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Thursday, March 4, 2021

**Contact: Joe Baerlein
617.306.1317**

RHODE ISLAND ATTORNEY GENERAL SUPPORTS MARINA EXPANSION FOES
Files Motion with Supreme Court Opposing State Agency ‘Backroom Deal’

BLOCK ISLAND, R.I. – In a memorandum scathingly critical of the Rhode Island agency tasked with protecting the state’s waterfront, Attorney General Peter F. Neronha today urged the Rhode Island Supreme Court to reject a request to approve an unofficially negotiated agreement to allow a significant expansion of Champlin’s Marina into Great Salt Pond.

Following almost two decades of unsuccessful administrative and in-court attempts by the marina owners to expand the marina further into the environmentally sensitive body of water, the state’s Coastal Resources Management Council late last year quietly –without the knowledge of the parties representing Block Island -- negotiated an agreement to allow expansion including an additional 156 feet of dock.

The Attorney General took strong exception to that agreement.

“At every phase over the past seventeen years, all of the parties with an interest in the Champlin’s application have had opportunities to seek appellate review of the CRMC’s decisions with respect to this application – until now,” the Attorney General wrote, in a 40-page filing with the Supreme Court. “The CRMC and Champlin’s mediated resolution circumvented this open and required process where any aggrieved party could be heard.

“For these reasons, and the reasons set forth in this memorandum, the Attorney General prays that the Joint Motion ... be denied.”

Longtime opponents of the marina expansion, who have been consistently successful since it was first proposed in 2003, have said since word leaked out late last year of what they call a “back-room deal” that, though they are officially recognized intervenors in the case, they have been left uninformed, ignored, and bypassed.

“Private deals, made in executive session without notice to opposing parties, are clearly and dramatically incompatible with the trust that was placed in the CRMC to be the guardian of the state’s resources charged by constitution and ancient common law with a public trust,” Attorney Prentiss wrote recently in answer to a motion filed by Champlin’s and the CRMC in the case ongoing before the Rhode Island Supreme Court.

“CRMC’s participation in the mediation itself was inappropriate,” the Attorney General told the Supreme Court today. A memorandum of understanding outlining the expansion “was improperly reached off-the-record between a single member of the full council, Champlin’s, and the CRMC’s Executive Director, while this Court held exclusive jurisdiction over the matter.”

In support of the intervenors and other opponents of the expansion, the Attorney General said that “CRMC’s and Champlin’s argument that the intervenors waived their rights to challenge the MOU because they declined to participate in a mediation and because they are not ‘full parties’ is misguided and incorrect.”

“Even if the mediation had been otherwise appropriate, the fact that a council member, otherwise expected to function in a quasi-judicial capacity, participated in the mediation and then voted to approve the MOU in executive session, violates the requirement of impartiality in contested cases,” the Attorney General’s motion states.

Opponents of the massive proposal to expand Champlin’s Marina into Great Salt Pond on Block Island went to court early this year to register their strong opposition to the Coastal Resources Management Council’s “backroom arrangement” and “secretly contrived fix” with the marina owner.

In a filing with the Rhode Island Supreme Court, the opponents’ attorney, R. Daniel Prentiss, said that the agency engaged in “blatantly illegal procedure and had no authority to settle ongoing litigation without the participation of Block Island’s local government and other parties to the litigation.”

The intervenors, longtime allies in opposition to the marina expansion that have been successful since the original plan was proposed in 2003, are the Town of New Shoreham, The Committee for the Great Salt Pond, the Block Island Land Trust, and the Block Island Conservancy.

The Attorney General’s memorandum filed today said that, “Even assuming that it were appropriate for the CRMC to participate in the mediation, the MOU is not a valid agency order because it does not carry out the CRMC’s legislative charge consistent with its enabling legislation, ignores the requirements set forth in CRMC’s regulations and procedures, violates the [Administrative Procedures Act of Rhode Island], and contradicts this Court’s precedent with regard to this application.”

The Attorney General said the Memorandum of Understanding described an agreement “reached during a closed-door mediation between Champlin’s and the CRMC, which allows, most notably, a 156-foot seaward expansion of piers, an extension of the western portion of the existing fuel dock by sixty-five feet, and an extension of the eastern portion of the existing fuel dock by twenty feet.”

“When the CRMC convened an executive session on December 8, 2020, and voted unanimously to ... approve the proposed mediated settlement, ... it did not have jurisdiction over the case.”

While the Supreme Court allows mediation in some cases, the Attorney General agreed with the opponents to the marina expansion that this case was not eligible for mediation. Nor did the case go through the officially prescribed Supreme Court mediation process.

The Attorney General noted in the memorandum that “the CRMC itself has determined that intervenors to contested cases have the same rights as parties. ... In this case, CRMC granted party status to the intervenors and therefore it was improper for these full- party status intervenors to be excluded from the mediation.”

The CRMC in 2011 denied the Champlin’s request for expansion.

“The CRMC’s sudden and unexplained departure from its findings of fact in its May 6, 2011, decision, coupled with the inconsistencies between the 2011 decision and the MOU, serve to demonstrate how

far afield the MOU is from the CRMC's charge to protect and restore the coastal ecology of the State," the Attorney General wrote.

The memorandum filed with the Supreme Court included three tables demonstrating "several of the unexplained contradictions between the May 6, 2011 decision and the Dec. 7, 2020" agreement with Champlin's. "Many of the criteria required to be addressed by the applicant and the CRMC in accordance with [CRMP procedures] in a final agency decision were simply ignored in the MOU."

"The limited findings contained within the MOU fail to provide any substantive basis for the full council's decision to approve this modification, leave unaddressed the question as to why the concerns it previously raised in the May 6, 2011, decision are no longer valid or have somehow been mitigated," the Attorney General wrote. "Instead, the MOU is, without any explanation, completely divorced from the May 6, 2011, CRMC decision and outside of the administrative record certified to this Court."

BACKGROUND

The long history of the case began in 2003, when Champlin's Realty Marina and Resort, Inc. applied to the CRMC to approximately double the size of its marina, already the largest on Block Island, a beautiful and popular summertime resort and residence for 1,000 year-round. That environmentally harmful expansion was opposed by the Town of New Shoreham, the Committee for Great Salt Pond, the Block Island Land Trust, and the Block Island Conservancy.

The opponents obtained intervenor status and became full parties to the contested proceedings before the CRMC. The CRMC denied the application for expansion in 2006.

Champlin's appealed to the Rhode Island Superior Court and the CRMC's denial was briefly reversed. But the opponents went to Rhode Island Supreme Court, which sent the case back to the Superior Court and the CRMC for further consideration.

The CRMC conducted further proceedings and issued its final decision denying Champlin's application for the marina expansion in 2013. Because Champlin's had appealed, the case went back again to the Superior Court, which in September of 2020 in a detailed 55-page decision upheld the CRMC's denial.

Champlin's again appealed to the Supreme Court. But at the same time an attorney for CRMC wrote to the New Shoreham Town Solicitor that the CRMC "had voted to participate in mediation for the Champlin's case, on the condition that the Town of New Shoreham also participate."

Although the Town of New Shoreham declined to participate, having won repeatedly before the CRMC and in court, Champlin's and the CRMC, with the participation of retired Supreme Court Justice Frank Williams, quietly engaged in an unsanctioned mediation process.

The outcome of that mediation process, which was entirely outside the formal mediation process that exists for Supreme Court cases, was a sudden and surprising decision by CRMC to allow a marina expansion, a reversal that shocked the longtime opponent groups and their members. Except for the town, which had expressly declined to participate, none had even been informed that mediation was proposed or ongoing.

The marina was sold on Dec. 23, 2020, just days before the so-called mediation and agreement were announced, following a closed-door meeting of the CRMC. Champlin's Realty Associates Limited Partnership's general partner, Champlin's Realty Associates, Inc., sold the marina to Great Salt Pond Marina Property, LLC, a unit of a large real estate investment and development company, The Procaccianti Companies.