

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, February 26, 2013 at 5:10 p.m. in Conference Room A of the Administration Building, One Capitol Hill, Providence, RI.

Members Present

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

Staff Present

Grover J. Fugate, Executive Director
Kenneth W. Anderson, Spv Civil Engineer

Brian A. Goldman, Esq.

1. Call To Order

Vice Chair Lemont called the meeting to order at 5:15 pm stating that the meeting is opening as a continuance of the Champlin's matter and read the project description for the record. Mr. Goldberg disagreed with the project description as read and stated that the applicant was looking for an approval to the subcommittee recommendation not what was contained in the initial application. Mr. Goldman disagreed with Mr. Goldberg's view of the proceedings stating that the application before CRMC is the application as originally filed.

Mr. Goldman clarified to the Council what their task was as set forth by Superior Court.

Mr. Anderson asked that two corrections be made to the transcript regarding his testimony. Corrections were put into the record.

4. 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

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. Goldberg continues to question Mr. Anderson. Mr. Anderson confirmed that to prepare for the meeting he had read the record containing the two applications and transcript of the last meeting. Mr. Anderson confirmed that he did not review the Goulet plan or report as not part of his application review. Mr. Anderson explained that CRMC permitting staff often works with applicants to revise their proposed applications to fit within the scope of the CRMC regulations to be able to gain approval either administratively or by the Council through their staff report recommendations. Mr. Anderson testified that this was the case in both the Payne's application and the Champlin's application. Mr. Anderson stated that Mr. Payne chose to accept the modifications but Mr. Grillo chose not to accept the chance to modify the application to fit within CRMC regulations.

Mr. Goldberg asked Mr. Anderson about the reconfiguration of Mooring Field E using the plan Exhibit 11-16-5. Mr. Anderson demonstrated the difference in the configuration and testified that the approval of modified harbor management plan for Block Island had been held in abeyance until the Champlin's decision was made. Mr. Goldberg and Mr. Anderson discussed the moorings that would be displaced/removed if the proposed application of Champlin's was approved. Mr. Anderson demonstrated where the moorings that would be displaced/remove were located using Exhibit Applicant's #2 full. Mr. Goldberg showed exhibits Applicants Number 15 and 16 to the Council. Mr. Anderson reads his testimony from February 17, 2005 as to the elimination of moorings in Mooring Field E saying that some of the 20-40 moorings were virtual moorings as opposed to actually being in the water.

Mr. Goldberg questioned Mr. Anderson on determination of boat size in the Payne's application. Mr. Anderson stated that he used a narrative and a graphic as submitted with the application to determine boat size of 55' maximum length when writing his report. Mr. Anderson confirmed that Mr. Payne was not questioned on boat length during his hearing before the Council. Mr. Goldberg questioned Mr. Anderson on the Town of New Shoreham's request for stipulation on vessel size being consistent with what was presented in the application and on Block Island Land Trust's request for vessel size consistency to application. Mr. Anderson stated that a stipulation was put on boat count not boat size as the objections were directed to the Council to incorporate such stipulations as his report had been completed.

Mr. Goldberg questioned Mr. Anderson on the issuance of the water quality certification for the Payne's application. Mr. Anderson explained his position by stating that the water quality determination was based on the expansion percentage which was less than 25% in the Payne's application.

Mr. Goldberg questioned Mr. Anderson regarding his review of the Champlin's Marina design being inefficient and that Payne's marina was run more efficiently. Mr. Anderson explained the means by which CRMC had determined boat count for marinas that didn't have assented capacities which was during a Marina review task meeting.

Mr. Goldberg questions Mr. Anderson regarding the requirement of a pump station and a parking requirement. It was determined that the questions were asked at the last hearing and answers already on the record.

Mr. Goldberg questioned Mr. Anderson regarding his familiarity with Mr. Payne. Mr. Anderson stated that he had worked with Mr. Payne during his years at CRMC but did not see him outside of his professional venue.

Mr. Goldberg questioned Mr. Anderson on the timeframe for the completion of the Payne's application. Mr. Anderson answered that the applicant requested CRMC to hold the application until a question on ownership was determined.

Mr. Goldberg question Mr. Anderson on the difference in requiring public access for each marina. Mr. Anderson stated that the requirement of a dinghy dock was different than providing public access. Mr. Anderson stated that the Champlin's proposed expansion was so large that it caused impacts on public uses but the Payne's expansion proposal was not considered to impact excessively the public uses of the public trust resource.

Mr. Prentiss questioned Mr. Anderson on the proportionality differences between the two projects. Mr. Anderson agreed that the size of the projects had an impact on CRMC's analysis of the projects.

Mr. Packer questioned Mr. Anderson on Payne's request to hold his application; CRMC approved Harbor Management Plan for the Town of New Shoreham, and the existence of portable pumpouts at Payne's dock. Mr. Packer also asked Mr. Anderson about the courtesy channel from the main channel to Champlins's and whether or not the majority of the boat traffic must go past Payne's marina.

Mr. Goldberg recrossed Mr. Anderson regarding the portable pumpouts and DEM requesting a slip dedicated to a pumpout facility.

Mr. Affigne asked Mr. Anderson if he had any reason to believe that different criteria, standards or readings of coastal program on the two applications. Mr. Anderson testified that the staff applied the same process, the same analysis, the same implementation of CRMC standards to both applications. Mr. Affigne questioned Mr. Anderson on his dealings with both applicants. Mr. Anderson testified that he harbored no ill will to either applicant and had the utmost respect for each marina owner and the operation of the establishments.

Mr. Sahagian asked to have Mr. Anderson acknowledged for his insightful and informational testimony.

Henry G. Dupont was sworn in and identified himself for the record. Mr. Prentiss submitted three photographs for the record which were marked as exhibit 2-26-1, 2-26-2 and 2-26-3 aerials for ID. Mr. Dupont testified that he has lived on Block Island for 35 years and was involved with organizations that are directly involved with the Great Salt Pond. Mr. Dupont testified that a Photographer, Eric Elwell, was taking the exhibit pictures as he flew over setting plane for picture taking. Mr. Dupont explained each picture stating that Exhibit 2-26-1 was taken over south shore of the Great Salt Pond showing Champlin's Marina, Block Island Boat Basin; 2-26-2 was a photo of Champlin's showing the dock and fairway in front of Champlin's; and 2-26-3 was a photo of Champlin's from the southwest corner of Champlin's property looking northeast. Mr. Goldberg objected as the pictures were taken in 2011 after decisions in both cases. Exhibits were marked Full.

Mr. Dupont confirmed his boating experience of over 25 years in the area of Payne's and Champlin's marinas and that he had a boat on a private mooring #320 east of head of Payne's dock. Mr. Dupont testified that he regularly sails by both marinas. Mr. Dupont explained the position of the courtesy channel

– pointed to it on 2-26-1 aerial which showed the Montauk ferry using courtesy channel to get to Champlins. Mr. Dupont testified to the traffic in Great Salt Pond and in front of Champlin's marina stating that Payne's dock has less boats in front of it in the fairway because service is on the side of the marina but that Champlin's has a large head of the dock where services are and where all boats go to be serviced. Mr. Dupont stated that he avoids sailing in front of Champlin's due to boats waiting in front. Discussion of wind direction and the effect on mooring position and mooring movement.

At a request of Mr. Coia to see where all three marinas were in the pond, a fourth picture was entered into the record marked at 2-26-4 full which is a picture of Great Salt Pond taken looking to the NNW showing all three marinas.

Mr. Dupont is cross-examined by Mr. Goldberg. Mr. Dupont testified that he was a member of the committee of the Great Salt Pond and on the Board of Directors for 25 years, being the President of Committee of the Great Salt Pond for 5 years from 1999-2004. Mr. Dupont testified that to prepare for the meeting he looked at photographs. Mr. Dupont also testified that the Committee for Great Salt Pond does a number of tests on the pond such as boat counts to establish base lines to determine environmental impacts for uses on the pond.

Mr. Goldberg asked Mr. Dupont to describe Full Exhibits 7-31-1 and 7-31-2 which are pictures of mega yachts at Payne's approximately 160' and 85' long. Mr. Goldberg discussed with Mr. Dupont the depth of the water near Payne's dock and the rafting of boats up to the shoal area. Mr. Goldberg questioned Mr. Dupont on his experience of traffic in the pond and opinions are expressed regarding the term "congestion" in the marina areas. Mr. Dupont testified that the fairway is significantly reduced in size when the wind blows from the east as the moorings move and increases the congestion in front of the marinas. Mr. Dupont testified that he had seen a cruise ship turn around in front of Payne's dock.

Redirect of Mr. Dupont by Mr. Prentiss regarding the congestion of boat traffic in front of Payne's dock when larger vessels are docked. Mr. Dupont stated that there was not congestion because the docking of larger boats was so infrequent.

Mr. Dupont testified that he was aware that the Committee for the Great Salt Pond had objected to the expansion of the Payne's marina expansion due to existing navigational channels and maneuvering room in the existing mooring field.

Sven Risom was called for witness by Mr. Prentiss and identified himself for the record. Mr. Risom talked about his experience of over 50 years in the Block Island and is not a full time resident. Mr. Risom stated that he had sailed in the vicinity of marinas and expresses and expressed his viewpoint on boat congestion on the pond and in the vicinity of the marina. Mr. Risom testified that he does not often sail in front of Champlin's due to the amount of boats waiting for dockage and fuel. Mr. Risom confirmed that he is affiliated with the Committee for the Great Salt Pond and that he joined 7-8 years ago and had been President for four years. Mr. Risom explained that the GSPC was in opposition of Champlin's application and because they took on a stewardship role of the pond and wanted to make sure that the use of the pond was balanced and proper. Mr. Risom stated that the GSPC did not pursue their objection to the Paynes expansion as their questions were satisfactorily answered.

Mr. Risom was cross examined by Mr. Goldberg regarding the GSPC objection to the Payne's Dock expansion. Mr. Risom stated that although he familiarized himself with the letter, he was not involved in the writing of the letter so could only testify to the accuracy of the wording that Mr. Goldberg read from the letter. Mr. Risom confirmed that he buys his fuel for his vessel at both marinas.

Mr. Fugate called as witness, was sworn in and identified himself for the record as the Executive Director of the Coastal Resources Management Council since 1986. Mr. Fugate testified regarding his educational background and his responsibilities as the Executive Director of CRMC. Mr. Fugate testified that the office policy is that regulations are applied uniformly but an application review can be adjusted based on the scope of the project and the sensitivity of the environment in the area. Mr. Fugate testified to his involvement in the Champlin's application stating that he talked with staff regarding their review to make sure the necessary programmatic areas were covered and then he signed off on their reports. Mr. Fugate testified that he had attended several of the hearings for the Champlin's application but that he had also read the entire record. Mr. Fugate testified to his involvement in the Payne's Dock application and also testified that the reports for both applications covered the same programmatic areas. Mr. Fugate stated that there were also differences due to the scope of the project and location sensitivities. Mr. Fugate testified that the staff reports for the Champlin's application recommended denial due to a series of navigational conflicts and also resource conflicts but that the Payne's application had smaller scale impacts which were addressed through the scaling back of the facility. Mr. Fugate stated that staff attempted to work with Champlin's to scale back their expansion request as well. Mr. Fugate explained the rational basis for the two different application decision outcomes stating that size of expansion, evolution of regulations, shellfish resources consideration and amount of objectors in the Champlin's case. Mr. Fugate testified that to his knowledge CRMC did not impose requirements on Champlin's to do extra biological studies.

Mr. Fugate was cross-examined by Mr. Goldberg. Mr. Fugate explained in detail the evolution of the RIDEM Water Quality program which involved a new dilution formula and CRMC's use of water quality information. Mr. Fugate testified that, at his direction, Mr. Goulet developed an alternative plan that staff felt would meet both CRMC regulations and ACOE processing and tried to offer as a recommendation of staff. Mr. Fugate reviewed testimony of June 25, 2010 hearing. Mr. Fugate stated that although there was not a formal staff report for him to sign off on, but that at his direction, Mr. Goulet developed the alternative plan which would have allowed a 100' outward expansion towards the mooring field. Mr. Fugate stated that Mr. Goulet's review and plan development was done based on the trapezoid mooring field that was permitted by ACOE and no moorings were displaced. Mr. Fugate confirmed that the Council did not fully consider the alternative plan. Mr. Fugate explained that normal navigational standards were applied to the review of both applications because anything else, such as the 300', would have required a regulation change for the Great Salt Pond or a change in the mooring field neither of which was done.

Mr. Fugate reviewed Exhibit photos 7-31-1 full and 7-31-2 full and agreed that some of the vessels dock were much bigger than represented in Payne's application agreement. Mr. Fugate stated that once staff reports are completed, staff does not go back and change them unless there had been significant site changes. Mr. Fugate confirmed that he reviewed staff reports, the decision and the 11/16/2012 transcript to prepare for meeting. Mr. Fugate stated that CRMC regulations do not address vessel size but it was looked at in the Champlin's case as it was represented that larger vessels up to 300' would be utilizing the marina. Mr. Fugate explained the staffs review process when marina expansions were applied stating that first staff looks at boat number and then the perimeter associated with the marina.

Mr. Fugate was recrossed by Mr. Prentiss regarding boat traffic in the vicinity of Champlin's Marina. Mr. Fugate was unable to recall boat count at Champlin's marina.

Mr. Ballou, of RIDEM, asked and Mr. Fugate confirmed that CRMC had approved other marina expansions during his 27 years with the Council and that other marina expansions been denied as well with different outcomes based on uniform applications and regulatory standards set by the coastal program.

Mr. Affigne asked whether applications were revisited when new regulations came into effect. Mr. Fugate stated that applications were not revisited and can only apply regulations that are in effect at the time of application. Mr. Fugate confirmed that he did not harbor any ill will towards either of the principals.

8. ADJOURN

Mr. Affigne, seconded by Mr. Hudner, motioned for the meeting to be adjourned at 9:15 p.m..

Respectfully submitted,
Lisa A. Turner, Recording Secretary