revision of Section 300.4's provision of one-and-a-half times the average vessel length for formulation of setback. Mr. Goulet stated that the provision included fairways and that the fairway ends at the right hand corner of the marina. Mr. Goldberg turned discussion to vessel draft. Mr. Goulet stated that he looked at a hydrographic survey that shows similar depths in the proposed area as in the existing marina and that the standard text by Tobiassen might have been used. Mr. Goldberg asks that the text distributed from Tobiassen book be marked for ID purposes (marked Champlin's Exhibit 7-15-1). Mr. Goulet scans text and chart. Vessel water depths are discussed in accordance to the Tobiassen text. Exhibit marked full exhibit. Discussion on water depth in regards to the Goulet Plan. Mr. Goulet stated that the depths in the Goulet Plan coincide with similar depths in the existing marina. Mr. Goulet explains how he used the bathymetry that was provided in the record, and photograph showing vessels in the area. Review of Photograph Four showing water depth. Discussion of proposed expansion area regarding water depth and rock location and its accommodation of deep draft power vessels or rafted vessels. The Soundings print out is discussed as well regarding draft of vessels

which Mr. Goulet explained he used the information from the soundings page to see if the area would handle existing vessels.

Brief recess.

Mr. Goldberg questioned Mr. Goulet in regards to the marina traffic being generated due to gasoline station. Mr. Goulet stated that he may have testified that there was a pumpout station and gas station they vessels would want to access. Mr. Goulet confirmed that he did not consider an option of removing the gas pumps from that particular dock. The Marina Aerial photo showing all boats is brought up for review. Mr. Goulet stated that he tried to count all the boats in the photo for approximate boat count. Discussion on boats being outside the marina perimeter limit thereby changing the calculation of authorized boats per acre. Mr. Goulet stated that if there were some boats outside of the marina perimeter limit then the density calculation would change making it lower. Mr. Goulet stated that he did not feel that the consideration of wave trough or storm conditions was pertinent due to the similarities of the existing area and proposed area. Mr. Goldberg finished with questioning.

At the request of Mr. Sullivan, Chair Lemont asks Mr. Goldberg to provide full copy of the Tobiassen text. Mr. Goldman states that when the full text is received he will substitute that for exhibit 7-15-1. Mr. Goldberg objects to offering the entire book and reminds Council that they certified having read the entire record. Chair Lemont states that just Chapter 12 would be acceptable. Mr. Goldberg requests that the Chapter in its entirety be given a different exhibit number to which Mr. Goldman assigns 7-15-2 marked for identification.

Mr. Sullivan asks Mr. Goulet about the density of a marina and whether or not that would trigger an enforcement action from CRMC. Mr. Goulet explained that typically CRMC uses a boat count as well as slips to see

Mr. Prentiss begins cross examination of Mr. Goulet.

Mr. Prentiss asks Mr. Goulet about marina perimeter limits (MPL). Mr. Goulet explains that an MPL is the bound around the structural elements of a marina, a line typically offset some distance around all the docks which allows for flexibility for the owner to be able to reconfigure as they see fit within the MPL without going through burdensome process. Mr. Prentiss distributes Champlin's MPL permit; Great Salt Pond Exhibit A-2 which is marked for identification. Mr. Prentiss asked Mr. Goulet if he'd researched Champlin's previous permit history. Mr. Goulet stated that there was only one previous assent in the record and that he did not research other assent history. Mr. Goulet stated that if Exhibit A-2 was not in the record it's likely that he did not research it. Further discussion on Mr. Goulet's knowledge of Champlin's MPL which was shown on several of the exhibits and Mr. Goulet had reviewed. Discussion of Champlin's use of area outside of their MPL. Mr. Prentiss asks Mr. Goulet about his creation of plan while considering the accommodation of four to six mega yachts. Mr. Goulet stated that the larger vessels were an option of the marina operator but that he did not specify the size of boats in the creation of his plan nor does the Council have prohibitions against them. Mr. Prentiss asks Mr. Goulet about Section 300.4.B.1 of the redbook which states that the marina will utilize techniques to make the most efficient use of space. Mr. Goulet stated that in his review, he did not look for ways to utilize the space within the marina but looked at areas that Champlins could expand beyond the existing area. Mr. Prentiss asked if it was a possibility for Champlins to increase boat

count without expansion. Discussion on whether this line of questioning should be allowed. Chair Lemont agreed to line of questioning. Mr. Goulet stated that he only looked at expansion of marina not redesign of existing marina; he did not consider the inefficiency of the existing marina as part of his development of the alternative plan. Objection by Mr. Goldberg and discussion amongst parties on whether or not questioning should include the efficiency of the existing marina layout.

Chair Lemont reads for the record the Order from the court.

Brief recess.

Mr. Goulet stated that he did not recall as to whether or not there was anything in the record that pertained to an analysis of the efficiency of the current layout of the existing marina and that he did not analyze the efficiency of the existing use of the existing MPL. Mr. Prentiss questions Mr. Goulet on Exhibit 5-27-4 (slide) regarding the expansion in the number of vessels that Champlins berths at its facilities by putting vessels outside of the MPL. Mr. Goulet stated that Champlins is authorized to have 250 vessels at their Marina and that there is no prohibition in their permit beyond their MPL but that if they did not place vessels outside of their MPL there would be fewer vessels. Mr. Prentiss questioned Mr. Goulet about CRMC policy on rafting. Mr. Goulet stated that it was a management issue as to whether or not rafting is used unless the Council put a stipulation in their permit that no rafting was allowed; but, without that stipulation there is nothing that would prohibit Mr. Grillo from continuing to raft. Mr. Goulet stated that even with the expansion and the increase in boat count, there would be continued rafting. Mr. Prentiss questions Mr. Goulet on Exhibit 25 in regards to rafting. Mr. Goulet stated that there was rafting in the exhibit. Mr. Goulet stated that, to him, rafting meant berthing boats side by side with one tied to the dock. Mr. Prentiss asked Mr. Goulet if he considered Section 300.4.B.2 in the preparation of the possible alternative. Mr. Goulet stated that the other uses in Great Salt Pond are in the vicinity of the mooring field, shellfishing in the area, and navigation. Mr. Goulet stated that he provided for navigation in his alternative plan. Mr. Goulet stated that the previous Harbor Management Plan did not have a fairway providing an area for vessels to travel in front of Champlin's Marina. Looking at Exhibit 5-27-4 it is established that there is a navigational area in front of Champlin's. Mr. Goulet states that he believes that a navigational area should be in front of the marina as well as all marinas. Mr. Prentiss questioned Mr. Goulet about setbacks. Mr. Goulet stated that a setback is a regulatory requirement but a navigational area is an area that vessels travel. Mr. Goulet stated that there should be a navigational area in front of Champlin's due to the significant number of vessels traveling to the marina. Mr. Prentiss questions Mr. Goulet about testimony given by Chris Willies, Block Island Harbormaster and whether or not the weekend congestion in this area on the summer weekends should be considered in the question of expansion of the marina. Mr. Goulet stated that he agreed. Exhibit 2-11-1, Army Corps of Engineers permit, is brought up for review. Mr. Goulet recognized the permit as allowing the Town of New Shoreham an increase in moorings in Mooring Field E increasing it to a total of 100 moorings. Mr. Goulet explained his method of determining navigational area stating that he went one and a half times the largest vessel on record from the trapezoidal mooring field which was 250 feet from mooring field. Mr. Goulet stated that he had confirmed coordinates from Mike Elliot of the Army Corps of Engineers. Mr. Goulet confirmed that in reading the record he recalled that the Town is able to only put in 90 moorings in Mooring Field E. Mr. Goldberg stated that all they are entitled to is 90 because the Town did not put the remaining 10 moorings in

prior to the January 2000 time limit. Mr. Prentiss asked about if the expansion of Champlin's marina would displace Town moorings. Mr. Goulet stated that he did not believe that to be the case but that in his alternative plan he showed a channel and modified the limits of Mooring Field E and that it would be challenging for the Town to keep the 90 moorings that are there. Mr. Prentiss questioned Mr. Goulet on the dimensions of the fairway pertaining to the average size boat at Champlins which is 38 feet long. Mr. Goulet stated that the navigational channel would have to be approx. 60 feet. Objection and discussion of testimony regarding the current regulation of one and a half times the length of the average boat size as adopted by the Council. Mr. Goulet stated that a 165 foot long boat could not turn in a 60-foot fairway. Mr. Goulet stated that the regulation states using similar size vessels within the fairway but that this was not the case for Champlins as there are not similar size vessels utilizing the fairway.

Recross-Examination by Mr. Goldberg.

Mr. Goldberg began questioning Mr. Goulet on boat sizes in the area, asking if Mr. Goulet was aware how many times a 165-foot vessel had been at the marina. Mr. Goulet stated that he did not know and agreed that the photograph he based research on was taken a few years earlier but that it was part of the record and he created the alternative plan based on information in the record. Mr. Goulet stated he was unaware of the frequency to which the 165-foot vessel frequented the marina but that there was extensive talk of it in the record therefore he based his plan on that. It was confirmed that Mr. Melchiori was the person who discussed the 165-foot vessel. Mr. Goulet confirmed recollection of a Coast Guard captain and a current captain of the ferry talking about safe navigation. Mr. Goldberg questioned Mr. Goulet on other permissible options for the expansion of the marina. Mr. Goulet stated that his was one option but that there could other permissible options. Mr. Goldberg ends re-cross examination.

Mr. Goldberg completes his offer to prove by stating that the record clearly shows that Mr. Grillo's testimony was unequivocal that the primary purpose of seeking the expansion was to eliminate rafting, that Mr. Goulet testified that the alternative plan did not eliminate rafting and that the question of the mega yacht did not come from the owner as a purpose of expansion. Mr. Goldberg also stated, in his offer of proof, that the average size of vessels frequenting the area are far smaller than the 165-foot vessel and that Mr. Goulet was comfortable with using the average size vessel.

Chair Lemont opened discussion on the timeframe of submission of briefs to CRMC Legal Counsel. Mr. Prentiss requested 45 days. Chair Lemont clarified by saying there would be an additional reply period. Chair Lemont stated 45 days for brief submittal and 15 days for the cross brief submissions. It is decided that the briefs would be submitted to CRMC offices with a copy going to Goldman Law Offices. It is decided that the briefs would be submitted by Monday, August 30, 2010 and the cross brief would be submitted by Tuesday, September 14, 2010. Mr. Goldman asked that the attorneys address the issue of which Section 300.4 applies in brief

Chair Lemont stated that once the briefs have been read, a meeting will be scheduled in which there will be one more time for brief argument by Counsel.

Chair Lemont thanked all involved for cooperation, diligence and presentations.

5. **ADJOURN**

Meeting adjourned at 12:10 p.m.

Respectfully submitted,

Lisa A. Mattscheck