

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, July 30, 2013 at 2:00 p.m. in Council Chambers, Narragansett Town Hall, 25 Fifth Avenue, Narragansett, RI.

Members Present

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

Staff Present

Jeffrey Willis, Deputy Director  
Brian Kavanagh  
Ryan Moore  
  
Brian Goldman, Legal Counsel

Members Excused:

Mike Hudner

**1. CALL TO ORDER**

Chair Lemont called the meeting to order at 2:10 p.m.

**2. Subcommittee Reports:**

Policy and Planning Subcommittee met on July 16<sup>th</sup> and recommend the following revisions for the rule making process:

Redbook Section 300.1 Aquaculture -- Amend Section 300.11.B.1 to further clarify CRMC existing policy that aquaculture is permissible in all CRMC designated type waters include Type 1.

Ocean SAMP – Amend Sections 8.60.2.1(3) and 11.60.1(3) to modify existing text concerning offshore development on the Rhode Island economy including the economic impacts on other existing human uses.

After hearing no comments on Amendments, Vice Chair Lemont asked that they be posted for rule making.

**3. Minutes**

Mr. Coia motioned, seconded by Mr. Sahagian, for approval of the minutes of the previous meeting. Motion carried on a unanimous voice vote.

**4. Application before the Full Council for Final Decision 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.**

Chair Lemont stated that the discussion would be amongst Council members only with no audience participation. Mr. Goldman gave a quick overview of the status of the case and the purpose of the meeting. Mr. Goldman also reiterated the relevant portions of the Court Remand clarifying that the matter was before the Council to put additional evidence into the record relating to the approval of the Payne's Dock expansion and the similarities or dissimilarities to the Champlin's Marina expansion project. Mr. Goldman went over the briefing schedule and what was received by the different parties which included a Motion to Strike the Towns brief by Champlin's and an objection to the Motion to Strike was filed by the Town of New Shoreham.

Chair Lemont stated that the first order of business would be to deal with the Motion to Strike and asked for comment from Council members. Mr. Ballou asked that the mooring field issue be considered at the meeting as well. Chair Lemont will allow in. Chair Lemont also stated for the record that the briefs will be closed at end of record and nothing added after this.

Chair Lemont polled the Council members on the reading of record.

Mr. Ballou	Yes
Mr. Abedon	Yes
Mr. Gomez	Yes
Mr. Coia	Yes
Mr. Affigne	Yes
Mr. Sahagian	Yes
Vice Chair Lemont	Yes

It was affirmed that everyone has read documentation.

In regards to the Findings of Fact Submitted to the Counsel, Mr. Goldman stated that according to Admin Procedures Act 42-35-12 – When a party submits proposed findings of fact to the agency, the Council must rule whether to accept or object finding of fact. Mr. Goldman stated that Mr. Prentiss submitted proposed finding of fact in brief and that the Council needed to rule on whether to agree or disagree as a body on those findings of fact. Mr. Goldman stated that the Counsel for Champlin's responded to findings of fact. Mr. Goldman stated that the Conservation Law Foundation did not label their suggestions Findings of Fact but that they could be considered Findings of Fact.

Mr. Ballou asked that he be able to review his sense of where the Council was on the mooring issue and in doing that he chronologically went through a sequence of events regarding the review of the Champlins Marina expansion request and the review of the Town's request for approval of their Harbor Management Plan (HMP) with the caveat that the HMP issue was to be limited to the location and size of Mooring Field E. Mr. Ballou stated that he was involved in the Champlin's application but not involved in the review of the Payne's Dock expansion. Mr. Goldman stated he did not have any comments on Mr. Ballou's discourse. Chair Lemont stated they would handle matter at a later point in proceeding.

Chair Lemont clarified for the record that the Champlin's Marina project request was for an expansion of approximately 13 acres mostly to the west and not four acres as the record keeps referring to.

Chair Lemont stated that the first discussion would be on the Findings of Fact submitted by Attorney Prentiss and a vote on each one as to whether the Council would accept them. Mr. Goldman stated that the Council needed to discuss Champlin's response to each of the Findings of Fact submitted by Attorney Prentiss.

Mr. Sahagian questioned procedures of deliberating on Findings of Fact submitted by a separate party. Mr. Goldman read the Administrative Procedures Act on ruling of Findings of Fact stating that although the Council will draft their own Findings of Fact, they need to discuss the ones submitted by Attorney Prentiss. Mr. Sahagian suggested waiting until the end of the proceedings before deliberating on someone else's Finding of Fact. Chair Lemont stated he was taking the advice of Legal Counsel.

Vice Chair Lemont stated they would start with Mr. Goldberg's submittal.

Mr. Affigne asked for clarification on whether they were reviewing Champlin's submittal against Payne's submittal; or, if the Council was reviewing the Payne's submittal against the Champlin's submittal with the Subcommittee Recommendation along with Mr. Grillo's affirmations.

Mr. Goldman stated that the Council would be comparing Champlin's decision to Payne's decision to see if there was any disparate treatment. Mr. Goldman stated that the Subcommittee decision was thrown out by the Court because of tainting of record by exparte communication. Mr. Goldman stated that the application was then remanded back to the Council de novo.

Mr. Affigne asked for clarification from Mr. Goldman asking if the task at hand was to determine disparate treatment and then the second task would be to make a decision de novo about the disposition of the application. Mr. Goldman stated that the Council can modify the Champlin's decision only if disparate treatment is found. Mr. Affigne asked if modification to decision can be made based on new evidence heard. Mr. Goldman stated it depended on the type of modification.

Mr. Sahagian stated that Mr. Grillo stated in testimony that he would be willing to change his application to reflect the 170 feet that the subcommittee made recommendation to. Mr. Goldman stated that at this point if Mr. Grillo wanted to modify his application he would have to submit a new application. Mr. Goldman stated that Mr. Grillo modifying his application would not be new evidence as they had said in the previous case that they would accept the subcommittee recommendation.

Mr. Sahagian commented on the findings of fact stating that Payne's application was submitted and approved but Champlin's application was submitted and denied; the subcommittee for Champlin's recommended a smaller expansion and that was denied. Mr. Sahagian stated that Payne's Dock got everything they asked for and Champlin's Marina didn't get anything. Mr. Sahagian stated that Champlin's Marina was held to stricter interpretation of the navigation laws. Mr. Sahagian stated that in the Champlin's application, the Chair of the Council sent a letter to the Subcommittee members but in the case of Payne's Dock, no letter was sent from the Chair to the Council. Mr. Sahagian stated that in the Paynes case the Council voted on the plan submitted but in the Champlin's case, CRMC staff was instructed to present an alternative plan for Council to review. Mr. Sahagian stated that the cases were treated very differently.

Chair Lemont stated that the Payne's application was modified at the request of staff; it was scaled back. Mr. Lemont stated that he had made motion to modify the Champlin's application which would have given them an increase of 100' and also tied certain items to that such as lowering the lights and a \$50,000 payment which was all denied without getting a second. Chair Lemont also stated that after

the subcommittee voted 3 to 1 to approve a 170' increase, Champlin's stated that the subcommittee recommendation was not acceptable.

Mr. Gomez stated that he had gone through the documentation submitted and came up with some conclusions – Champlin's expansion was for 13 acres and Payne's expansion was for 3.8 acres. Mr. Gomez expressed that the Champlin's expansion request was larger than Payne's request. Mr. Gomez stated that efficiency was discussed in both applications with Champlin's marina being less efficiently utilized than Payne's Dock. Mr. Gomez stated that Champlin's expansion would effect the mooring field where Payne's Dock was modified to avoid the mooring field. Mr. Gomez stated that recommendations by staff to minimize navigational impacts were made by staff for both applications which Champlin's rejected but Payne's accepted. Mr. Gomez stated that there were several objections to the Champlin's expansion but minimal objections, maybe one, with the Payne's expansion. Mr. Gomez stated that another difference was in the water quality determination which Champlin's larger expansion required further review but Payne's receiving their approval due to the small size of their projection. Mr. Gomez stated that shellfish was an issue with the larger Champlins project requiring mitigation but the smaller Payne's application required a transplant area suggested by CRMC staff.

Mr. Sahagian responded by saying that the recommendation of 170 expansion was efficient. Mr. Sahagian also explained the different water type allowances for the Champlin's expansion as well as the displacement of three moorings when there was over 240 acres of Type 2 waters where moorings were allowed.

Mr. Gomez expressed his opinion that it all came down to size of expansion and impact on area usage. Mr. Gomez stated that he put those points out for discussion.

Mr. Affigne stated that although he was not party to the original Champlin's discussions, but he was party to the Payne's discussions but abstained from the vote so from his perspective he can look at both applications from the original application perspective. Mr. Affigne also reiterated his questions to Mr. Fugate and Mr. Anderson if they held any bias against any of the applicants to which they responded no. Mr. Affigne stated that Mr. Fugate and Mr. Anderson also affirmed that both cases were evaluated and processed comparably. Mr. Affigne was concerned that the aforementioned affirmations were not incorporated into any of the briefs with the exception of the CLF brief. Mr. Affigne stated that he would have appreciated Champlin's addressing the affirmations in their brief directly. Mr. Affigne stated that his third concern was that both marinas were docking boats significantly larger than expected and that boat counts were higher than expected. Mr. Affigne expressed his concern regarding the Tikoian letter. Mr. Affigne compared the similarity between the two marina operations such as services offered, location in Great Salt Pond and similar markets; but other than that, he did not see many similarities in the actual application which he stated were dramatically different which the size and proposed expansions alone justifies disparate outcomes acknowledging that a much greater project had greater impacts and would be subject to a different level of scrutiny and face a higher threshold for approval.

Mr. Ballou stated that his points were consistent with Mr. Affigne's, such as business interests, location in pond, water type, Class SA(b) waters as defined by DEM, and reviewed by CRMC standards Section 300.4. Mr. Ballou stated that the differences of the applications starts with size, configuration, and extension into the Great Salt Pond occupying greater extent of public trust land. Mr. Affigne stated that the uses of Type 3 waters needed to be taken into account, such as marinas, moorings and public recreational use. Mr. Ballou stated that the consideration of the public trust interests was done in a fair and equitable way by the Council and a balance was struck appropriately given the very different nature of the two proposals..

Mr. Abedon spoke stating that although both proposals were similar in operation and concern for expansion, but that they are markedly different. Mr. Abedon stated that the reading of the record and the various documents present clearly show there was not disparate treatment.

Mr. Coia stated that although he understood the similarities and dissimilarities of each case but when the findings of fact were reviewed and the Council gets into the decision making process he was the one who voted for the subcommittee recommendation for some sort of enlargement and improvement to what they were seeking as well as he voted to approve Payne's expansion. Mr. Coia stated that he thought they looked to see whether or not Champlin's was held to a higher standard. Mr. Coia stated that even the time spent reviewing and deliberating on each application was very different and that he could see where maybe the Council treated Champlin's a little different in what the standard of review and rationale may have been as part of the decision making process.

Chair Lemont stated that everyone had had a chance to weigh in and that after a brief recess they would look at the findings of fact.

Brief recess.

Chair Lemont stated that they would start by reviewing and voting on the Findings of Fact as submitted by Mr. Prentiss.

Mr. Ballou asked if the Council would be adopting their own Findings of Fact. Mr. Goldman stated they would but has to rule/consider/agree/disagree about the submitted Findings of Fact and could incorporate them into their final decision.

A Finding of Fact #1 – Champlin's existing marina covers nine acres of the Great Salt Pond. Mr. Affigne motioned to adopt, Mr. Gomez seconded the motion. Motion carried on a unanimous voice vote.

A Finding of Fact #2 – Payne's existing marina covers 3.8 acres of the Great Salt Pond. Mr. Goldman clarified by reading the Payne's record that the existing was 2.8 and the application would bring it to 3.2 acres. Chair Lemont modified Finding of Fact #2 to say "marina covers 2.8 acres." Mr. Gomez motioned approval. Mr. Ballou seconded the motion. Motion carried on unanimous voice vote.

A Find of Fact #3 – Champlin's Marina requested an increase in its occupancy of the Great Salt Pond of four acres, to build 2,990 feet of additional dock space and 755 feet of floating docks to accommodate an additional 140 vessels. Mr. Gomez questioned the acreage. Chair Lemont stated that with the perimeter limit they would have been given an additional nine acres making it 13 acres on a perimeter limit. Mr. Affigne motioned to adopt with the minor revision that the word "about" is added between "of" and "for". Chair Lemont clarified that with the 13 acre expansion of the perimeter limit, the marina would have been able to expand without coming before the Council. Mr. Goldman confirmed. Chair Lemont modified Find of Fact #3 to "Occupancy in the Great Salt Pond of approximately nine acres, four of which to have immediate construction." Chair amended #3 to say "of about four acres". Mr. Affigne motioned to adopt. Mr. Ballou seconded. Motion carried – 6 approval, one denial.

A Finding of Fact #4 – Payne’s application requested an increase in its occupancy of the Great Salt Pond by 1.38 acres to do an 80-foot extension of its main pier to accommodate 15 additional vessels.” Mr. Ballou moved to adopt. Mr. Affigne seconded. Motion carried on unanimous voice vote.

A Finding of Fact #5 – Large yachts in excess of 100 feet in length utilize Payne’s. In addition, mini cruise ships of length of 200 feet and beam of 40 feet travel to Payne’s on a weekly schedule staying for two days.” Mr. Sahagian stated that there was testimony that the mini cruise ships also stayed at Champlin’s. Mr. Sahagian motioned to not adopt number 5. Mr. Affigne seconded the motion. Motion to “not adopt” FOF #5 carried on unanimous voice vote.

Mr. Affigne asked if they could look at Mr. Sahagian’s observation that the staff should look into the question of boat size. Chair Lemont stated that he had just directed staff to do that.

A Finding of Fact #6 – Generally the yachts that utilize Champlin’s are larger than the yachts that utilize Payne’s.” Mr. Ballou motioned to “not adopt” the FOF. Mr. Affigne seconded that motion. Motion carried unanimously.

A Finding of Fact #7 – Champlin’s is at the intersection of two fairways. The main navigational channel that runs from the entrance of the Great Salt Pond southeasterly to Payne’s and then westerly towards Champlin’s and a fairway that crosses the mooring field from the main navigational channel west of Champlin’s. Mr. Sahagian motioned to not adopt as it is not a legal fairway but a courtesy channel. Mr. Coia seconded the motion. Mr. Ballou agrees the wording needs to be addressed. Mr. Affigne offered the option to include in parentheses the word “courtesy channel” so that it’s clear to everyone what’s being talked about. Mr. Sahagian stated that the amendment should be addressed when CRMC forms its own findings of fact. Motion carried on a 6 to 1 vote

A Finding of Fact #8 – Champlin’s fuel ramp is at the T pier at the end of the marina”. Mr. Sahagian motioned to adopt. Mr. Ballou seconded. Motion carried unanimously.

A Finding of Fact #9 – Payne’s fuel pump is along the side of the marina, not on the T pier at its end. Mr. Ballou motioned to adopt. Mr. Gomez seconded. Motion carried unanimously.

A Finding of Fact #10 – The moorings in the Town mooring field are 300 feet away from the face of the T pier at the end of Champlin’s. Mr. Sahagian motioned to not adopt as the length was never proven. Mr. Affigne stated that the harbor master measured it. Mr. Ballou stated that the mooring field had not been configured or designated. Motion to not adopt carried unanimously.

A Finding of Fact #11 – There’s just one mooring in the vicinity of Payne’s, which is 380 feet from the existing docks. Mr. Affigne motioned to adopt. Mr. Gomez seconded. Mr. Ballou suggested an amendment to say “There’s just one Town mooring”. Motion with amendment carried 6 to 1.

A Finding of Fact #12 – The combination of the larger size of Champlin’s Marina, the location of its fuel pump and the closeness of a large part of the Mooring Field E cause a greater amount of vessel traffic and congestion near Champlin’s than exists near Payne’s. Mr. Sahagian motioned to not adopt based on FOF number 10 that mooring field E does not legally exist. Mr. Ballou amended to say “and the closeness of a relatively large number of Town mooring cause a greater amount of vessel traffic,” while striking the word “a large part of the Mooring Field E”. Mr. Abedon seconded the motion to deny. Motion to deny carried on a 4 to three vote.

A Finding of Fact #13 – The entire 300-foot existing fairway between Champlins and Mooring field E is necessary to provide for safe navigation. Mr. Sahagian motioned to deny based on the objector's expert witness that a 200 foot expansion was viable and they could navigate. Mr. Coia seconded motion to deny. Motion to deny carried on a four to three vote.

A Finding of Fact #14 – The proposed expansion of Champlin's would cause the elimination from Mooring Field E of as many as 40 of the Town's rental moorings. Mr. Sahagian motioned to deny. Motion seconded by Mr. Coia. Mr. Affigne moved to amend the motion with the suggestion of changing the wording for accuracy to say "any expansion of Champlin's would result in the elimination of existing Town moorings. Mr. Gomez seconded the motion. Motion carried on a 5 to 2 vote.

A Finding of Fact #15 – Any expansion of Champlin's would result in the elimination of moorings and mooring field E. Mr. Affigne moved to deny to leave the option of considering any future proposal from Champlin's. Mr. Coia seconded the motion. Motion carried on unanimous voice vote.

A Finding of Fact #16 – There's no other location in the Great Salt Pond where moorings displaced by Champlin's expansion could be located. Mr. Sahagian motioned to deny. Mr. Coia seconded. Motion carried on a 6 to 1 vote.

A Finding of Fact #17 – The expansion of Payne's as permitted by the CRMC decision of July 12, 2012 will not require the elimination of the one mooring near Payne's and will not have any impact on navigation for competing uses for the Great Salt Pond. Mr. Sahagian motioned approval. No second was offered. Mr. Coia motioned to deny. Mr. Ballou seconded. Motion carried on 6 to one vote.

A Finding of Fact #18 – The Expansion of Payne's will not have a significant impact on plant and animal life. Mr. Affigne motioned to adopt. Mr. Ballou seconded. Motion carried unanimously.

A Finding of Fact #19 – Payne's dock configuration of a single principal pier with finger piers intersecting at right angles is a reasonably efficient use of the waters that it occupies for accommodating the maximum vessels that can reasonably be docked within that area. Mr. Affigne motioned to adopt. Mr. Ballou seconded. Motion carried unanimously.

A Finding of Fact #20 – Payne's expansion is not a significant expansion of an existing marina within the meaning of CRMP review 5.B.9. Mr. Gomez motioned to adopt. Mr. Affigne seconded. Motion carried 6 to 1.

A Finding of Fact #21 – Payne's and Champlin's are not similarly situated with respect to their effects on navigation, competing uses of the Great Salt Pond, impact on plant and animal life or efficiency of use of public trust resources. Mr. Affigne motioned to adopt. Mr. Gomez seconded. Mr. Sahagian asked to make an amendment regarding the effects on navigation and competing uses of the pond, impact on plant life or efficiency of use of public trust resources to be looked at individually. Mr. Affigne disagreed. Discussion amongst Mr. Affigne and Mr. Sahagian. Mr. Affigne stated his motion still stood without amendment. Mr. Ballou asked that the FOF be amended to say "Paynes and Champlins are similarly situated with respect to" and then list the items and then follow up with "Paynes and Champlins are not similarly situated with respect to" and then list the items. Chair Lemont stated that it could be put in one of the Council's Finding of Fact. Motion carried with a 5 to 2 vote.

Chair Lemont moved on to the Memorandum of Champlin's and the other parties. Mr. Affigne stated for the record that the remand was to consider evidence of disparate treatment. Mr. Affigne discusses the CLF brief which included the staff members' statements of non bias and procedural inequities. Mr. Affigne stated that there were no memos or emails or statements of bias of a personal or professional nature. No evidence was provided of procedural disparate treatment.

Mr. Ballou asked for clarification on the wording disparate treatment in the Court order. Mr. Affigne clarified that it was in the Champlin's appeal of CRMC's denial of its application to Superior Court. Mr. Goldman agreed.

Mr. Sahagian brought to the discussion the letter sent to the Subcommittee from the CRMC Chair trying to influence the outcome. Mr. Sahagian stated that in the Champlin's case, two Chairs were forced to recuse themselves in the matter and that did not happen in the Payne's case. Mr. Sahagian stated he felt that was to be considered being treated differently.

Chair Lemont did not see the comparison.

Mr. Ballou stated he did not see the relevance of Mr. Sahagian's statement. Mr. Ballou stated that no one on the board at the time is in any way compromised to make a decision. Mr. Ballou stated that the two applications had very different paths. Mr. Sahagian interrupted stating that the Council originally voted 5 to 5 with the Chair's vote which was discounted due to his ex parte communications and the influence he was trying to put on the subcommittee. Mr. Sahagian stated that the Chair had a CRMC staff member prepare a plan to present to the subcommittee and to the Council, which did not happen in Payne's. Mr. Sahagian contends that it was not the same treatment. Mr. Ballou stated that he was on the Council the night of the January 2011 meeting and none of the information Mr. Sahagian brought forth influenced his decision. Mr. Affigne stated that there was not evidence that the vote was influence in any way by the behaviors that Mr. Sahagian brought up. Mr. Sahagian again stated that the vote was influenced by Mr. Tikoian voting and having it later revoked by the court after evidentiary hearing that he was trying to influence the panel's decision.

Mr. Goldman stated that the actions that Mr. Sahagian was talking about took place prior to the Supreme Court remanding the matter to this Council and it's the remand decision, cleansed of all that, that you are comparing to the Payne's decision. Mr. Sahagian stated that Payne's did not have to go through any of that indicating disparate treatment right there.

Mr. Sahagian asked the Council if they could honestly say that Payne's was treated the same as Champlin's. Mr. Affigne stated that the difference in treatment needed to be irrational to prove disparate treatment. Mr. Sahagian again tried to have the Council agree with the disparate treatment of the previous Chair. Mr. Affigne stated he did not know whether Chair Tikoian's actions were rational or irrational, it may have been meant as guidance even if ill-advised.

Chair Lemont asked to make a decision.

At this point, Mr. Sahagian left the meeting.

Chair Lemont announced that with the departure of Mr. Sahagian the Council lost its quorum and could not vote.

Mr. Affigne motioned to adjourn. Mr. Gomez seconded the motion.

Mr. Prentiss stated that once quorum is established a vote can be made.

Chair Lemont stated he was adjourning so as to not cause any issues. Mr. Ballou asked Mr. Goldman's opinion on the adjourning of the meeting. Mr. Goldman stated that they had to.

**3. ADJOURN**

Vice Chair Lemont adjourned the meeting at 4:43 p.m.

Respectfully submitted,

Lisa A. Turner  
Recording Secretary