

**In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, February 12, 2013 at 6:00 p.m. in Conference Room A of the Administration Building, One Capitol Hill, Providence, RI.**

Members Present

Anne Maxwell Livingston, Chair  
Paul Lemont, Vice Chair  
David Abedon  
Robert Ballou, RIDEM  
Raymond Coia  
Donald Gomez  
Michael Hudner  
Tony Affigne  
Jerry Sahagian

Staff Present

Jeffrey M. Willis, Deputy Director  
Kenneth W. Anderson, Spv Civil Engineer  
William Mosunic  
  
Brian A. Goldman, Esq.

**1. Call To Order**

Chair Livingston called the meeting to order at 6:00 pm.

Chair Livingston announced the Mr. Fugate was in Washington DC at the Presidential State of the Union Address as a guest of Senator Sheldon Whitehouse to focus attention on climate change.

Chair Livingston congratulated CRMC staff member Ken Anderson for receipt of recognition from Director Michael Lewis of RIDOT for his assistance to them in response to Hurricane Sandy.

**2. Approval of the minutes of the previous meeting: November 16<sup>th</sup>, 2012 and January 8<sup>th</sup>, 2013**

Vice Chair Lemont motioned, seconded by Mr. Coia, for the approval of the minutes of the meeting held on November 16, 2012 and January 8, 2013. Motion carried on a unanimous voice vote.

**3. Subcommittee Reports.**

On behalf of Subcommittee Chair deRamel, Mr. Goldman reported out the subcommittee recommendation on the Ann Street Pier application/City of Newport. Mr. Goldman stated that the subcommittee recommended approval with modification. Mr. Goldman stated that the application, having been reported out, will be put on a subsequent agenda for full Council review.

**4. Staff Reports**

Mr. Willis informed the Council that a future CRMC seminar was being planned at Alton Jones tentatively for March 28<sup>th</sup>, 2013. Mr. Affigne and Mr. Abedon were unavailable. It was decided that a new day would be looked into based on Council availability.

**5. Applications Which Have Been Out-to-Notice for 30 days and are Before the Full Council for Decision:**

**2012-08-060 RI DEPARTMENT OF ENVIRONMENTAL MANAGEMENT -- Extend two observation decks 12 foot seaward at Salty Brine Beach. Located at plat I-G, lot 71; 254 Great Island Road, Narragansett, RI.**

Mr. Anderson gave a brief overview of the application for the Council stating that the DEM was proposing to extend by 12' x 12', two existing observation decks in Galilee overlooking the breachway. Mr. Anderson stated that there were no staff objections to the proposed project. Mr. Sahagian motioned, seconded by Mr. Coia, for approval of the application based on staff recommendation. Motion carried on a unanimous voice vote. Mr. Ballou abstained from the vote.

Chair Livingston read a statement recusing herself from the Champlin's case in response to a Motion for Recusal which was filed by the attorney for Champlin's Realty Association. Chair Livingston handed the gavel over the Vice Chair Lemont to chair the case.

**6. 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.**

Attorneys identified themselves for the record:

Present for the Applicant:

Joseph Grillo, Owner  
Robert Goldberg, Esq., Legal Counsel, Goldberg Law Offices  
Thomas DiPrete, Esq., DiPrete Law Office

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 marked Chair Livingston's statement as 2-12-1 for identification.

Steven Land, remaining under oath from previous meeting, was called for cross-examination by Mr. Goldberg. Mr. Land confirmed that since the last hearing he had discussed the case with Erik Elwell and Sven Risom but only in regards to the meeting cancellation. Mr. Land confirmed that he had provided the Harbors Department's Boat Count records from 2006 to present to Mr. Prentiss which had been requested the last time he testified. Copies of the boat count records were distributed. Mr. Land explained that the Harbors Department tried to do a boat count twice a week for informational purposes for his department. Mr. Land explained that the report being handed out was compiled by his assistant Beth Rouseau and that it was a boat count of boats in Great Salt Pond. The boat count document was marked 2-12-1 for identification. Mr. Land also explained that he had measured the distance between the end of Payne's Dock and the first Town mooring – there was discussion on who asked for the information, Mr. Goldberg or Mr. Prentiss. Mr. Goldberg stated that he had also asked for records on damage to boats in the mooring

field that may have occurred while boats were waiting to dock at Champlin's – there was discussion on whether or not the request was on the record.

Mr. Land explained his procedure in measuring from Payne's dock to the first mooring stating that he did the measurement shortly after the November 16<sup>th</sup> hearing and that he measure to the "winter ball" as the moorings had been removed for the winter. Mr. Land stated that his measurement came to 380' from the mooring to the most westward piling of Payne's dock. Mr. Goldberg pointed out a discrepancy between Mr. Land's measurement and Mr. Anderson's measurement of 170' in the CRMC Engineering Report. Mr. Land suggested that the mooring may have moved since the engineering report had been written and there may have been a difference in the way the two measurements were made. Mr. Goldberg questioned Mr. Land about Mooring Field B between Payne's Dock and BI Boat Basin. Mr. Land confirmed that he had not read Mr. Anderson's CRMC Engineering staff report. Mr. Goldberg asked Mr. Land about whether Payne's Dock had a launch that landed. Mr. Land stated that he had never seen a launch land at Payne's Dock but was unsure as to whether one was permitted. Mr. Land confirmed that he had measured from Champlin's dock to the mooring field when he was first hired as harbormaster guesstimating that the measurement would have been done between May and when the moorings were commissioned.

Mr. Goldberg asks that a publication "New England Cruise Ship Schedules" be marked for id – marked as 2-12-3 ID. Mr. Goldberg questioned Mr. Land on his knowledge of cruise ships docking in the harbor. Mr. Land stated that his concern remains mainly with the weekend mariner as opposed to cruise ships that are operated by professionals. Mr. Land stated that he did not know of a website called scanmaritime.com.

Mr. Goldberg ends questioning Mr. Land at that time. Mr. Prentiss redirects clarifying that Mr. Goldberg would cross only on what his redirect involves.

Mr. Prentiss asks Mr. Land to explain in detail the Boat Count document. Mr. Land explained how his department counted the boats in the harbor on Thursdays and Sundays and that there are times when counts are interrupted by more important matters and that at busy times, an estimate must be done, as it is difficult to traverse the boats in the marinas. Mr. Land confirmed that the boat counts were maintained in the custody and control of the Harbormaster office. Mr. Prentiss asked that 2-12-2 be marked a full exhibit. Mr. Prentiss ends questioning of Mr. Land. Mr. Goldberg crosses on boat count document. Mr. Land and Mr. Goldberg go over the number of boats in both marinas on particular weekends establishing that there are times when Payne's dock goes over their allotted boat count. Mr. Land explained that it was only during holiday and very busy weekends. Mr. Goldberg ends questioning.

Mr. Prentiss called Mr. Anderson for questioning. Mr. Anderson was sworn in, identified himself for the record as the Supervising Civil Engineer for the Coastal Resources Management Council, and explained the nature of his job for the record. Mr. Anderson confirmed that in the 25+ years of working at CRMC he had reviewed an estimate of 50 marina applications which would include existing marina expansion and new marina applications; and that during the processing of those application he reviewed them in the context of the provisions of the Coastal Resources Management Program. Mr. Anderson confirmed that he had authored the engineering review of both the Champlin's expansion application and the Payne's Dock expansion application. Mr. Anderson confirmed that both marina applications were reviewed in the same manner and in some cases using very similar language. Mr. Anderson explained that in his assessment of the Payne's application, the measurement he made of 170' was to the apex of Mooring Field E noted in the HMP as point 10. Mr. Anderson stated that the actual mooring was farther from the dock than the prescribed mooring field delineation by coordinates and that there was no discrepancy between the two measurements. Mr. Anderson explained that CRMC staff takes into consideration the efficient use of public trust resources when reviewing an application and explained that Champlin's marina could be reconfigured in a way to be more efficient and to maximize the number of boats in a minimum amount of space, preserving safe navigational fairways to provide the safe dockage and passage of its vessels. Mr.

Anderson stated it was acknowledged on the record that Champlin's has never demonstrated that it can meet its full capacity at 250 boats under the original marina perimeter limit. Mr. Anderson stated that photographs and exhibits never show over 170 boats. Mr. Anderson confirmed that he had reviewed Payne's Dock for efficiency of use and found that it was more efficient than Champlin's in its use of space. Mr. Anderson confirmed that CRMC staff used the information provided in the application regarding the size of boats that use Payne's Dock which was depicted as in the 50-foot range and that if he had known there would be larger vessels docked at Payne's Dock the staff analysis of the application would have been different. Mr. Anderson reads his recommendation in his engineering report on the Champlin's application and on the Payne's application. Mr. Anderson confirmed that there was a rational basis of his recommendation of denial of the Champlin's application and approval as modified of the Payne's Dock application and explained that because of navigational impacts in relation to boat size leads to a certain recommended navigational fairway width that could not be provided in the Champlin's application. Mr. Anderson stated that in the Payne's case, no moorings would have been lost to accommodate a fairway for the boat lengths proposed in the application. Mr. Anderson confirmed that the use of the same standard for both application produced different recommendations. Mr. Anderson confirmed that the scale of expansion was drastically different between both applications and the use of the same standards lead to different recommendations. Mr. Anderson explained and demonstrated the differences in the Mooring field depiction for the Champlin's application describing the geometric shapes used. Mr. Anderson explained that the two different depictions were the ACOE approved mooring field which they still consider to be a valid mooring field and another delineation of Mooring Field E which was designated and approved by CRMC under the Harbor Management Plan in 1993. Mr. Anderson explained that Mr. Duhamel used two different mooring fields when he took measurements for each application. Mr. Anderson explained that he used Mooring Field E measurements for his reports on Champlin's and Payne's. Mr. Anderson explained his recommendation for Payne's Dock saying that Mooring Field E had a section that could not support a mooring and that the corner could be eliminated and moved away from expansion without any loss of navigable fairway in front of Payne's marina based on boat length proposed for use at the marina. Mr. Anderson confirmed that in the Champlin's case, the expansion would extend into Mooring Field E and the fairway would further encroach into Mooring Field E with a total loss of 30-40 Town moorings.

Mr. Packer clarified through questioning Mr. Anderson, the length of the Staff report for the Champlin's application.

Mr. Goldberg cross-examined Mr. Anderson asking him how he prepared for the meeting and whether he discussed the case with anyone. Mr. Anderson stated that he read the transcripts that involved his prior testimony and discussed the case with CRMC legal counsel. Mr. Goldberg questioned Mr. Anderson on his mooring field testimony and Mr. Anderson confirmed that there was conflicting testimony as to whether the ACOE had approved CRMC approved mooring field. At the Request of Mr. Goldberg, Mr. Anderson determined the distance between the Champlin's existing pier and the ACOE approved mooring Field using a scale and approximating the distance at 310 feet; and the same for Payne's approximating the distance at over 500 feet. Mr. Goldberg questioned Mr. Anderson on the distance calculations to the nearest mooring ball from Payne's dock with Mr. Anderson estimating in excess of 250 feet. Mr. Anderson confirmed that the Mooring Field E delineation was ongoing at the same time as the Champlin's case. Mr. Anderson explained the rationale behind his distance calculations from Payne's dock to the Mooring field and his consideration of the swing radius of the mooring based on the water depth and vessel size calculating it to be approximately 100'. Mr. Goldberg asked Mr. Anderson if CRMC investigates the accuracy of applications submitted for review. Mr. Anderson stated that CRMC accepts the applicant's representation as provided in the application which in the Payne's case, boat size. Mr. Anderson confirmed that a 200' fairway would not be adequate for a 200' vessel tied up at the head of the Payne's pier stating that it would need a 300' minimum fairway based on the industry standard of 1 1/2 times the vessel length. Mr. Anderson confirmed that he used a two times the vessel length standard in the

Champlin's review based on the vessel length of 300' as provided in the Champlin's application. Mr. Goldberg questioned Mr. Anderson on his calculation of boats at Payne's Dock. Mr. Anderson explained the permit history for Payne's stating that the latest boat capacity was 70 vessels. Mr. Goldberg and Mr. Anderson review the boat counts based on the Harbormasters report. Mr. Anderson confirmed that CRMC had approved a boat capacity of 85 boats for Payne's dock in 2011. Mr. Goldberg questioned Mr. Anderson on his consideration of Public Access at both marinas. Mr. Anderson confirmed that public access was not required in the Payne's Dock approval and did not believe his review of Champlin's included public access requirements. Mr. Goldberg questioned Mr. Anderson on the navigational traffic pattern of the Great Salt Pond. Mr. Anderson talked about traffic patterns and relayed that in his testimony he mentioned that the boats in the pond access the marinas directly not following the fairways to a T but running through the anchorages and mooring fields as well as prescribed fairways. Mr. Goldberg establishes that vessels have to pass the Boat Basin and Payne's dock prior to heading to Champlin's in the normal traffic pattern used.

Vice Chair Lemont expressed concern with the line of questioning and also clarified that CRMC cannot be held at fault for a marina exceeding their boat count as that would be up to the harbormaster. Mr. Affigne asks for clarification on the CRMC's responsibility of verification of application information. Mr. Goldman stated that the Council should make their decisions based on the representations that are made in applications. Mr. Goldman confirmed that is it if found that there were material misrepresentations in an application, that that is grounds for revocation of an assent and for an enforcement action. There was discussion on boat count for both marinas.

Mr. Goldberg asked Mr. Anderson to read CRMC Legal Decision (signed 05-06-2011) #8 into the record regarding Mooring Field E and allowing a 300-foot wide navigational channel between the mooring field and the marina. Mr. Goldberg pointed out that within a span of two months, the Champlin's navigational channel was required to be 300-foot in the CRMC Decision and Payne's Dock was approved with a 200-foot navigational channel as stated in the CRMC Decision. Mr. Anderson confirmed that he did not testify at the Payne's full council hearing. Mr. Anderson maintained that his review for both applications was identical based on the projects and location of each facility. Mr. Goldberg pointed out some of the duplicate services provided by both marinas and that only Champlin's provides a dinghy dock for general public.

Mr. Anderson explained the parameters used to review a facility's efficiency stating that it is referenced in the context of necessity to expand and that if a facility used the existing facility more efficiently there might not be a need to expand. Mr. Anderson stated that based on the request of Payne's there a demand for additional slips.

Mr. Goldberg questioned Mr. Anderson on a requirement for parking spaces based on the number of boats. Mr. Anderson stated that in both applications he made a reference to the fact that both facilities were transient and that the parking standard was allowed to be relaxed. Discussion on relevance of questioning of parking and upland.

Vice Chair Lemont asked that the meeting be wrapped up and there was discussion on future dates for the next meeting. It was decided to have the next meeting be scheduled for February 26<sup>th</sup> at 5:15p.m.

Discussion on witness lists and length of time to finish up.

**8. ADJOURN**

Mr. Coia, seconded by Mr. Gomez, motioned for the meeting to be adjourned at 9:00 p.m.

Respectfully submitted,  
Lisa A. Turner, Recording Secretary