

STATE OF RHODE ISLAND  
PROVIDENCE, S.C.

COASTAL RESOURCES MANAGEMENT  
COUNCIL  
Oliver H. Stedman Government Center  
4808 Tower Hill Road, Wakefield, RI 02879

**FINDINGS OF FACT IN RESPONSE TO SUPERIOR COURT REMAND**

Petition Of: Champlin's Realty Associates consolidated with the Town of New Shoreham Harbor Management Plan application.

Docket No.: 2003-05-155

This matter is before the Coastal Resources Management Council ("CRMC") pursuant to a September 17, 2012 remand order issued by the R.I. Superior Court in consolidated matters C.A. Nos. WC 11-0615, WC-11-0616, and C.A. No. WC 11-0333 entitled "Champlin's Realty Associates v. Paul E. Lemont et al" and "Town of New Shoreham v. CRMC" as more fully set forth on the record before CRMC and incorporated by reference.

A prior May 31, 2012 Superior Court remand order resulted in the CRMC holding an evidentiary hearing on July 31, 2012, which is incorporated herein by reference. However, the September 17, 2012 Superior Court remand order clarified the scope of the hearings CRMC was to conduct.

Pursuant to that order, the CRMC held evidentiary hearings on November 16, 2012, February 12, 2013, February 26, 2013 and April 1, 2013. A post-hearing briefing schedule was then agreed to by the interested parties and adopted by the CRMC.

After receipt and review of all the legal memoranda filed by interested parties the CRMC publicly met on July 30, 2013 and August 26, 2013 to deliberate and draft findings of fact in response to the September 17, 2012 Superior Court remand order.

After the CRMC members certified they had read the entire record in the consolidated matters, and the Payne's expansion record, by a vote of 6-2 CRMC members voted to make the following findings:

1. Champlin's existing marina covers nine acres of the Great Salt Pond, has a capacity of 220-250 vessels, and extends about 500 feet from the shoreline into the pond.
2. Payne's existing marina covers 2.8 acres of the Great Salt Pond, has a capacity of 70 vessels, and extends about 500 feet from the shoreline into the pond.
3. Champlin's application to the CRMC requested an increase in its occupancy of the Great Salt Pond of about four acres, to build approximately 2,990 linear feet

of additional fixed pier and 755 linear feet of floating docks, extending 240 feet further into the pond, to accommodate an additional 140 vessels.

4. Payne's application to the CRMC requested an increase in its occupancy of the Great Salt Pond of 0.38 acres, to build about 332 linear feet of additional fixed pier, extending 80 feet further into the pond to accommodate 15 additional vessels.
5. In 2011, the Council denied the Champlin's application, and approved the Payne's application, after modifying the Payne's application to permit about 300 linear feet of additional fixed pier, extending 80 feet further into the pond, to accommodate 15 additional vessels.
6. Champlin's and Payne's are similarly situated in the following ways:
  - a. They are in the same body of water – the Great Salt Pond – and in the same Type 3 and Class SA(b) water use type and water quality classifications established, respectively, by the CRMC and DEM.
  - b. They are in close proximity to one another, separated by a distance of approximately 1,400 feet, or about ¼ mile.
  - c. They serve the same markets and are business competitors.
  - d. On occasion, they both accommodate large vessels. The record associated with the Champlin's application established that the marina is used by vessels of at least 165 feet in length, and that the marina hopes to attract yachts up to 300 feet in length. The record associated with the Payne's application provided no evidence regarding the size of vessels that use the marina, other than a schematic depiction indicating a maximum size of 55 feet. The record associated with the subsequent remand hearings established that the marina is used by vessels up to 200 feet in length.
  - e. They are both located proximate to a heavily utilized fairway, running along the seaward ends of the three marinas (Payne's, Block Island Boat Basin, and Champlin's) and between the three marinas and the Town's mooring field. The fairway is utilized by vessels for a variety of purposes, including navigating to and from the marinas, navigating to and from the mooring field(s), and transiting the southerly and southeasterly portion of the Great Salt Pond. The fairway is also used for a variety of recreational purposes, including kayaking, sailing, canoeing, fishing, and power boating.
  - f. They are both located proximate to the intersection of the fairway and associated navigational channels. Champlin's is proximate to the intersection of the fairway and a courtesy channel that runs between the fairway and the main channel. Payne's is located proximate to the intersection of the fairway and the main navigational channel.
7. Champlin's and Payne's are not similarly situated in the following ways:

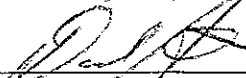
- a. Champlin's fuel pump is located at the tee pier at the end of the marina. Payne's fuel pump is located along the side of the marina.
  - b. Champlin's maintains a dinghy dock that provides public access between the shore and vessels moored in the pond. Payne's does not have a dinghy dock.
  - c. Champlin's is a much larger marina than Payne's, occupying about three times the amount of acreage and servicing significantly more vessels.
  - d. Payne's dock configuration of a single principal pier, with finger piers intersecting at right angles, is a reasonably efficient use of the waters for accommodating the maximum number of vessels that can reasonably be docked within that area. The existing configuration of Champlin's is not the most efficient utilization of the area of the Great Salt Pond that it occupies. The irregular shape of the fixed docks results in fewer vessels being able to be docked within its marina than would be the case with a more carefully planned dock layout.
  - e. Champlin's and Payne's are both located in close proximity to the Town's rental mooring field; however, Champlin's is located due southwest of the heart of the field, whereas Payne's is located due southeast of the corner of the field. As such, an extension into the pond by Champlin's would have a greater impact on the Town's rental mooring field than an extension into the pond by Payne's. In fact, there is just one town rental mooring in the vicinity of Payne's, which is 380 feet away from the existing marina. The proposed expansion of Champlin's would have caused the elimination of as many as 40 of the Town's rental moorings.
  - f. As a result of the combination of navigational uses of the fairway, other recreational activities in the fairway, the operations of the marinas, and the uses of the Town's mooring field, the waters in the vicinity of the existing marinas are often congested during the summer months. However, the record reflects that the combination of the larger size of Champlin's, the location of its fuel pump, and the location of the marina relative to the heart of the Town's mooring field result in a greater amount of vessel traffic and congestion near Champlin's than exists near Payne's.
8. With regard to the application by Champlin's to expand its marina, and the application by Payne's to expand its marina, and the respective review and consideration of the proposals by the CRMC:
- a. Both applications were subject to the same standards of review -- namely, those standards set forth in the RI Coastal Resources Management Program (RICRMP), with particular reference to section 300.4, which sets forth the applicable standards and policies governing recreational boating facilities, which must be addressed and met in

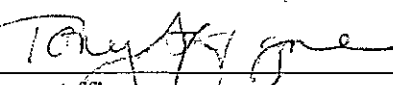
- order for an application to be deemed consistent with the program and thus approvable.
- b. The Champlin's application was deemed a "significant" expansion of an existing marina within the meaning of section 335.B.9 of the RI Coastal Program. The Payne's application was not deemed a "significant" expansion of an existing marina within the meaning of section 335.B.9 of the RI Coastal Program.
  - c. The Champlin's application was a contested case and was thus subject to extensive hearings before a Subcommittee. The Payne's application was not contested and thus was not subject to any Subcommittee hearings. Both applications were fully reviewed by staff and duly considered by the full Council.
  - d. The record reflects no evidence of disparate treatment, bias, procedural inequities, or selective enforcement in the review and consideration of the two applications, notwithstanding the disparate outcomes. In fact, direct sworn testimony from the Executive Director and Chief Engineer indicated no disparate application of CRMC policies and no personal or professional bias against either applicant.
  - e. With regard to impacts on plant and animal life in the Great Salt Pond: the record associated with the Champlin's application failed to demonstrate that the proposed project would not cause significant impacts; although Champlin's secured a water quality certification from RIDEM for a 240-foot expansion; the record associated with the Payne's application showed no evidence that the proposed project would cause significant impacts.
  - f. With regard to impacts to navigation in the Great Salt Pond: the record associated with the Champlin's application failed to demonstrate that the proposed project would not cause significant impacts; the record associated with the Payne's application showed no evidence that the proposed project would cause significant impacts.
9. With regard to the fairway -- which runs along the seaward ends of the three marinas (Payne's, Block Island Boat Basin, and Champlin's) and between the three marinas and the Town's mooring field -- the Council found, in its 2011 decision pertaining to Champlin's, that the appropriate width needed to be at least 300 feet in order to safely accommodate the navigational uses of the fairway off of Champlin's. Erroneously, the Council's decision -- at Conclusion of Law #8 -- established a 300-foot setback between the Town's mooring field and Champlin's "as well as the other existing marinas in the [Great Salt Pond]." That Conclusion is in error because the record reflects that the Council only voted to establish the 300-foot setback between the Town's mooring field and Champlin's. In view of that error, and because the Council in 2011 did not fully and formally establish the configuration of the Town's mooring field, the review and approval of the Payne's application was not governed by the mandatory 300-foot setback requirement. Notwithstanding the error regarding Conclusion #8 and the associated issue of (non)applicability with regard to Payne's, the Council did, in fact, uphold the 300-foot standard in its decision pertaining to Payne's. That is


reflected by the Council's decision to eliminate a single town mooring at the southeast corner of the mooring field, resulting in a final site plan for the expanded marina showing a 320-foot distance between the new marina perimeter line and the edge of the mooring field.

10. Based on the application of identical regulatory standards, and based on the significant differences regarding the size of the two marinas, the size of the proposed extensions, the efficiencies of their configurations, the amount of vessel traffic and congestion that occurs near each facility, the impacts of the proposed expansions on safe navigation within appropriately sized fairways, and the impacts of the proposed expansions on the Town's mooring field, the Council finds that there is a rational basis for the denial of the Champlin's application and the approval of the Payne's application.
11. With the exception of Conclusion of Law #8 from the Council's 2011 decision on Champlin's the Council upholds all of the Findings and Conclusions set forth in the Champlin's decision. The Council also upholds all of the Findings and Conclusions set forth in the Payne's decision.
12. With regard to Mooring Field E, that is the Town's rental mooring field located off of the three marinas, the Council finds that the field shall be configured in accordance with the following parameters:
  - a. The field shall be situated 300 feet off of all three marinas (Payne's, Block Island Boat Basin, and Champlin's) in order to provide for a 300-foot-wide fairway that affords safe and convenient navigation in the area.
  - b. The field shall abut the main navigational channel that runs from the entrance to the Great Salt Pond southeasterly to Payne's.
  - c. The field shall preserve and abut a 100-foot wide buffer between its western/northwestern boundary and the eastern boundary of Mooring Field D.

  
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Paul Lemont, Vice-Chair

  
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David Abedon

  
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Tony Affigne

  
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Robert Ballou

*Guillaume de Ramel*

Guillaume de Ramel

*Michael Hudner*

Michael Hudner

DATE: 9/27/13