

**In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, November 16, 2012 at 10:00 a.m. to 6:00 p.m. in Council Chambers, Narragansett Town Hall, 25 Fifth Avenue, Narragansett, RI.**

Members Present

Anne Maxwell Livingston, Chair  
Paul Lemont, Vice Chair  
David Abedon  
Ronald Gagnon  
Raymond Coia  
Donald Gomez  
Michael Hudner  
Tony Affigne  
Guillaume deRamel  
Jerry Sahagian

Brian A. Goldman, Esq.

Staff Present

Grover J. Fugate, Executive Director  
Kenneth W. Anderson, Spv Civil Engineer  
Danni Goulet, Marine Infrastructure Coordinator  
  
William Mosunic  
Ryan Moore

**1. Call To Order**

Chair Livingston called the meeting to order at 10:00 am.

**2. Application before the Full Council in accordance with Remand Order from the Rhode Island Superior Court:**

**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") seeks 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.**

Present for the Applicant:

Joseph Grillo, Owner  
Robert Goldberg, Esq., Legal Counsel, Goldberg Law Offices  
Thomas DiPrete, Esq., DiPrete Law Office  
Kathleen Managhan, Esq., Houlihan, Managhan, Morrissey & Kyle

Present for the Objectors:

R. Daniel Prentiss, Esq, representing Committee for the Great Salt Pond  
Donald J. Packer, Esq, Solicitor for the Town of New Shoreham  
Jerry H. Elmer, Esq, representing Conservation Law Foundation

Mr. Goldman explained that a supplemental information package had been prepared for the meeting and marked all the information in the package which contained the hearing notice and mailing list, the court remand order, legal memorandums, and transcript. Mr. Goldman explained that after the previous hearing a new remand order was issued by the Court for the presentation of additional evidence which relating to the approval of Payne's dock expansion and any similarity or dissimilarities between Champlin's Marina and Payne's dock. Mr. Goldman explained the hearing process and stated that the Council would hear as much evidence as time allowed and that the meeting may possibly continue to a second hearing, after which legal memorandums would be submitted to be considered by the Council. Mr. Goldman explained that a workshop would be scheduled for deliberation and final determination. Mr. Goldman suggested that Mr. Goldberg start the hearing as it is Champlin's burden of proof.

Mr. Goldberg requested to call Chris Duhamel as his first witness. Mr. Duhamel's CV was marked as Champlin's Exhibit 11-16-2 full. Mr. Duhamel was sworn in, identified for the record and qualified as an expert witness in civil engineering. Mr. Duhamel explained that he was retained by Champlin's marina to evaluate the existing record with regards to Payne's dock expansion and the existing record for the Champlin's Marina expansion and to compare the decisions rendered with regards to the approval of the Payne's Dock expansion and the denial of the Champlin's Marina expansion. Mr. Duhamel stated that he had reviewed the CRMC records on file for both applications. Mr. Goldberg had an aerial composite plan of Great Salt Pond marked for as Champlin's Exhibit 11-16-3. Mr. Duhamel testified that he had determined the distance between the two marinas as 1400 feet and that a fairway connects the two marinas. Mr. Duhamel compared the setbacks suggested by CRMC for the two marinas, Payne's Dock being 200' between the MPL and the adjusted mooring swing and Champlin's setback was determined to be 300'. Mr. Prentiss objected to the subject matter and discussion/argument ensued regarding what the remand order specifically entailed. Mr. Goldberg introduced a new exhibit (Marked Exhibit 11-16-5 full) demonstrating the 200' setback and the 300' setback in relation to one another which was prepared by Mr. Duhamel using the plans of record for both applications. Mr. Duhamel clarified for the Council the information on the plan which also depicted the modification of Mooring field E done in the Payne's decision and a portion of the plan showed what the channel would look like if both marinas were approved with a 200' setback. Discussion on buffer information as it related to the subcommittee recommendation for the Champlin's application and what was proposed by the Council and how the marinas would look if the standard were applied to both applications. Mr. Goldberg introduced a map and asked for marking as Exhibit 11-16-6 full which is the same map at used for 11-16-5 but this version depicted boat size and channel configuration in regards to vessel maneuvering using the criteria of one-and-a-half to two times vessel size. Discussion/argument on the use of the standard as opposed to the footage approved for the channel in the Champlin's case and in comparison to what was approved in the Payne's case. Exhibit 11-16-5 also showed the channel if the same standard was used in both applications. Mr. Duhamel was questioned on the alternative plan prepared by Mr. Goulet as found in the Champlin's record.

Mr. Prentiss cross-examined Mr. Duhamel asking him about his educational background regarding marina design, navigational channels for vessels or in laying out navigational channels. Mr. Duhamel stated that he completed courses in technical engineering, marine science and civil engineering. Mr. Duhamel testified that he relied on the Army Corps of Engineers maps for defining navigational channels and buffers to the channels, but that if he were to establish a navigational channel he would refer to the Harbor Management plan and CRMC guidelines. Mr. Duhamel testified that, in his opinion, a 200-foot fairway seemed to be a reasonable standard for the fairway that serviced Payne's and Champlin's marina. Mr. Prentiss questioned Mr. Duhamel's expertise in design of a fairway channel to which Mr. Duhamel explained that he would use regulatory standards and current analysis. Mr. Duhamel testified that he had no knowledge of vessel traffic at either marina during the summer season. Mr. Prentiss questioned Mr. Duhamel on Payne's Dock plans marked as Exhibit 11-16-1. Mr. Goldberg objected as the plan was not part of the Payne's Dock Council proceedings. Mr. Goldman clarified that the plan was a part of the administrative record provided to all parties in April, 2012. Mr. Prentiss questioned Mr. Duhamel on the

location of moorings in Mooring Field E. Mr. Prentiss questioned Mr. Duhamel on the configuration of the Payne's dock as reported by the CRMC engineer. Mr. Duhamel testifies to the existing of two fairways in front of Payne's dock. Mr. Prentiss questioned Mr. Duhamel regarding Mooring field E and the differences between two plans. Mr. Prentiss questioned Mr. Duhamel on the extent of expansion for each marina – Champlin's requesting a 4 acre expansion and Payne's Dock requesting a .38 acre expansion – and the effect each would have on the competing uses of the water body. Mr. Prentiss questioned Mr. Duhamel on the repositioning or removal of moorings in Mooring Field E. Mr. Duhamel stated that he did not have personal knowledge of the position of the moorings but stated that because the boundaries did not change in the Champlin's expansion request that no moorings would be lost.

Mr. Packer cross examines Mr. Duhamel asking him about his review of the Champlin's record. Mr. Duhamel stated that he reviewed the transcript of the Champlin's Marina Decision, the review of the variables of the channel width and the denial of the application but that he did not review the entire record. Mr. Duhamel stated that he had not reviewed the Town's Harbor Management Plan regarding Mooring Field E. Mr. Goldberg and Mr. Goldman clarified that Mr. Duhamel had reviewed the Full Council Decision not the Subcommittee recommendation.

Redirect by Mr. Goldberg to Mr. Duhamel to clarify the configuration of the Payne's dock extension and the information Mr. Duhamel used in preparing the comparison plan.

Meeting recessed at 1:00 p.m. and resumed at 2:00 p.m.

Mr. Goldberg called Scott Rabideau as his next witness. Mr. Rabideau was sworn in and identified himself for the record and was qualified as an expert in his field of wetland science. Mr. Rabideau testified that he had worked on the Champlin's application from the beginning. Mr. Rabideau testified that he had worked on the Payne's Dock expansion application as well being retained in 2010. Mr. Rabideau stated that he was available for questioning at the Full Council hearing for Payne's Dock but was not called to testify. Mr. Rabideau explained his understanding of his role in the day's proceedings as reviewing the records of both application and comparing the areas of his expertise to see if there were any differences in the review standards. Mr. Rabideau testified as to the differences in water quality requirements for both marinas summarizing that Champlin's would have required mitigation for water quality disturbance and Payne's Dock just required the issuance of the DEM Water Quality Certification. Mr. Rabideau testified to the difference in review of the applications regarding shellfish impacts which required Champlin's to perform shellfish bed transplanting but Payne's Dock project shellfish impact would be mitigated by the shellfish enhancement project in Great Salt Pond. Mr. Rabideau testified to the aesthetic and scenic requirements for both applications. Mr. Rabideau stated that staff report for Champlin's talked about an adverse impact on scenic value of the pond and the staff report for Payne's Dock stated that the scenic and aesthetic impacts would not be significant. Mr. Rabideau testified to the differences in Champlin's Marina expansion and Payne's Dock expansion regarding design and citing criteria stating Champlin's Marina was addressed by staff but Payne's Dock was not. Mr. Rabideau was questioned by Mr. Goldberg regarding a letter from Chair Tikoian to Subcommittee Chair Lemont written February 23, 2004 marked as Exhibit 11-16-7 as to whether or not he had ever seen a letter such as this written to a Subcommittee Chair from the Chairman on any Case to which Mr. Rabideau stated he had not.

Mr. Rabideau is cross examined by Mr. Prentiss. Mr. Rabideau confirmed that it was DEM who required additional surveys for the Champlin's application which was concurrently submitted to CRMC. Mr. Rabideau confirmed that Champlin's commissioned his firm to perform shellfish studies for burden of proof to meet applicable requirements and that the CRMP required the study but that the Payne's Dock application did not provide any shellfish information but was reviewed and approved. In redirect from Mr. Goldberg, Mr. Rabideau testified to differences in application and review of application regarding water depth and benthic habitat. Mr. Rabideau, in redirect, testified that the WQ Certificate for Payne's dock

expansion was not required to be renewed at the time of the Council hearing and approval due to the tolling legislation.

Mr. Goldberg called Mr. Grillo as his next witness. Mr. Grillo was sworn in and identified himself for the record as the principal and manager of Champlin's Marina. Mr. Grillo testified to his familiarity with Payne's marina, its location from his marina, and the similarity of the market they both serve. Mr. Grillo stated that Champlin's marina derives most of its income from transient dockage and confirmed that Payne's Dock is a competitor of Champlin's Marina and the method of cost calculation. Mr. Grillo stated that one difference between the two marinas is that Champlin's has a dinghy service. Mr. Grillo explained photos of boats docked at Payne's Dock. Mr. Grillo stated that he had done some research on a boat called the "Independence" from the American Cruise Lines and received information from them on boat length and width which was marked as Exhibit 11-16-8 for ID. Mr. Grillo spoke about his previous business dealings with American Cruise Lines. Mr. Grillo answered questions such as size, width, vessel location and timeframe regarding previously marked pictures of boats from American Cruise Line as they are docked at Payne's Dock. Mr. Grillo testified to water depth comparisons at the head dock of both marinas. Mr. Grillo testified that 80 boats tie up in the summer at a neighboring marina, Block Island Boat Basin, 150 tie up at Payne's Dock and between 150 and 180 docks at Champlin's Marina. Using Applicant's Full Exhibit Number 15 and Exhibit 11-16-1, Mr. Grillo explained traffic patterns of boaters in fairways between the marinas and Mooring Field C and explained that the busiest part of the pond on a summer day is out in front of Payne's dock at the waterway intersection. Mr. Grillo testified that he would like the Council to approve the recommendation that was submitted by the Subcommittee as it appears in the record which would allow them to minimize rafting allowing them to provide better service to patrons.

Mr. Prentiss questioned Mr. Grillo on his practice of rafting. Mr. Grillo stated that rafting is necessary for Champlin's to generate income. Mr. Prentiss questioned Mr. Grillo on the size difference of the expansion between Champlin's proposal and Payne's Dock proposal.

Redirect by Mr. Goldberg to Mr. Grillo regarding the boat count at Payne's Dock and rafting at Payne's Dock in the proximity to the Hogpen Marina.

Mr. Prentiss called Stephen Land as his first witness. Mr. Land was sworn in and identified himself for the record as the Block Island Harbormaster. Mr. Land briefly described his educational background, his professional expertise in boating and licenses held. Mr. Land stated that he had been the harbormaster for three years, described his duties as harbormaster and stated that the majority of the time he performed his duties on the harbormaster boat instead of in an office. Mr. Land explained his involvement when large vessels come into Great Salt Pond. Mr. Land testified that the boats from the American Cruise lines are familiar with the port and usually come during the less busy seasons. Mr. Land reviewed Exhibits 7-31-6, 7-31-5 and 7-31-3 and stated that the timeframe might have been the spring due to the fog and the lack of boats docked. Mr. Land testified that congestion at Champlin's marina has improved in the last five years but that there is still congestion with all three marinas just for different reasons. Mr. Land stated that the vessels docked at the Hogpen marina are not transient boats and dock for the summer. Mr. Land testified that boats waiting to dock at Champlin's sometimes drift into mooring fields. Mr. Land explained his agreement with Payne's Dock involving their rafting practices which allows Mr. Payne to raft on the 4<sup>th</sup> of July weekend and another weekend of his choosing. Mr. Land stated that he does not restrict rafting but tries to work with marinas. Mr. Land testified as to the recreational uses of the Great Salt Pond during the summer stating that people shellfish, water ski, sailing, swimming and any other water sport. Mr. Land testified that it is very busy in the anchorage area in the summer season. Mr. Land described the different mooring fields in the vicinity ending with Mooring field E, the town mooring field, which rents the mooring by day. Mr. Land stated that the busy season on the island begins in July and goes through Labor Day with the busiest days being Thursday through Sunday and during this time frame marinas and moorings are usually filled to capacity. Mr. Land testified that he had done measurements in the vicinity

of Payne's Dock and Champlin's Marina and that no moorings would have needed to be moved with the expansion of Payne's Dock. Mr. Land testified that he had measured from Champlin's Marina to the mooring field and it measured 300 feet which is needed to accommodate vessel congestion and traffic near Champlin's marina and that 40 moorings would have to be displaced if a 240' expansion were approved. Mr. Land expressed his opinion at Mr. Prentiss' request, that the two expansion requests were completely different due to traffic patterns and marina size and the effect on the work of the Great Salt Pond. Mr. Land stated that he did not have an opinion on why one marina was granted an expansion and one was not.

Mr. Elmer cross-examined Mr. Land asking about traffic flow. Mr. Land stated that the Champlins expansion would affect the traffic in the Great Salt pond.

Mr. Packer cross-examined Mr. Land. Mr. Land testified that a 300 foot buffer is not necessary off of Payne's dock because traffic flow does not require it.

Mr. Goldberg cross-examined Mr. Land. Mr. Land confirmed that he was the harbormaster for the Town of New Shoreham, which he was a town employee, and that Mr. Prentiss and Mr. Packer were representing the Town of New Shoreham in the proceedings but he did not feel as though they represented him. Mr. Land stated that he had met with Mr. Packer and Mr. Prentiss the previous day and discussed what would be talked about at the meeting. Mr. Land answered questions on repositioning moorings that have been moved/shifted. Mr. Land confirmed that he had reviewed the picture in the Payne's application in preparation of testimony. Mr. Land confirmed that he worked professionally with Mr. Payne and that he had known him for five years and he fixed a rafting blocking problem with Mr. Payne by agreement. Mr. Goldberg questioned Mr. Land about his rafting agreement with Mr. Payne, about the number of vessels docked at Payne's marina and how many they are permitted to dock at the marina. Mr. Land confirmed that Payne's dock had a vessel capacity of 70 boats as referenced in CRMC report by Ken Anderson. Mr. Land and Mr. Goldberg discussed the accuracy of the measurement from Payne's Dock to the mooring number 1 and from Champlin's Marina to the mooring number 1. Mr. Land testified that the 226' vessel, the Independence, turns around in front of Payne's Dock frequently without ever hitting the mooring. Mr. Goldberg questioned Mr. Land about the fairway width in different areas as approaching the marinas. Mr. Land stated that the fairway was narrowest between the red and the green can. Mr. Goldberg questions Mr. Land on Payne's marina docking protocol and the lack of radio use or reservation. Mr. Land answered questions about the number of vessels that tie-up beyond Payne's dock and the water depth along the shore. Mr. Land testified that the private moorings in the area can be leased for the night if the mooring owner is not expected that day. Mr. Land answered questions about dinghy services from both marinas stating that Payne's provides a service only if you are their patron but that Champlin's provides dinghy service for public access. Mr. Land answered questions regarding the turning radius of larger vessels and whether there should be a separation distance standard, confirming that he was aware that the subcommittee had set one in the Champlin's Subcommittee recommendation. Mr. Land testified that separation distance may depend on the marina operation and the way boats are docked. Mr. Land testified that drifting into mooring fields happens at all three marinas. Mr. Land testified that over the past five years he had seen an increase in boat size in the area not just in the pond and that Champlin's caters to the bigger boats. Mr. Land testified that the main fairway turns in front of Champlin's Marina and Payne's dock and that the flow of traffic is circular both clockwise and counterclockwise. Mr. Goldberg questioned Mr. Land regarding dates that the cruise ships were docked at Payne's Dock. Mr. Land stated that he only remembered that a 184' cruise ship was docked on July 20, 2012 but that he does not keep track of cruise ships at Payne's Dock. Mr. Goldberg questioned Mr. Land about complaints received from the marinas. Mr. Land stated that if it is a vessel operation complaint he handles it but if it is a noise complaint, the police handle it. Mr. Goldberg asked Mr. Land about his working relationship with both marina owners. Mr. Land stated that he had a working relationship with Mr. Payne and that although he did not see Mr. Grillo that often, it was professional and respectful.

Mr. Goldberg asks to recess at that point. Chair Livingston stated that she would like to keep going to try to finish Mr. Land.

Mr. Goldberg asked Mr. Land's opinion on the elimination of rafting at Champlin's as it pertains to easier docking and relief of congestion. Mr. Land was unsure of the reason for the congestion and elimination of rafting may not fix it if the congestion is due to another reason. Mr. Goldberg questioned Mr. Land about fuel pump accessibility at Payne's and pump out accessibility at Payne's. Mr. Land confirmed that these amenities are not always available at Payne's. Mr. Land confirmed that the amenities are available at Champlin's marina.

Chair Livingston called an end to testimony for the day and stated that the Council was looking at November 30<sup>th</sup> to reconvene. Mr. Goldberg stated that he had a Superior Court ordered proceeding that day.

## **8. ADJOURN**

Vice Chair Lemont motioned, seconded by Mr. Abedon, for the meeting to be adjourned at 6:00 p.m.

Respectfully submitted,  
Lisa A. Turner, Recording Secretary