In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Monday, August 26, 2013 at 2:00 p.m. in Council Chambers, Narragansett Town Hall, 25Fifth Avenue, Narragansett, RI.

Members Present	Staff Present
Paul Lemont, Chair	Grover J. Fugate, Executive Director
Raymond Coia	William Mosunic
David Abedon	Ryan Moore
Tony Affigne	
Guillaume deRamel	
Robert Ballou, RIDEM	Brian Goldman, Legal Counsel
Jerry Sahagian	
Mike Hudner	

Members Excused:
Don Gomez

1. Call to Order

Chair Lemont called the meeting to order at 2:15 p.m.

2. Approval of the Minutes of previous meeting – July 30, 2013

Mr. Coia motioned approval of the minutes, seconded by Mr. Abedon. Mr. deRamel asked that the minutes reflect his excused absence. Motion to approve minutes with attendance change was approved on an unanimous voice vote.

Mr. Goldman stated that Attorney Dan Prentiss was not available, but that he asked that the hearing go forward without him and that Attorney Joe Priestly would attend on his behalf. Attorney Jerry Elmer also sent notice that he would not be available and he was agreeable to the Council proceeding without him.

Chair Lemont polled members Mr. Hudner and Mr. deRamel regarding the reading of the record and transcript of previous meeting. Both Mr. Hudner and Mr. deRamel confirmed that they had read record of last meeting.

3. 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.

Mr. Ballou asked to address the Council on a series of 12 findings regarding the CRMC's final decision. Mr. Ballou distributes copies of his document to the Council members. Mr. Goldberg requests copies of document. Chair Lemont stated that if the Council adopts the findings then copies will be made available. Mr. Goldberg states his exception to that decision.

Mr. Ballou continues explaining his 12 Findings of Fact:

1. Champlin's is an existing marina that covers 9 acres and extends 500 feet into the Great Salt Pond, with the capacity of 220 to 250 vessels.

2. Payne's marina is an existing marina that covers 2.8 acres and extends 500 feet into the Great Salt Pond with a capacity of 70 vessels.

3. Champlin's application requested an increase of 4 acres to build 2900 linear feet of additional fixed pier and 755 lf of floating dock space – extending 240' further into the pond – to accommodate 140 additional vessels.

4. Payne's application requested an increase of .38 acres to build 332 lf of additional fixed pier – extending 80' further into the pond – to accommodate 15 additional vessels.

5. In 2011, the Council denied the Champlin's request and approved the Payne's request after modifying it to permit 300 lf of additional fixed pier and extending 80' further into the pond to accommodate 15 more vessels.

6. Champlin's and Payne's are similarly situated in this respect:
   A. in the same water body;
   B. close to each other;
   C. serve the same market and are competitors;
   D. they both accommodate large vessels on occasion;
   E. both are close to heavily utilized fairway running along the seaward ends of Payne's, BI Boat Basin, and Champlin's;
   F. both closed to the intersection of the fairway and courtesy channel;

7. Champlin's and Payne's differ in this respect:
   A. Champlin's fuel pump is located at T-pier at end of marina and Payne's fuel pump is located alongside of the marina;
   B. Champlin's maintains a dinghy dock to provide public access between shore and vessels moored in pond. Payne's does not have a dinghy dock;
   C. Champlin's is significantly larger than Payne's
   D. Payne's dock configuration is reasonably efficient -- a single principal pier with finger piers intersecting at right angles. Champlin's configuration is not efficient – irregular shape of fixed dock results in fewer vessels being able to be docked than if configured differently.
   E. Champlin's is located due southwest of the Town's mooring field and Payne's is located due southeast of the corner of the field. Champlin's extension would have greater impact on Town's mooring field.
   F. Waters often congested in the summer months due to activities of the surrounding businesses, however, with Champlin's configuration and location relative to Town mooring field, congestion moreso at Champlin's marina.

8. Regarding both applications to expand marinas and respective reviews and considerations:
   A. both applications subject to same review standards set forth in RICRMP with particular reference to Section 300.4;
   B. Champlin's application was deemed a significant expansion of existing marina; Payne's application was not deemed a significant expansion of existing marina;

C. Champlin's application was a contested case thus subject to extensive hearings before a subcommittee; whereas, Payne's proposal was not contested thus not subject to subcommittee hearings. Both applications fully reviewed by staff and duly considered by full Council;
D. the record reflects no disparate treatment, bias, procedural inequities or selective enforcement in the review and consideration of the two applications although they had different outcomes;
E. Plant and animal life impact in the pond, Champlin's record failed to demonstrate expansion would not cause significant impacts but the record for Payne's show no evidence that the proposed project would cause significant impacts;
F. Navigation impacts in the pond, Champlin's record failed to demonstrate the expansion would not cause significant impacts to navigation in the pond but the record for Payne's showed no evidence that the proposed project would cause significant impacts in navigation;

9. Fairway – the record reflects that the Council only voted to establish a 300-foot setback between the Town's mooring field and Champlin's. The Council did uphold the 300-foot standard in its decision pertaining to Payne's

10. Based on use of identical regulatory standards, significant differences regarding size of both marinas and the size of both proposed extensions CRMC Council finds that there is a rational basis for denial of Champlin's and approval of Payne's applications.

11. With the exception of #8, the CRMC upholds all of its findings and conclusions set forth in the Champlin's decision as well as all of the findings and conclusions in the Payne's decision.

12. Regarding the Town's Rental mooring field, Mooring Field E, the Council finds that the field shall be configured according to the following parameters: 300' off of all three marinas in order to provide for a 300-foot wide fairway for safe navigation; the field shall abut the main navigational channel running from entrance to Great Salt Pond southeasterly to Payne's; the field shall abut a 100' wide courtesy channel, deemed a navigational channel, from main navigational channel to the fairway running between and separating mooring fields C and D.

Mr. Ballou offered the twelve points for a motion which was seconded by Mr. Abedon to afford Council discussion.

Chair Lemont asked for discussion on each of the points, there was no discussion on points 1-5.

Point 6:

Mr. Sahagian asked to discuss point number 6E regarding the fairway being a channel. Mr. Ballou clarified that the courtesy channel if established would be a navigational channel. Mr. Sahagian expressed concern about distinction between courtesy channel and navigational channel as the federal government establishes channels.

Point 7:

Mr. Coia asked for clarification of the location of the fuel pump. It was confirmed that Mr. Ballou's information was correct.

Mr. Sahagian commented on Point 7E that Mooring Field E had not been legally created so the expansion into it should not be considered a negative impact. Mr. Ballou stated that the reference is to the Town's mooring field – not to Mooring Field E.

Point 8:

Mr. Affigne commented on item 8D stating that the record provides no evidence of disparate treatment. Mr. Affigne asked to go a step further stating that the record reflects two staff members saying they did not feel nor apply bias or disparate treatment in applying CRMC policies during review of application. Mr. Affigne stated that he would prefer to apply the stronger language that the record reflects. Mr. Affigne added that all parties had opportunity to cross-examine the witnesses and provide evidence of bias or disparate treatment but none was brought forward.

Mr. Sahagian offered the statement of the Chairwoman indicating that the application was bad and that the lead counsel for the applicant was obnoxious and arrogant. There is an affidavit in the record that stands on its own.

Chair Lemont and Mr. Ballou concur with Mr. Affigne and agree that Point 8D could be rephrased to more positively reflect the fact that there is sworn testimony from Executive Director and Chief Engineer indicating no bias during review. Mr. Affigne suggested adding a sentence to the end of D reflecting the direct sworn testimony of Executive Director and Chief Engineer. Mr. Abedon seconded the change.

Mr. Sahagian commented on item 8E stating that there was evidence that the expansion would not cause significant impacts on the environment by the DEM issued water quality certificate for the 240' expansion for Champlin's. Mr. Sahagian also pointed out that Mr. Rabideau's testimony on Champlin's application was not disputed by objectors. Chair Lemont stated that Mr. Rabideau is a coastal biologist not a water quality expert. Mr. Sahagian also pointed out that Champlin's had a shellfishing expert do shellfishing studies. Mr. Ballou commented that there is a distinction between water quality and fish and wildlife impacts. Mr. Sahagian stated that the Champlin's decision which Mr. Ballou used for his information is the document that is in question. Mr. Affigne pointed out that there is overlapping membership on the Council and that some members were not on the Council for the decision on both applications. Mr. Affigne stated that in reviewing the record of both cases and listening to long testimony, he felt that the present Council had done a very good and fair job.

Mr. Sahagian suggested that point 8E be struck as it indicates that Champlin's didn't provide testimony to prove that it would not cause any significant impacts to Salt Pond.

Mr. Ballou stated that a series of findings in the Champlin's Decision 45 – 52 which lays out the short comings and burdens that Champlin's bore in demonstrating no impacts to fish and wildlife and that Champlin's failed to sustain its burden of showing that the project would not cause significant impacts on plan and animal life of the Great Salt Pond. Mr. Abedon requested that it be put in as a similarity between both applications that they were both granted water quality certificates. Mr. Sahagian motioned that language be added at the end of 8E stating that Champlin's secured a water quality certificate from RI DEM for a 240' expansion. Mr. Coia seconded motion. Motion carried on a majority vote with Mr. Affigne being indifferent.

Mr. Sahagian motioned to strike 8F from the document as Champlin's did provide a navigational expert to testify that the proposed project would not cause significant impacts to navigation. Mr. Coia seconded and agreed that the record showed that evidence was provided by Champlin's saying that expansion would not interfere with the navigation.

Mr. Hudner commented on his recollection of the record and the interpretation in terms of what was the mooring field.

Chair Lemont asked for a vote on motion. Motion carried with one opposed (Mr. Affigne).

Mr. Sahagian asked about 8D. Chair Lemont asked that he bring it up at the end.

Point 9:

Chair Lemont asked for comments and received no response from Council.

Point 10:

Mr. Coia is concerned with the wording of the finding as he feels each member would be voting individually and not collectively. Chair Lemont stated that the question of whether the Council acted in a rational basis for denying the Champlin's application is a collective question.

Point 11:

Mr. Affigne asked for clarification. Mr. Ballou explained it would read: "with the exception of the conclusion of law #8 from the Council 2011 decision at Champlin's."

Point 12:

Mr. Ballou started by saying that he did not know whether it was in the Council's purview to establish a Courtesy Channel, navigational channel but the Configuration of the Mooring Field E is in the Council's purview. Mr. Ballou stated that he would defer to the Town through their harbor management planning process to establish the position of the channel. Mr. deRamel asked for guidance from Legal Counsel regarding the channel establishment. Mr. Goldman stated that it is entirely up to the Council as that is the way it came before the Council; both parts. Mr. Affigne agreed with Mr. deRamel stated that the clarification of the boundaries of the mooring field was part of the whole review.

Mr. Affigne asked to make one final point and that was that both marinas were stretching the limits of their boat count and boat size and asked that CRMC staff look into it. As far as language on the mooring field to Amend C, he suggested that "the field shall preserve and abut a 100-foot wide buffer between its westerly, northwesterly boundary and the eastern boundary of mooring field D. Mr. Affigne made a motion to amend seconded by Mr. Ballou. Motion approved with on opposed (Mr. Sahagian)

Chair Lemont clarified point 8D in discussion with Mr. Sahagian.

Chair Lemont called a voice vote.

Mr. Goldman clarified that the motion was to accept Mr. Ballou's proposed findings of fact as amended.

Mr. Abedon	Accept
Mr. deRamel	Accept
Mr. Ballou	Yes
Mr. Sahagian	No
Mr. Hudner	Yes
Mr. Coia	No
Chair Lemont	Yes

Mr. Goldman stated that it was six in the affirmative and two in the negative. Motion carried.
Mr. Goldman stated that he would make the changes that were amended to Mr. Ballou's document and they will be circulated for signature to the members in acceptance.

Mr. Affigne thanked Mr. Abedon for service to the Council.

Chair Lemont stated that Mr. Abedon had been a steadying influence on the Council for a lot of years and that the Council as well as the State of RI was very much appreciative.

Mr. Abedon thanked everyone.

Mr. Abedon motioned to adjourn with a second from Mr. Affigne. Motion carried.

3. ADJOURN

Vice Chair Lemont adjourned the meeting at 3:14 p.m.

Respectfully submitted,

Lisa A. Turner
Recording Secretary