STATE OF RHODE ISLAND

WASHINGTON, SC. **SUPERIOR COURT**

(FILED: September 9, 2021)

CHAMPLIN'S REALTY ASSOCIATES	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	**C.A. Nos. WC-2011-0615, WC-2011-0616**
COASTAL RESOURCES MANAGEMENT COUNCIL	:	
	:	
	:	
Defendant	:	

DECISION

LANPHEAR, J. This matter came before this Court by remand order of the Rhode Island Supreme Court. The Supreme Court deemed it necessary to determine the validity *vel non* of the purported settlement between Champlin's Realty Associates (Champlin's) and the Coastal Resources Management Council (CRMC), and to do so the Court remanded this matter to the Superior Court for findings of fact and conclusions of law concerning the "propriety and conclusiveness" of the purported settlement and the validity of the Memorandum of Understanding (MOU).

This Court applies a preponderance of evidence standard.

I

Travel of the Case

This matter has an extensive history of which this Court and the Rhode Island Supreme Court are familiar with, and therefore, this Court will not provide a complete history of the case, but rather the relevant travel regarding the Supreme Court remand. This Court issued a decision

on February 11, 2020 in which it affirmed the May 6, 2011 and September 27, 2013 decisions of the CRMC which denied Champlin's application. On June 17, 2020, this Court entered judgment implementing the Court's decision affirming the CRMC's denial of the Champlin's application. Champlin's filed petitions for issuance of writs of *certiorari,* and the Supreme Court granted *certiorari* on October 19, 2020. This Court's record was docketed in the Supreme Court on November 30, 2020.

On January 8, 2021, Champlin's and the CRMC filed a joint motion requesting the Supreme Court to incorporate and merge the MOU into a consent order of the Court. The joint motion was met with extreme opposition by the environmental groups, the Committee for the Great Salt Pond, the Block Island Land Trust, and the Block Island Conservancy, as well as the Town of New Shoreham (collectively, the Intervenors). The Attorney General also moved to intervene into the case, which was later granted. On March 26, 2021, the Supreme Court denied the joint motion of Champlin's and CRMC. The Court noted that "while the Court is supportive of alternative dispute resolution, if parties enter court-ordered appellate mediation and that mediation session is a success, the parties will be asked to finalize the settlement and withdraw the appeal. "It is not the role of this Court to enter and ultimately enforce a substantive stipulation or consent order for court-ordered appellate mediation; we do not consider private mediation to be any different." *Champlin's v. CRMC,* No. 2020-168-M.P. and 2020-169-M.P., Supreme Court Order, March 26, 2021. On May 13, 2021, Champlin's filed a motion to remand.

On June 11, 2021, the Supreme Court granted the motion to remand and ordered the matter be remanded to the Superior Court to determine the validity *vel non* of the purported settlement between Champlin's and CRMC. In order to make such a determination, the Supreme Court

remanded this matter to the Superior Court for findings of fact and conclusions of law concerning the "propriety and conclusiveness" of the purported settlement and the validity of the MOU.

In order to make such findings of fact and conclusions of law, this Court held several evidentiary hearings. This Court established a three-phase procedure in order to gather the necessary information to follow the Supreme Court's order. The first phase was for the proponents of the MOU to present evidence about what happened surrounding the mediation and the execution of the MOU; the second phase was for the opponents to present witnesses and evidence questioning what happened; and the third phase was for the proponents to present rebuttal evidence.

II

Findings of Fact

The findings herein are expansive; that is, they go beyond those which may be necessary to make the legal conclusions and otherwise justify this Decision. In the orders of the Rhode Island Supreme Court of March 26 and June 11, 2021, the high court made clear that it does not normally consider new evidence, and it is the function of the trial courts to make initial factual determinations. In the June 11 order, the Supreme Court ordered a prompt hearing in this trial court as "this eighteen-year saga must be brought to an end." It remanded the case temporarily "for findings of fact and conclusions of law." The case will then proceed in the high court. Therefore, even though some facts found herein may appear to be superfluous for the conclusions of this Court, this Court seeks to find all facts which may be necessary for the high court to make its conclusions.

This Court makes the following findings of fact:

In 2003, Champlin's applied to the CRMC for an assent to allow an expansion of its existing marina into Block Island's Great Salt Pond by 240 feet seaward into the Great Salt Pond

in New Shoreham, thereby accommodating an additional 140 boats. *Champlin's Realty Associates v. Tikoian*, 989 A.2d 427, 432 (R.I. 2010). The application and subsequent judicial review have had an extensive travel, outlined above. Before the CRMC, the Block Island Land Trust, the Conservation Law Foundation, and the Block Island Conservancy opposed the application. On July 8, 2006, the CRMC issued a decision denying that application. Subsequent reviews were conducted in the Superior Court and the Rhode Island Supreme Court. On February 10, 2010, the high court remanded the application to the CRMC for further review. The CRMC denied the application in September 2013. On appeal the Superior Court upheld the denial in June 2020.

The Intervenors are all represented by Attorney R. Daniel Prentiss and have been since at least July 2020. Attorney Katherine Merolla is the Town Solicitor of the Town of New Shoreham.

The New Shoreham Town Clerk, Fiona Fitzpatrick, is on the mailing list of the CRMC to regularly receive the agendas for the CRMC meetings. She received notices of meetings for November 24, 2020 and December 29, 2020 and, consistent with her common practice, routinely sent the agendas to each of the members of the New Shoreham Town Council and to the Town Solicitor. The CRMC agenda for November 24, 2020 was distributed to and received by those town officials through this method on or about November 20, prior to the CRMC meeting. The agenda indicates that a discussion will be held on the Champlin's application. Pl.'s Ex. 12. The CRMC voted to direct CRMC legal counsel, Attorney DeSisto, Acting CRMC Chair Coia, and CRMC Executive Director Willis to follow the discussion contained in the Executive Session "to authorize mediation with Champlin's Realty Associates and the CRMC." Defs.' Ex. KKK. This vote was taken in open session, on the Zoom videoconference platform. The minutes of the CRMC meeting are publicly available on a website maintained by the Rhode Island Secretary of State. Town Solicitor Merolla and Second Warden (a town councilperson) Risom knew of their

on-line availability. Even though all of the parties were awaiting a response from the Rhode Island Supreme Court, it was clear from these notices that the CRMC was actively considering something at executive sessions. In addition, the attorneys (and likely some of the individual members) were well aware that the minutes of the CRMC actions could be reviewed on the Secretary of State's website.

In November 2020, Attorney Prentiss sent Second Warden Risom and other Intervenors an email regarding the possibility of mediation. Second Warden Risom testified that he waited almost two weeks, until December 7, to act, find out more, or raise any concern about the possibility of mediation. Although privilege limited the Court from discovering their internal communications, Second Warden Risom, Attorney Prentiss, and Attorney Merolla all sat, knowing that CRMC and Champlin's were moving toward mediation.

On November 30, 2020, Katherine A. Merolla, the Solicitor for the Town of New Shoreham, received an email from Attorney Anthony DeSisto, counsel for the CRMC, explaining that the CRMC voted on November 24, 2020 to participate in mediation. Pl.'s Ex. 16; Defs.' Ex. EEE. The email stated that "CRMC . . . voted to participate in mediation . . . on the condition that the Town of New Shoreham also participate." *Id.* Solicitor Merolla indicated in a reply email that the Town Council would discuss the issue in executive session on December 7, 2020 and let him know its decision. *Id.*

On December 3, 2020, Retired Chief Justice Williams telephoned Town Solicitor Merolla, asking about the mediation. She did not return his calls. Justice Williams then sent an email "[t]rying to et [*sic*] you to have new [*sic*] Shoreham join Champlin's and Coastal in mediation. Please call . . ." Defs.' Ex. FF. Attorney Merolla did not call but replied in an email that the Town

Council would vote on the issue on December 7, 2020. Attorney Merolla recognized that Justice Williams was an experienced mediator who had mediated many cases successfully.

At the Town Council meeting of December 7, 2020, the Town Council, in executive session, discussed whether to participate in mediation, and voted not to engage in mediation. Pl.'s Ex. 15. Attorney Prentiss was in attendance for this meeting and argued against mediation, although he was not listed on the meeting minutes.

Solicitor Merolla notified Attorney DeSisto on December 8, 2020 of the Town's vote not to engage in mediation. Justice Williams received a phone call from Solicitor Merolla on the same day indicating that the Town voted not to engage in the mediation. Justice Williams indicated his disappointment to her and noted that the mediation was going to go forward, with CRMC and Champlin's proceeding to mediation on their own.

On December 15, 2020, Champlin's moved in pending Supreme Court case SU 2020-169-M.P. for additional time to file a statement of the case as Champlin's and the CRMC "are engaged in mediation before Retired Chief Justice Williams." Attorneys Prentiss and Merolla received copies of the motion and subsequent order.

In late December 2020, Justice Williams conducted mediation sessions between CRMC and Champlin's. Champlin's and CRMC reached an agreement, memorializing it in an MOU. Pl.'s Ex. 2. Mr. Dani Goulet of CRMC produced an earlier draft of a compromise plan which he gave to Mr. Willis prior to that mediation.

On December 23, 2020, the CRMC sent an agenda for its December 29, 2020 meeting to the New Shoreham Town Clerk and others on its mailing list. The agenda noted that the Champlin's appeal would be discussed at an executive session. Pl.'s Ex. 13. The notice was

distributed by the Town Clerk to the members of the New Shoreham Town Council and the Town Solicitor.

The December 29, 2020 meeting of the CRMC was held on the Zoom video-conferencing platform. The CRMC ratified the MOU and settlement. The agreed settlement (Pl.'s Ex. 2) allowed for an expansion of Champlin's fuel dock to be 314 feet from east to west, and an extension of Champlin's piers 156 feet off the fuel dock and to be 314 feet laterally. The agreement allowed for other expansions, referenced in the MOU, including an expanded perimeter limit to 1.5 acres.

On January 8, 2021, the CRMC and Champlin's jointly moved the Supreme Court to incorporate and merge the MOU into a consent order.

III

Presentation of Witnesses

i. Introduction.

This case comes to the Court in an odd posture. It has been remanded for limited findings of fact and conclusions of law for which the Supreme Court has retained jurisdiction having issued a writ of *certiorari*. As this Court is making findings for the high court, it is helpful to give an explanation of the testimony provided, this Court's determinations of the credibility of the witnesses, and a review of the entirety of the evidence.

ii. Discussion of Privileges and Immunities.

This Court was faced with a challenge in conducting the evidentiary hearings in this matter due to the numerous, and very important, privileges that protected a great deal of the evidence. At each turn, and with almost every witness, various privilege issues were raised. These privileges included the attorney-client privilege (for Attorneys Merolla, Prentiss, and DeSisto), the statutory

privilege for mediators pursuant to G.L. 1956 § 9-19-44, the quasi-judicial immunity explained by the Rhode Island Supreme Court in *Tikoian*, 989 A.2d at 438-40, the legislative immunity set forth in *Maynard v. Beck*, 741 A.2d 866, 870-71 (R.I. 1999), and the judicial privilege that protects judges from testifying about their thought processes in previous decisions. This Court acted with caution and purpose to protect the various privileges that were asserted during the evidentiary hearings because the Court felt these privileged communications ought not to be disturbed by a Court. However, this posed an incredible hurdle for this Court in its attempt to make findings of fact relating to the MOU and the events leading up to the mediation.

Section 9-19-44 provides, in pertinent part, that:

> "All memoranda and other work product, including files, reports, interviews, case summaries, and notes, prepared by a mediator shall be confidential and not subject to disclosure in any subsequent judicial or administrative proceeding involving any of the parties to any mediation in which the materials are generated; nor shall a mediator be compelled to disclose in any subsequent judicial or administrative proceeding any communication made to him or her in the course of, or relating to the subject matter of, any mediation by a participant in the mediation process."

Based on this statutory provision affording the mediator a "privilege" from disclosing materials prepared in the course of mediation and communications made to the mediator, this Court was not able to elicit testimony concerning each of the communications surrounding the mediation. The Court was cautious to allow questioning about the specifics of the mediation or the discussions that occurred at the mediation due to this statutory provision. For this reason, the Court was disadvantaged in making findings of fact specifically regarding the mediation process, since it is protected by statute.[1] It is difficult and seemingly unfair to be prevented from access to the

[1] "Confidentiality lies at the heart of the mediation process. Mediation would not be nearly as effective if the parties were not assured their discussions would remain private. Parties would be hesitant to bare their souls to someone who may be called as a witness against them in subsequent

mediation drafts and much of what happened at mediation, but here, the Intervenors were aware of the mediation and declined to participate.

"The attorney-client privilege is one of the oldest and most widely recognized evidentiary privileges, created by the common law. The underlying premise of the attorney-client privilege is that communications within the attorney-client relationship are so important that the law is willing to sacrifice its pursuit of the truth, the whole truth, and nothing but the truth in the interest of those communications." 98 C.J.S. Witnesses § 330. This Court was especially cautious in delving into any communications where the attorney-client privilege was asserted. Specifically, this privilege arose in the context of Solicitor Merolla and Attorney Prentiss advising the Town Council, as well as Attorney DeSisto advising the CRMC. Due to the attorney-client privilege, this Court was unable to delve into these executive session meetings' minutes and find the truth of the communications because of the concern of the attorney-client privilege. The Court was also reluctant to perform an in-camera review in the vein of remaining cautious and not violating the attorney-client privilege, particularly where it did not seem that the review would bear fruit.

The Rhode Island Supreme Court in *Tikoian* explained that "the administrative decision makers at the CRMC cannot and should not have been questioned about their mental process in making recommendations to the full council or participating in decision making." *Tikoian*, 989 A.2d at 439. Further, the Court stated, "[o]nly factual matters not reaching the examiner's bases, reasons, mental processes, analyses or conclusions are fair subjects for inquiry." *Id*. (internal

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litigation. It is therefore essential to the success of the process that parties freely disclose information relating to the dispute. Confidentiality serves the crucial purpose of allowing the mediator to be seen by the parties as a neutral, unbiased third party." Pamela A. Kentra, *Hear No Evil, See No Evil, Speak No Evil: The Intolerable Conflict for Attorney-Mediators Between the Duty to Maintain Mediation Confidentiality and the Duty to Report Fellow Attorney Misconduct*, 1997 B.Y.U. L. Rev. 715, 722 (1997).

quotation omitted). Additionally, the Court held that "agency adjudicators also are cloaked with immunity from rendering testimony about their mental processes in reaching decisions just as judicial officers are—lest the compulsion of the testimony of agency adjudicators about their mental process become a favored litigation technique." *Id.* For these reasons, this Court was conscious about members of the CRMC being asked questions that delved into their mental processes. This Court applied this "quasi-judicial privilege" to several of the current and former members of the CRMC when they were asked questions that would elicit testimony about their decision making and the mental process behind their decision making. Similar to the challenges with the attorney-client privilege, this significantly limited the amount of testimony the Court was able to elicit from these various witnesses about the process leading up to the mediation, the mental processes surrounding the decision to mediate, and the actual mediation.

A similar obstacle applied to CRMC's opponents here, the Intervenors. Like the quasi-judicial privilege in *Tikoian*, the Rhode Island Supreme Court in *Maynard* expounded on legislative immunity. The Court stated, "[w]e also observe that the doctrine of legislative immunity is not reserved solely for legislators, and that 'officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.'" *Maynard*, 741 A.2d at 870 (quoting *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998)). Therefore, the Supreme Court suggests that courts employ a "functional approach to immunity questions." Based on this, this Court was mindful of the immunity the members of the Town Council of the Town of New Shoreham held and was cautious to allow questioning that would probe into the process of their legislative function. For these reasons, the Court could not ascertain the Town Council's actions or the motivations of the vote to decline the offer to mediate.

Finally, in a manner similar to *Tikoian* and *Maynard*, the Court was mindful of the immunity held by members of the judiciary that prevents such people from rendering testimony about their mental processes in reaching decisions. *See Tikoian*, 989 A.2d at 439. Specifically, the Court did not allow questioning regarding a member of the judiciary and the reasoning for the Justice's particular decision, majority, or otherwise.

iii. Testimony at Hearing.

The first witness presented during the Court's various evidentiary hearings was Retired Chief Justice Williams, called by Champlin's, who was the mediator for the mediation between Champlin's and CRMC which resulted in the MOU at issue. Justice Williams has extensive experience in the legal field with fifty-one years of experience, spending twenty-six years in private practice, five years in the Rhode Island Superior Court, ten years as Chief Justice of the Rhode Island Supreme Court, and serving as a mediator since 2010. He has been engaged in mediation as part of the Appellate Mediation Panel and privately, as well as an arbitrator at times, having been involved in mediation in thousands of cases in some capacity. He explained that mediation is not litigation and not adjudicatory but rather it is an informal proceeding entered into with the mutual consent of the parties designed to reach a settlement between the parties. Regarding this case, Justice Williams explained that he was approached to mediate this litigation in a private mediation, meaning it was set up directly by the parties and not through the Appellate Mediation Panel. Justice Williams indicated that the process in beginning this type of mediation generally involves the parties sending pre-mediation memoranda and then he sends a sort of protocol including the fee per hour and an explanation of how the proceeding is an informal proceeding with the end goal to be resolution which requires each party to generally have to give something up to come to such resolution. He discussed the factors in determining whether mediation is appropriate.

Justice Williams explained that with respect to this controversy, he was asked by Attorneys Goldberg and DeSisto if he was interested in mediating this long-running dispute between Champlin's and CRMC, and he understood that the case was pending in the Supreme Court. Justice Williams agreed to be the mediator. At a preliminary meeting with Attorney Goldberg, Attorney DeSisto, and Justice Williams, the parties discussed the inclusion of the Intervenors. Justice Williams then indicated that he called Attorney Merolla, the Town Solicitor for the Town of New Shoreham, two times during the week of November 30, 2020 and left voicemails but did not hear back. His purpose was to encourage the Town, as well as other Intervenors, to participate in the mediation proceeding. Not receiving a call back, he sent an email to Attorney Merolla, and she responded indicating that the topic of participating in the mediation would be discussed at the Town Council meeting on December 7, 2020. Justice Williams testified that on December 8, 2020, Attorney Merolla called him and explained that the Town Council voted unanimously to not participate in the mediation after Attorney Prentiss recommended that the Town and other Intervenors not participate. Justice Williams expressed his disappointment with the Town's decision but indicated to Attorney Merolla that it was his belief that the mediation between Champlin's and CRMC would proceed notwithstanding the refusal to participate by the Town and the other entities. Tr. 29, July 27, 2021. During this conversation with Attorney Merolla, after the Town Council meeting, Justice Williams expressed how important it would have been to have the Intervenors involved even though the parties controlled the decision to accept the MOU. Justice Williams did not communicate directly with the other Intervenors.

Justice Williams testified that, as a mediator, he routinely and customarily assesses the fairness of resolutions, signing each MOU as an indication of the process and the validity of the process and the form. He testified how fairness is very important to a mediator. He stressed the

concept of fair play and indicated he followed these principles in mediating this case. Qualified as an expert mediator, Justice Williams opined that the MOU was a full and fair agreement to resolve the dispute presented to him.

On cross, Justice Williams indicated that he had the intention that all parties receive notice before the mediation. He also opined that intervenors are not the same as parties although they have an interest in the matter. He expressed that he was insistent that the Intervenors in this case participate because they have a "say" but not a "deciding say." He explained the Intervenors were invited and declined to participate. As to the communication with the Intervenors, Justice Williams explained that the communication with Attorney Merolla occurred first because the first priority was to get the Town to participate, and then, if the Town agreed, the other Intervenors would be asked. Because Attorney Merolla indicated to him that Attorney Prentiss encouraged all of the Intervenors not to participate at the Town Council meeting, once Justice Williams received the "no" from Attorney Merolla, he ceased any attempt to encourage the Intervenors to participate.

Justice Williams testified that Attorney Goldberg informed him a week prior to the evidentiary hearing that he would likely be called as a witness, and he prepared his July 14, 2021 affidavit because Attorney Goldberg wanted him to explain his role in notice and in how the Town and the other Intervenors received notice (i.e., the phone calls and emails).

Going back to the topic of mediation, Justice Williams explained that mediation is voluntary unless it is by court order, and mediation cannot be forced on parties unless a court with jurisdiction over the matter orders the parties to proceed to mediation. Justice Williams stated that if an intervenor declines the right or invite to mediation, but the parties agree, then the mediation can go forward. He explained that if the parties agree then the mediation can go forward, but the intervenors cannot stop mediation from occurring. According to Justice Williams, the selection of

the mediator is a vital aspect to mediation, and the parties need to agree to who will mediate. He further indicated that he, as mediator, never received any objection as to selection of the mediator or in the process of mediation from the Intervenors. Justice Williams expressed that the Intervenors could have objected and everyone would have discussed the objection, but that did not occur. Justice Williams further testified that the Intervenors were invited, had notice, and waived their right to participate because they would have been welcomed at the mediation.

Specifically, as to notice, Justice Williams expressed that he told Solicitor Merolla that the mediation would go forward without the Town and the other Intervenors. Therefore, he concluded that the Intervenors had notice and waived the right to participate in the mediation. Regarding the "condition" in Attorney DeSisto's November 2020 email to Solicitor Merolla, Justice Williams stated that he was not sure of the accuracy or when it was done or when it was modified. Justice Williams further testified that during the week of November 30, 2020, he received a call from Attorney DeSisto indicating that CRMC would go forward whether or not the Town or other Intervenors participated, though Attorney DeSisto expressed some concern by CRMC that the Town should participate. Justice Williams testified that he thought it was important for the Intervenors to participate because they had an interest in the outcome. Prior to hearing, he had not seen the email from Attorney DeSisto indicating that CRMC's participation in mediation was conditional on the Town's participation.

Justice Williams then testified regarding the press surrounding the mediation and the case. Justice Williams explained that his definition of fairness means fairness to the parties and to the public.

On further cross, Justice Williams indicated that intervenors are important but not necessary to mediation and the inclusion depends on the case. Furthermore, he testified that if a

necessary party opted out then the mediation probably would not go forward but that it would depend on what agency was involved. He also testified that an agency cannot mediate if the enabling statute or regulations prohibit mediation.

Justice Williams also testified that he was aware that Mr. Prentiss was the counsel for the Town of New Shoreham. He explained that he never received any objection from the Intervenors.

This Court found Justice Williams to be very credible. He was consistent throughout his testimony, and no other witness provided contradictory testimony. As to the fact testimony, Justice Williams responded promptly, directly, and with a sharp recall of details, often providing in his answers far more than was required. He was forthright, answering firmly and promptly, even before objections were ruled upon. He was clear in detailing his version of the facts, even when not asked, and redirecting the question if necessary. In the more critical portions of his testimony, his conversations with Attorney Merolla, he had a firm recollection of the events where Attorney Merolla did not recall the substance of the conversations.

iv. Danni Goulet, CRMC Marine Infrastructure Coordinator.

The next witness called was by CRMC, Mr. Danni Goulet, an employee of CRMC as the Marine Infrastructure Coordinator. He has worked with the State for almost twenty years, as the dredge coordinator for about ten years and the Marine Infrastructure Coordinator for close to ten years. At CRMC, Mr. Goulet works on dredge projects and has experience with docks and marinas. He testified in an earlier proceeding on the Champlin's application and the so-called "Goulet Plan" (which was never accepted). He is familiar with both the Great Salt Pond and the existing Champlin's dock.

Mr. Goulet testified that in December 2020 he was asked by CRMC Executive Director Willis to review whether there were any staff-generated plans that were acceptable for an

expansion as part of the old file. Mr. Goulet reviewed the digital file and located what he referred to as the "Goulet Plan" in the old file. Tr. 88, July 27, 2021. He had the understanding that mediation was going to occur, but he did not participate in the mediation. He prepared a memorandum for Mr. Willis with his findings after he reviewed the Champlin's file. Mr. Goulet testified that he did not speak to any council members regarding the mediation or any plan to modify the existing application.

Mr. Goulet also testified that the Champlin's file is still open in the CRMC database and will remain open until there has been a final determination by the Courts. According to Mr. Goulet, a preliminary determination is its own application with plans and a narrative to describe what is sought. The staff reviews the application and weighs it against all the applicable standards and policies and tells the applicant whether the standards are met or what would need to be changed to become compliant with the regulations. Mr. Goulet explained that there will be no need for a preliminary determination in this matter and such would not be appropriate here because the application is still pending. An engineering plan and a permit from the Army Corps of Engineers is still required.

On cross, Mr. Goulet testified further about the emails between himself and Mr. Willis regarding staff recommendations for the Champlin's application. Mr. Goulet testified that he is familiar with the applicable regulations which is known as the Red Book. He explained that the Red Book has the regulations and requirements regarding efficiency of use of public trust resources.

Mr. Goulet also testified about the 300-foot common fairway which is used by boaters between the mooring field and the marina. The 300-foot fairway existed before this application and exists today. Mr. Goulet recalled that the MOU purports to allow a 156-foot expansion

seaward from the outer edge of the fuel dock. This would allow for the berthing of vessels on the outside of that dock with a beam of up to 25 feet. Mr. Goulet testified that a perimeter limit is a line that goes around the hard structures or floating structures and the docks so it confines the structures to not extend beyond and allows the marina to do certain activities without a permit, such as limited maintenance. The perimeter also allows the CRMC to limit activities outside of the perimeter limit. However, a marina can move and reconfigure the docks within the marina perimeter so long as they don't exceed the allowable boat count. The 170-foot expansion in the MOU is not possible within the existing marina perimeter line; therefore, to do the expansion there would need to be an expansion of the marina perimeter line. Mr. Goulet explained how the Champlin's dock is in a trident shape and this limits how much you can berth on the inside, and, if the trident did not exist, there is a potential to have the whole area reconfigured for a more efficient use of the area.

On further cross, Mr. Goulet testified that his responsibilities included reviewing large commercial infrastructure projects, all of the dredging projects, the majority of the marina projects, and any heavy construction maintenance projects that come before the CRMC. In connection with these projects, he would look at the proposals and the policies and standards in the Red Book to make sure the project meets the policies and standards. The purpose of this is that state standards task the CRMC with ensuring that the resources are protected. He testified that he is familiar with the CRMC regulations generally, but that he was not involved with the proposal of the MOU. He has been involved in making a demonstration to the executive director to support a modification to a final decision of the council.

Mr. Goulet explained that with regard to a new application, there are administrative aspects that must be completed first, then he will review the description of the project and the plans to

make sure it is appropriate with the Red Book. He further explained that there are category A and category B projects, as well as maintenance projects, and there are different requirements for each of those types of applications. If a Category B assent is required, the application would be put out to public notice and a hearing would be required. Regarding Champlin's 2003 application, Mr. Goulet testified that there was a staff report, but he did not know whether that report contained a recommendation relative to the application. He explained that the Goulet Plan was submitted at the subcommittee process to attempt a compromise with the original application, and it was created at the direction of the executive director at the time. *See Tikoian*, 989 A.2d at 432. Mr. Goulet was then asked to compare several paragraphs from the MOU and the CRMC decision from May 2011.

Mr. Goulet testified that the original application asked for a seaward expansion of 207 feet and the Goulet Plan recommended a seaward expansion of 100 feet. Mr. Goulet knew that Attorney Prentiss had some involvement in the Vineyard Wind Project but was unfamiliar with specific dates when he was involved. He did not discuss the Vineyard Wind Project or this case with Mr. Prentiss. To prepare for his testimony, Mr. Goulet indicated that he reviewed his emails relating to this matter and the MOU.

The Court found Mr. Goulet to be succinct, respectful, responsive to all questions, professional, and courteous to all attorneys. He was informative concerning the decision-making process, the history of this application, the CRMC regulations, and the origin of the compromise plan. Although he appeared to disagree that the matter should be in mediation, the Court found his testimony consistent and credible.

v. Jennifer Cervenka, Former Chairperson of the CRMC.

Ms. Cervenka has been a practicing attorney in the State of Rhode Island since 2000 and has actively practiced since then. She worked with Attorney Prentiss as an associate at Holland & Knight for five years; Attorney Prentiss was a partner at the firm. In her role there, she participated in subcommittee hearings for Attorney Prentiss' clients on occasion and covered for him on one occasion on Block Island that she could recall. She testified that she continues to have a good relationship with Attorney Prentiss. She served for four years as Chairperson of CRMC; concluding the position one week prior to the evidentiary hearings. During her time at CRMC, she had occasion to work with Attorney Prentiss as special counsel to agency staff at CRMC. Ms. Cervenka testified that Attorney Prentiss was retained by CRMC as special counsel for the agency staff in relation to the Vineyard Wind Project. Ms. Cervenka met with Mr. Prentiss in that regard.

Ms. Cervenka testified that she recused herself from the Champlin's matter and took no role in proceedings that involved Champlin's. Whenever Champlin's came up, Ms. Cervenka would not participate and for the virtual meetings she would leave the call. In preparation for her testimony, Ms. Cervenka reviewed her recusals, any emails about Champlin's, and talked with Attorney DeSisto. Ms. Cervenka explained that it was the practice to send out notice of meetings to parties that may have an interest in them, but she was not fully sure of the office practice and did not know whether the Town of New Shoreham was notified of the Champlin's meetings before CRMC.

On cross, Ms. Cervenka testified that she is also a member of the East Greenwich Planning Board. She explained that she is familiar with ethics, and she filed evidence of her recusals with the Rhode Island Ethics Commission. She also testified that she did not vote in the November 24, 2020 CRMC Executive Session.

On further cross, Ms. Cervenka testified that she was not aware of any time that CRMC engaged in settlement with only one party. She also testified that notice would always be given to intervenors in a contested case. By notice, she explained, there would either be individual notice or the published agenda. Once a party had made a motion for intervenor status, Ms. Cervenka explained that the party would be treated like a party. Ms. Cervenka testified again that she recused herself from all matters relating to the Champlin's application and she didn't talk to anyone about the Champlin's matter. Specifically, she did not recall the November 24, 2020 CRMC meeting, she did not attend the December 29, 2020 meeting, and she recused herself from any of the Champlin's discussions that came up during the March 2021 meeting.

Ms. Cervenka testified that she is familiar with the Jamestown Boat Yard dock expansion pending application, and the CRMC issued an agency decision relative to that application. She also believed that there were intervenors involved in the Jamestown Boat Yard matter. Ms. Cervenka further testified that she had no personal knowledge whether the CRMC record was transmitted in the Jamestown Boat Yard matter.

The Court found Attorney Cervenka to be frank, clear, consistent, professional, responsive, and credible. As she avoided involvement with the Champlin's matter, the Court did not find her testimony helpful to determining the facts or law here.

vi. Fiona Fitzpatrick, Town Clerk of New Shoreham.

Ms. Fiona Fitzpatrick is employed as the Town Clerk of the Town of New Shoreham and has been for twenty-one years. In this position, she oversees a staff of three, prepares and maintains Town Council minutes, assists the council, oversees six other boards, administers elections, administers the town ordinances, maintains the Land Evidence records, and oversees local vital records and all licensing for the town. Her office is located in the town hall, and she was present

at the Town Council meeting that occurred on December 7, 2020 when the council went into executive session to decide whether or not to participate in mediation. Ms. Fitzpatrick testified that Mr. Prentiss was also present, virtually, at the December 7 meeting of the Town Council. She further explained that Mr. Prentiss participated in that discussion. Ms. Fitzpatrick testified that she does not read the Block Island Times and therefore did not know if the matter was widely reported in same.

Ms. Fitzpatrick testified that she did not remember reading the CRMC meeting notices for November 24 or December 29, 2020. She did not deny receiving the notices but did not specifically remember seeing them. She did testify that part of her official tasks as Town Clerk is to receive correspondence for the council. In her capacity as Town Clerk, she would typically forward emails like the CRMC meeting notices to the council, but she could not recall if she did with the November 24 and December 29, 2020 meeting notices. It was her custom, pattern, and practice to do so. Ms. Fitzpatrick explained that she prepares a packet for the council for a routine meeting and it goes to the council members, the Town Manager, and the Town Solicitor. However, the meeting notices are forwarded to the Town Council and the Town Manager, but are not included in the package and are not sent to the Town Solicitor.

Town Clerk Fitzpatrick did not recall any general discussions in December 2020 about CRMC granting Champlin's marina expansion. She did not recall hearing any talks outside of the actual Town Council meeting concerning the Town's participation in the Champlin's mediation. Ms. Fitzpatrick spoke with Attorney Prentiss about this case in preparation of her testimony.

The Town Clerk was presented with the minutes from the December 7, 2020 Town Council meeting which are marked "draft." Pl.'s Ex. 15. She prepared the document herself without the

assistance of counsel and she did not discuss the document with Attorney Prentiss. Ms. Fitzpatrick explained that she prepared the notes at the meeting and then prepared the draft minutes sometime before February 2, 2021. She also explained that she looked for a final accepted copy but there is not one because she had incorrectly placed it in the file of approved minutes, and it was "my clerical error." Tr. 98, July 29, 2021. She testified that they have still not yet been approved. The Town Council membership has not changed since the December 7, 2020 meeting, and the council was sworn in on December 7, 2020.

Since the December 7, 2020 meeting, Ms. Fitzpatrick could not recall if the issue of Champlin's and mediation had been taken up, but that would be reflected in the minutes. She indicated there may have been more meetings where the council took up the subject of mediation, but she does not recall. Ms. Fitzpatrick did not see any of Attorney Prentiss' letters in the Block Island Times and could not recall if she discussed the case with anyone from the membership of the Committee for the Great Salt Pond.

On examination by Attorney Prentiss, Ms. Fitzpatrick testified that she regularly receives notices from CRMC regarding meetings, more than once a week, and she usually opens them and forwards them to the Town Council and the Town Manager. She also testified that the Town Council hires lawyers to represent the Town. She could not recall when Mr. Prentiss was hired by the Town, and she also could not recall when the Town Council voted for his hiring or if the Town Council voted to retain him. However, she believed that the Town entered into a fee agreement with Mr. Prentiss.

Town Clerk Fitzpatrick was called back as a witness in Champlin's rebuttal evidence on August 12, 2021. Ms. Fitzpatrick testified that she did not review her previous testimony, she did not discuss the substance of her testimony with anybody, and to prepare for her testimony she

reviewed the requested minutes. Pursuant to the subpoena, Ms. Fitzpatrick brought the minutes of Town Council meetings from January 13, January 20, February 17, March 24, April 7, April 21, May 19, June 16, July 7, and July 12, 2021. Pl.'s Ex. 26. All of these minutes concern Champlin's in one way or another. Ms. Fitzpatrick testified that she did not read the minutes closely to see whether or not they reflect anyone reaching out to Champlin's regarding the mediation and she did not know if anyone from the council or clerk's office reached out to Champlin's.

Ms. Fitzpatrick testified that it is her responsibility to place the legal notices in the Block Island Times. She testified that the newspaper provides her with a one-page proof, and she does not check the actual postings in the Times, but she checks the proofs. If there is a problem with the proofs, she testified that she called Patrick Tenwall, who is the current advertising person at the Block Island Times. She never discussed any of the letters or articles concerning Champlin's with the Block Island Times.

Ms. Fitzpatrick could not explain why Attorney Prentiss was not listed as being at the December 7, 2020 council meeting. She testified that she did not recall anyone telling her not to list him on the minutes. The Town Clerk recalled that she did not discuss removing Attorney Prentiss' name from the minutes after she testified before and did not discuss putting him on the minutes with anybody.

Ms. Fitzpatrick testified that she is the keeper of records for the Town and the New Shoreham Home Rule Charter is one of those records. She further testified that during the entire time that she has been the Town Clerk, the Town has had a Town Charter. Finally, she testified that Section 906 of the Charter lists the Block Island Land Trust as one of the boards and commissions of the Town.

Town Clerk Fitzpatrick is a pleasant person who clearly has significant experience at her position, which handles a vast array of responsibilities. She was not pleased about testifying, though she remained courteous throughout her testimony, and she was clearly guarded in answering questions by counsel for Champlin's. She was nervous at times, and when discussing the minutes and the council discussions, she paused after the questions as if to try to determine where the questioner was going. The Court finds that she was attempting to avoid saying she knew anything about the mediation issue. (However, on questioning by Attorney Prentiss she recalled that Attorney Merolla discussed mediation with Attorney DeSisto.) Tr. 119, July 29, 2021. Hence, the Court found her credibility in question on whether she had spoken to the members of the intervening groups, whether she knew why the minutes were not ratified, and why Mr. Prentiss' presence was removed from the minutes. She could not remember if she ever went to a meeting of any intervening group or if the Town Council hired her. It was odd that she never read the local newspaper and talked only to the advertising department. She seemed hesitant to testify, protective of the Town, and in an uncomfortable position as a witness. Hence, the Court doubts her credibility on these particular issues. The Court does not believe that she doesn't recall more of the discussions on mediations or how much it was discussed, whether anyone else in her office reached out to Champlin's during the last few months, that she never reads the local newspaper or talks to the reports, and is left to conclude that it is quite odd that key minutes were not ratified and that Attorney Prentiss's presence was not noted.

vii. Katherine Merolla, Town Solicitor for the Town of New Shoreham.

Attorney Merolla has been a practicing attorney in the State of Rhode Island continuously for forty-two years. She has been employed by the Town of New Shoreham since 2007. In preparation of her testimony, Attorney Merolla reviewed the five emails in evidence but did not

discuss her testimony with anyone. In terms of her involvement in the Champlin's case, during the six-year period that the case was before another justice of this Court on administrative appeal, the prior Town Solicitor, Don Packard, retired, and Attorney Merolla entered her appearance. In regard to her involvement with hiring Attorney Prentiss, she testified that she may have recommended him but did not recall the specifics from when he was hired, and she testified that she knew of no fee agreement with Attorney Prentiss.

Attorney Merolla testified that she saw the agendas for the two CRMC meetings in February 2021, and that the Town Clerk does not forward her these agendas. *See* Pl.'s Exs. 12 and 13. In terms of the membership of the other Intervenor groups, Attorney Merolla testified that she did not know the names of the members and was not approached by the members.

Attorney Merolla testified that Attorney DeSisto told her CRMC would only go forward to mediation if the Town participated and she believed what he said. She also testified that she did not know that Justice Williams left any voicemails because she was not in her office, so the first communication from Justice Williams that Attorney Merolla received was the email from him on December 3, 2020. She further testified that, "I don't remember anything about that call" with Justice Williams following the Town Council meeting of December 7, 2020. Tr. 146, July 29, 2021. Attorney Merolla was excused, and her testimony concluded at a later date.

When Attorney Merolla returned, she testified that her recollection regarding the conversation with Justice Williams remains the same in that she has no recollection one way or the other. Attorney Merolla testified that she clerked for Judge Kelleher for the court year 1979-1980. (Justice Williams indicated he referred to this during his telephone call with her.) Attorney Merolla testified that Attorney Prentiss was at the Town Council meeting of December 7, 2020 because he represented the Town in this matter, but she did not remember who notified him.

Attorney Merolla testified that regarding the CRMC vote to enter into mediation with Champlin's, she did not verify the vote because she received an email from counsel for CRMC, and because the email was plain English and there was nothing to verify. She asserted that she believed what Attorney DeSisto told her in the email, that CRMC would not go into mediation unless the Town participated. Attorney Merolla testified that she received an email from Justice Williams on December 3, 2020, and she responded that the Town Council had the item on the agenda for December 7, 2020, and she would let them know what the council's vote was. She further testified that she chose to respond by email, and the email did not raise any questions as to the circumstances of the condition of mediation.

Attorney Merolla testified that she did not know whether the meeting minutes for the December 7, 2020 meeting had been adopted. She also testified that she does not get involved in the administrative aspect of the Town. Attorney Merolla testified that she was aware that Justice Williams testified that she had a telephone call with him on December 8, 2020. She also testified that she did not review Justice Williams' testimony and only reviewed the transcripts of the pretrial hearings, not any of the testimonial transcripts. To prepare for her testimony, Attorney Merolla reviewed the emails between Attorney DeSisto and Justice Williams. Attorney Merolla testified that she has seen the CRMC meeting agendas, but she could not recall when she saw them. She also testified that she first learned about the subject of mediation in Attorney DeSisto's email of November 30, 2020. Attorney Merolla testified that she learned that the mediation had occurred when the motion was filed in January 2021 in the Rhode Island Supreme Court requesting that the Court adopt the MOU as a judgment. She also testified that until then she did not do anything to inquire or investigate whether the mediation went forward because she believed Attorney DeSisto's email.

Attorney Merolla testified that she cannot say whether or not she has any memory lapses. She reported that a family member had been quite ill at the time and she was not in the office. She also testified that she does not remember a phone call with Justice Williams, and her testimony is not going to change. Attorney Merolla testified that she did not participate in the preparation of the press release and did not know who drafted it. Attorney Merolla testified that because Attorney DeSisto's email stated, "on the condition that the Town participate" and did not mention the other respondents, then it was implied that they were not invited. Attorney Merolla verified that the press release did not mention any reference to Attorney DeSisto's email. Attorney Merolla testified that it is her practice to protect her client as much as possible and sometimes speaking publicly about a case does not help.

On examination by Mr. DeSisto, Attorney Merolla testified that she has been the Town Solicitor for a continuous fifteen years and there are assistant solicitors. She further testified that she provides advice to certain boards and commissions. She also testified regarding the Town Charter. Attorney Merolla also testified that she was not aware of the case *Block Island Land Trust v. Champlin's Realty Associates*.

As Attorney Merolla was a vital witness on the issue of notice, this case proceeded without a jury and, in the hope that a direct question from the Court may assist in her recollection, the Court presented questions directly to Attorney Merolla. She indicated that attorneys talk about her dad all the time because he was legal counsel to the Governor and other positions. Ms. Merolla testified that people talk about her dad to her very frequently. In the same, inquiring about Justice Kelleher did not seem to spark a recollection. Attorney Merolla also testified that she does insurance defense work where tracking time is important and there are codes that she uses to track her time. However, she testified that she does not always put down everything. She indicated

that she does not have time to keep all the time. Attorney Merolla did not directly answer whether she tracked her time for New Shoreham, until the Court asked her directly. To this, she replied that she didn't know whether she had a time entry for her conversation with Justice Williams.

The Court knew Attorney Merolla to be an experienced, respected, intelligent, organized attorney prior to her testimony. Her repetitive response that she 'simply does not recall' the pivotal conversation assisted her in avoiding direct questions. This was not credible. Even when the Court inquired, she seemed to deflect questioning on her conversation with Justice Williams, any notes of it, or any time entries. This was the crux of her testimony—an important, relatively recent telephone call with a retired Supreme Court Chief Justice and prominent mediator regarding an actively litigated, publicly charged case—placing her in an awkward position. It raised the likelihood of settlement discussions for a case that had been to the Supreme Court, had two contested evidentiary hearings at the Superior Court, and had been a dominant issue in the town she represents. She had avoided the justice's telephone calls for several days, knowing that he wanted to speak with her. She knew the issue of the telephone calls would be important in this litigation because of previous motions, and, with a delay in her testimony, she had substantial time to think about it. Even recognizing that she had a substantial health concern in her family, the Court is left to seriously question her credibility when she indicates she does not recall the conversation and avoids indicating that there are notes or time entries of it.

viii. Raymond Coia.

Mr. Raymond Coia has been a member of the CRMC since 2002 and was a member when CRMC decided the Champlin's application in 2005. He was also a member when CRMC decided the remand in 2010.

Mr. Coia testified that since September 2013, and to the present, he communicated with Attorney Goldberg in social settings but never about the merits of the Champlin's application. He also testified that he has communicated with Attorney Thomas DiPrete but did not communicate with Joseph Grillo, although he knew that Mr. Grillo was the prior owner of Champlin's. He then clarified that he did talk to both attorneys in reference to the mediation but not outside the scope of the mediation. He indicated that he has never been to Champlin's marina.

In terms of the mediation, Mr. Coia testified that he became aware of the mediation after the Supreme Court granted *certiorari* and was told about the mediation by Attorney DeSisto. He testified that he did not communicate with Attorney Goldberg before the mediation, but Justice Williams told him about the mediation in an email sent to the parties who were participating. Mr. Coia testified that the mediation was at the end of November 2020 and took place at a hotel near the CRMC offices.

In terms of the CRMC meeting email blast, agenda, and meeting minutes, Mr. Coia testified that he would sometimes get them in a separate email than the email blast, but that he got them in one way or another before the December 29, 2020 meeting. He further testified that it was his understanding that the outcome of the mediation was to be dealt with at the December 29 executive session. He testified that he voted to approve the MOU.

Mr. Coia's testimony was brief. He was responsive to all questions, professional, courteous, consistent, thoughtful, and not argumentative. His testimony was never contradicted or placed in issue, and the Court found him to be highly credible.

ix. Lisa Turner.

Lisa Turner was called by counsel for CRMC. Ms. Turner works at CRMC as the office manager; she has worked there since 2003. As office manager, she makes sure the office runs

smoothly, supervises the administrative staff, works with the Executive Director and Deputy Director on their ongoing projects, schedules meetings, prepares agendas, and pretty much anything they request of her. Her duties include preparing and sending out notices when the CRMC is scheduling any hearing as well, either of a subcommittee or the CRMC, including contested cases. In doing so, she prepares an email mailing list on a case-by-case basis including those who should receive notices in that particular matter.

Ms. Turner testified that she prepared the agenda for the CRMC meeting of November 24, 2020, and she prepared the minutes. Ms. Turner was in her position as office manager when the Champlin's permit was pending before CRMC in 2012. She could not recall whether Attorney Prentiss was on the email list for the notices of hearings in the Champlin's matter before CRMC in 2011 and 2012 but knew he represented Intervenor parties and knew that it is a general practice in contested cases to prepare a mailing list to all parties involved in the matter. Ms. Turner explained that Attorney Prentiss was not included in the November 24, 2020 meeting notice because it was not a public notification, but only a notification of a meeting where the Champlin's matter was to be discussed in executive session rather than the application being heard. Ms. Turner testified that the MOU was posted to the CRMC council's web page, not the public website of the CRMC, because it was not accepted by the council.

On cross, Ms. Turner testified that the CRMC meeting notices list the Town Clerk for the Town of New Shoreham as a recipient of the email. Additionally, she was familiar with the name Donald Packer as the New Shoreham Town Solicitor. Finally, she testified that Jerry Elmer of the Conservation Law Foundation was also listed on the meeting notice.

Ms. Turner spoke clearly, was highly responsive to all questions, intelligent, courteous, and described the procedural aspects of the notices. Her credibility was never directly challenged, and the Court found her highly credible.

x. Grover Fugate.

Mr. Grover Fugate was called by Attorney Prentiss for the private Intervenors. Mr. Fugate was employed as Executive Director with the CRMC from February 2, 1986 until May 29, 2020. As Executive Director, Mr. Fugate was involved in well over one hundred contested cases, if not more. Initially, his role would be in preparing and overseeing the staff reports that go to the council and, once it was into the record before the council, he was responsible for overseeing staff to ensure that the record was complete and kept in good order during the proceeding itself. Once a decision was rendered by the council, a final decision would be prepared with legal counsel and sent out for the thirty-day appeal. Mr. Fugate explained that the primary reason a case would be a contested case would be when there were other parties who appeared in opposition to the application. Mr. Fugate testified that objectors would be treated equally with the applicant in terms of the way that they were allowed to proceed through the process, either by cross-examining the staff or reviewing reports, and presenting evidence. He explained that the same is true with respect to receiving notice of any proceeding or activity of the CRMC regarding an application.

Mr. Fugate testified that contested proceedings have been held with intervenors, where the CRMC issued a final decision and the case was appealed to Superior Court. Mr. Fugate also testified that there was a mediation that was attempted in the Champlin's case a number of years ago and that he participated in that mediation.

Mr. Fugate testified that CRMC made its final agency decision in the Champlin's case following remand sometime in September 2013 and thereafter an appeal was taken by Champlin's

to the Superior Court. Pursuant to statute and under his direction, the CRMC forwarded the entire administrative record to the Superior Court in connection with the appeal. Tr. 84, Aug. 2, 2021.

On cross, Mr. Fugate testified that he had been involved in contested cases that were denied. He further explained that if the CRMC had denied an application without prejudice then the applicant could reapply provided the circumstances regarding the application had changed, such as the scope of the application or the location changed. In such a situation, the application would be treated as a new application. He further explained that if the CRMC received the same application and there had not been a material change in the application, the council has invoked the doctrine of administrative finality and has not processed the application.

On further cross, Mr. Fugate testified that he supervised Mr. Goulet when he was Executive Director. Mr. Fugate testified that he directed Mr. Goulet to come up with alternate plans when this matter was before the council and that Mr. Goulet did complete that task.

Mr. Fugate was present in Court under subpoena, and he discussed the nature of the questions he would be asked with Attorney Prentiss prior to his testimony. He was not being compensated in any way for his testimony other than travel costs.

Regarding settlement of cases, Mr. Fugate testified that he was familiar with situations where the parties would reach a settlement and then seek approval of the court for the settlement, and it was not unusual to try and settle while the parties were in court. He further testified that if an order from the Supreme Court was to settle a case, the CRMC would settle the case. He also explained that he is aware that there is a desire within the Court system to try to use mediation at times to resolve issues, and that he is familiar with mediation and has participated in mediation on behalf of CRMC a couple times. Mr. Fugate testified that the CRMC was the entity vested with the authority to grant or deny these contested cases, and his role as Executive Director was an

advisor to the CRMC council because he worked for them, and if they told him to mediate a case he would do so. When mediating a case, Mr. Fugate testified that if a party refused to participate in mediation, the mediation would go forward, but everyone would be notified at every point along the way as to what was happening. Mr. Fugate testified that he believed the council has an obligation to provide notice and send out notices to that effect, and if the council ordered the mediation to go forward without them, then that would happen.

Mr. Fugate testified that he was involved in retaining Attorney Prentiss in the Vineyard Wind Project which was while the Champlin's case was underway and pending, and Champlin's was not notified. His retention was with the Chair and the Governor's concurrence. He testified that there was a fee agreement with Attorney Prentiss.

Mr. Fugate further testified that the parties to a contested case included all the parties that were listed under appeal. He further explained that if an agreement was reached and the matter needed to go back before the council because it was a contested case, notice would be sent of a hearing date and notice would be sent of the final decision.

Mr. Fugate was not a cooperative witness for CRMC or Champlin's, appearing to be reluctant about either the mediation or the application itself. He told of past practices of the CRMC and other mediations. Most of his testimony was a discussion of past procedures and, to this extent, he was never contradicted, deliberate, responsive, respectful, clear, and reasonably credible, but protective of the past actions of CRMC.

xi. Jeffrey Willis.

Mr. Jeffrey Willis was called by Attorney Prentiss. He is employed by CRMC as the Executive Director. He started at CRMC as an intern in 1988 and has also held positions as a research associate, an environmental planner, supervising environmental planner, deputy director,

acting director, and executive director. He became deputy director in 2002, just before the Champlin's application was originally filed with the CRMC. He became acting executive director in June 2020. Mr. Willis testified that if any issue came up with the Champlin's case while he was acting director he would have responsibility of that. The first activity of Champlin's that Mr. Willis was involved in as acting director was the mediation.

Mr. Willis testified that he first became aware of the topic of mediation of the Champlin's case sometime before November 20, 2020. He also testified that he was aware there were intervenors in the matter. Mr. Willis testified that he was present at the November 24, 2020 executive session of the CRMC. He also testified that he attended the mediation.

Mr. Willis testified that there were other drafts of the MOU. He also testified that he was aware that Attorney Prentiss submitted an Access for Public Records Act request for documents related to the Champlin's matter, and Mr. Willis participated by gathering the documents that he had. The documents that he gathered may have included prior drafts of the MOU. Mr. Willis testified that he searched the Champlin's folder of his email and forwarded the documents and emails he had.

Mr. Willis testified that the CRMC had a regularly scheduled meeting between the November 24, 2020 meeting and the December 29, 2020 meeting, and Champlin's was not considered at that meeting. Mr. Willis testified that he did not read the Superior Court decision issued in this case in February 2020. Mr. Willis testified that he would have the office manager post agendas because his role as the Executive Director is to have the agency notify as appropriate when an agenda is published. He further testified that his intent was to have the agenda available, and to notify those who receive it that it could be in an executive session.

Executive Director Willis testified that throughout his career he became familiar with the CRMC programs and regulations. He testified the CRMC follows the regulations to the best of their ability. Mr. Willis also testified that the CRMC has regulations governing the settling of contested licensing proceedings, and the procedure would continue with the review of the application, but he did not recall specific language regarding management procedures that govern how the agency can engage in settlement of a contested case where there are intervenor parties to the case.

On cross, Mr. Willis testified that the potential mediation was never publicly discussed at the CRMC. He also testified that the mediation and the multiple draft versions of the MOU were never presented publicly. Mr. Willis then testified about findings of fact found in the 2011 decision and whether those issues were addressed in the MOU. Mr. Willis testified that he is familiar with the Jamestown Boatyard case, and he was present for the April 13, 2020 meeting for the ratification of the Jamestown Boatyard issue. Mr. Willis also testified that he did communicate with Jim Hummel from the Providence Journal after the MOU was ratified. Mr. Willis testified the communication was about questions on the process of mediation. He also testified that he was mistaken and thought the mediation was required by the Supreme Court.

On further examination by Attorney DeSisto, Mr. Willis testified that the Rhode Island Department of Environmental Management issued a water quality certification for matters of this nature. Tr. 57, Aug. 4, 2021. He also testified that a water quality certification was issued for the Champlin's application, and as the CRMC application is pending, the water quality certification is still in effect. He testified that the original application was for an extension of 240 feet and the expansion for the MOU is not for 240 feet, but the proposal now is for 156 feet. He also testified that the original application filed by Champlin's has not been withdrawn.

Mr. Willis also testified that in the course of his employment at the CRMC he deals with the CRMC plan on a regular basis. Mr. Willis testified that he was at the December 29, 2020 CRMC meeting and when the council came out of executive session they voted to seal the minutes and voted to execute the MOU in open session. He testified that the "Red Book" was originally developed back in the late 1970s into the early 1980s with a red cover so the regulations of the Coastal Resources Management program have always been carried forward as the Red Book, but they are also referred to as the Rhode Island Coastal Resources Management program. He further explained that it is the regulatory document to the State of Rhode Island, and there are also specific management programs for discrete geographic or purpose, but the Red Book is the larger statewide regulatory program.

Mr. Willis testified that after the council voted to approve the MOU and authorized him to sign it, he did sign it. He did not know the order in which the MOU was signed.

Mr. Willis was very respectful and professional.

xii. Keith Stover, Member of the New Shoreham Town Council.

Mr. Keith Stover was called by Attorney Prentiss. He lives in the Town of New Shoreham, has owned a house there for thirty years, and has lived there permanently for the last four years. He is a newly elected member of the Town Council of New Shoreham, sworn into office on December 7, 2020, and he was present during the executive session of the Town Council on December 7, 2020. Councilperson Stover identified the people present at the meeting were the five members of the Town Council, Attorney Prentiss, and Town Solicitor Merolla. Mr. Stover testified that one of the topics discussed was Champlin's. He testified that as a member of the council he made a decision as to how he would vote regarding the mediation proposal described

in the December 7, 2020 meeting minutes. There was a resolution made for the council to vote which was to decline the offer to enter mediation, and he voted in favor of the motion to decline.

On cross by Attorney Goldberg, Councilperson Stover testified that he had never met Attorney Goldberg and never spoke to him about this case or any other cases. He testified that he was not present under subpoena but was asked by Attorney Prentiss to give testimony. The councilperson testified that he spent decades as a lobbyist in Connecticut, he testified that he is not an attorney, and this was his first time testifying in a courtroom setting, but he had been deposed previously in his role professionally and had spoken at a number of hearings. As a lobbyist, he represented multiple industries, but had a lot of insurance clients and other large corporate clients, universities, and tax stuff. The position on the Town Council is his first venture into elective office.

Councilperson Stover testified that he was elected in early November 2020 before being sworn in on December 7, 2020. Before being sworn in, he completed a training for first time municipal elected officials at Bryant University. He testified that he had no preparation or study over the whole Champlin's matter prior to assuming office. The Councilperson testified that his wife and he have contributed to the Block Island Conservancy and the Nature Conservancy from time to time, but not the Committee for the Great Salt Pond. However, he testified that he knows many of the members of the Committee for the Great Salt Pond.

Regarding the December 7, 2020 Town Council meeting, Councilperson Stover testified that the meeting was conducted remotely, and that Attorney Prentiss appeared at the meeting as did Town Solicitor Merolla. The councilperson testified that he did not know why there was no final adopted version of the Town Council minutes for the December 7, 2020 meeting because the council approved minutes at every meeting. He testified that he recalls voting to approve these

minutes and in all likelihood they were approved in January 2021, but he did not recall the exact date. He was unsure, as December 7, 2020 was his first meeting, who the lawyers were representing and whether Attorney Prentiss was there representing the Town. Councilperson Stover testified that he did not know what the purpose of the December 7 meeting was before he was in the meeting; he testified that after he left the meeting, he understood the purpose of the meeting was to vote on whether or not to participate in mediation with Champlin's. He testified that this was the first time the subject of participation in mediation with Champlin's had come up to him. He testified that he did not recall any substantive conversations about Champlin's mediation after the December 7, 2020 meeting. Mr. Stover did not recall ever seeing the CRMC agenda notices for the November 24, 2020 meeting or the December 29, 2020 meeting, but he did not doubt that it was sent to him by the Town Clerk.

Councilperson Stover testified that his attendance at council meetings thus far has been 100 percent. He also testified that he has had discussions outside of council meetings concerning the Champlin's mediation and that "after all these years the Champlin's case is in the ether." Tr. 101, Aug. 4, 2021. He further explained that the matter was widely known and discussed, and he was sure he discussed it with land trust leadership, the Block Island Conservancy, and the Committee for the Great Salt Pond. He testified that Attorney Prentiss was not always present for those discussions.

Councilperson Stover testified that he keeps in touch with his constituents and "keep[s] [his] ear[s] to the ground." *Id.* at 102. He tries to familiarize himself with what is the hot topic and what is not within his jurisdiction, and he reads the Block Island Times regularly. He testified that people are always talking about the Champlin's case and that the expansion and mediation was a topic of conversation between December 7, 2020 and January 13, 2021. By "ether,"

Councilperson Stover explained he meant that certain issues are pervasive in a particular environment. He further testified that in the New Shoreham community the Champlin's Marina expansion is one of those things that pervades the conversation.

Councilperson Stover testified that the January 13, 2021 press release was released in conjunction with all the other Intervenors in the case. He testified that the email trail between Justice Williams and Solicitor Merolla was familiar to him, but he could not remember when he first saw it. Pl.'s Ex. 4. Mr. Stover was not aware of a phone call to Justice Williams from Solicitor Merolla on December 8, 2020. He testified that he did not recall Solicitor Merolla talking about a conversation with Justice Williams. Mr. Stover testified that he did not remember the exact date that he learned that an agreement had been reached between Champlin's and the CRMC but it was likely in January 2021, and he did not recall how he learned of the agreement. He also testified that he did not recall when he first saw the press release.

On cross by Attorney DeSisto, Councilperson Stover testified that his constituents comprise between 1,000 and 2,000 residents. He testified that the Town Council is an at large council. He testified that he knew his fellow council members before being elected to the Town Council, but that he was unsure about the makeup of the boards of the Intervenor groups. The councilperson testified that he familiarized himself with the New Shoreham Town Charter, and he was familiar with the section that grants the Town Council the authority to hire the Town Solicitor and special legal counsel. He testified that he does not recall voting to retain Attorney Prentiss, but that he understood that Attorney Prentiss had been involved in the case for a long time for the Town and the other Intervenors.

Councilperson Stover was very confident, seemingly anxious to provide testimony at the outset. His direct testimony seemed to be shortened by council, and the Councilperson seemed

engaged at the beginning of cross. When asked about Attorney Prentiss' role and engagement, he seemed taken aback and looked at Attorney Prentiss more, at least until Attorney Prentiss acknowledged that he represented the Town at the council meeting. He then seemed to be unsure which meetings Attorney Prentiss had been present at. The Court found him to be intelligent in knowing his role and quick to discount his lack of experience when he knew the importance of the issues before him. He became a reluctant witness, surprised about the lack of approval of the minutes, hesitant about knowing specific Town Charter or press release language. The Court therefore found his testimony to be more questionable.

xiii. Anthony DeSisto.

After extensive hearings on objections and the engagement of substitute counsel, Attorney Anthony DeSisto was called by Attorney Prentiss. Attorney DeSisto is a private attorney and is the legal counsel for the CRMC. He has served as legal counsel for the CRMC since 2016 and, in that capacity, he advises counsel and staff, represents the CRMC in court and in other matters, and gives advice when necessary. Attorney DeSisto testified that he made a call to Justice Williams regarding the Champlin's case the week of November 30, 2020 where he informed Justice Williams that there was some concern about CRMC not going forward unless the Town of New Shoreham participated along with the other Intervenors, and that, as far as CRMC was concerned, the mediation would go forward even if the Town and the other Intervenors did not participate. Attorney DeSisto testified that after the November 24, 2020 meeting, the CRMC met on December 8, 2020, but the Champlin's matter was not on the agenda for the meeting.

Attorney DeSisto testified he was counsel to CRMC on February 11, 2020 when Judge Rodgers issued a decision on the Champlin's appeal. He testified that he thought Attorney Prentiss represented the Committee for the Great Salt Pond but did not know if he served as appointed

counsel for the Town. However, as of December 8, 2020, Attorney DeSisto knew that Attorney Prentiss was lead counsel for the Town and for the other Intervenors.

Attorney DeSisto informed Solicitor Merolla that the CRMC had voted to mediate with Champlin's on the condition that the Town also participate and, on December 8, 2020, Solicitor Merolla informed Attorney DeSisto that the Town Council voted to decline the invitation. Attorney DeSisto testified that during the week of November 30, 2020 he had concern whether the Town would participate so he informed Justice Williams that the mediation would go on whether or not the Town said yes. Attorney DeSisto further revealed that he had been afflicted with COVID-19 and he called Justice Williams to let him know he was ill, and he informed Justice Williams he had made a mistake in communication with Solicitor Merolla where he overstated the position of the CRMC. Justice Williams said he would take care of contacting Solicitor Merolla again. Because Justice Williams said he would take care of contacting Solicitor Merolla, Attorney DeSisto felt he did not need to communicate with her further. Attorney DeSisto testified that Justice Williams informed him that the justice asked for the participation by the Intervenors and he was told they would not participate. He testified that Justice Williams told him that he had said to Solicitor Merolla that CRMC and Champlin's would proceed on their own with the mediation. Further, Attorney DeSisto testified that Justice Williams told him that under no circumstances would the Intervenors participate in the mediation.

Attorney DeSisto testified that he did not know why he did not send Attorney Prentiss an email to tell him, as counsel for the Committee for the Great Salt Pond, that the CRMC would engage in mediation with Champlin's, and he did not know why he did not identify who was counsel for the other Intervenors and inform them of the same. He testified that he attended the CRMC meeting and the mediation by Zoom videoconferencing.

Attorney DeSisto was responsive and courteous to all counsel and appeared forthright. He acknowledged that he informed Attorney Merolla that the mediation was conditioned on the Town's participation, but after their reluctance and the justice's intervention, the mediation proceeded without them. He revealed the limits of his knowledge, unable to say why he did not contact Attorney Prentiss. It was surprising to hear that he participated in the mediation and council meeting remotely because of his illness, but he appeared quite forthright on the stand. His calm, responsive answers were also pleasantly direct, given that he must have been dismayed when suddenly required to testify. Moreover, he was under scrutiny for having informed New Shoreham that the mediation would not proceed without them. His answers were consistent with those of Justice Williams, it appearing to the Court that the justice pressed for a continued mediation as a means of reaching a partial accord. The Court found Attorney DeSisto's testimony to be both credible and uncontradicted by other evidence.

xiv. Maryann Crawford.

Ms. Maryann Crawford was called by Attorney Goldberg for Champlin's. Ms. Crawford is employed by the Town of New Shoreham as the Town Manager and has held this position since August 24, 2020. As part of her routine duties as Town Manager, she attends the Town Council meetings. Town Manager Crawford testified that the Champlin's expansion application was on the docket for the December 7, 2020 Town Council meeting. She testified that the issue at that meeting was that Solicitor Merolla reported that she had been approached by Attorney DeSisto with an offer for mediation. Town Manager Crawford learned about the offer of mediation about seven days before the Town Council meeting from Solicitor Merolla. The Town Manager testified that they decided it would be best to bring the offer before the council so it could make the determination or decision.

Town Manager Crawford testified that Attorney Prentiss was at the Town Council meeting of December 7, 2020, and she did not know why his presence was not noted on the meeting minutes. Ms. Crawford testified that she did not discuss the offer of mediation with anyone in advance of the Town Council meeting.

The Town Manager testified that she works with the Town Clerk and the First Warden and sometimes the Second Warden to prepare the agendas for the council meetings. She testified that the Town Clerk would have posted the agenda, but she recalled preparing and working on the agenda. She was not aware whether the December 7, 2020 minutes had been formerly approved by the council, and she did not know why the Town Clerk had not presented the minutes for approval. She did not have any information regarding whether the minutes were prepared at the request of Attorney Prentiss, and she did not inquire about where these minutes were from December 2020 through the present.

Town Manager Crawford next testified about the January 13, 2021 Town Council meeting, a meeting she was present for, and where the council approved a joint press release. Pl.'s Ex. 18. She testified that she first saw this press release sometime before the January 13 meeting, but she did not recall specifically when. Ms. Crawford testified that council members were involved with preparing the press release with the Committee for the Great Salt Pond; she indicated that "the bulk of this was done by others," and she reviewed it. Tr. 70, Aug. 12, 2021. By others she explained that included the Committee for the Great Salt Pond, the Land Trust, two council members, a PR company, and maybe the Nature Conservancy. She was not involved in drafting the press release. The Town Manager did not know the name of the public relations company involved, and she did not work directly with it, and she did not know who was paying it.

Town Manager Crawford testified that she did not know where the substance of the contents of the press release came from, and she did not check the facts in it. She further testified that when she found out about the possibility of mediation in the Champlin's matter she did not do anything to follow up on that possibility. She testified that the Town Clerk was on the list of recipients of the agenda for the semi-monthly virtual meeting of the full council in November 2020; however, the Town Manager testified that she did not remember seeing the agenda and did not do anything in regard to the agenda. She testified that she did remember seeing the agenda for the CRMC meeting on December 29, 2020, but she did not do anything in response to receiving the notice. Pl.'s Ex. 13.

Town Manager Crawford testified that she was not sure if the Champlin's application was widely discussed on Block Island between November 2020 and January 13, 2021. She was unaware if there were any discussions with anybody outside of the council members concerning whether or not the Town should join in mediation. Ms. Crawford testified that she did not call anybody from CRMC concerning mediation of the Champlin's case and did not call anybody from Champlin's.

Town Manager Crawford was courteous, proficient, and respectful to counsel. Her testimony was not very helpful to the Court as it was not terribly revealing. It was odd that she helped decide that the mediation issue should be brought to the Town Council, then recalls little about the discussion or aftermath. She also recalled no discussion among the Town in opposition to Councilperson Stover. Given her position she would want to be protective of the Town. While the Court does not have a significant reason to question her credibility, her testimony added little to the controverted facts.

xv. Sven Risom.

Mr. Risom was called by Attorney Goldberg for Champlin's. Sven Risom is a member of the Town Council of the Town of New Shoreham and holds the position of Second Warden, an elected position. If the First Warden cannot be at the meeting, then the Second Warden runs the meeting. He has held this position since November 2020 and before that he was a member at large for three years. He was first elected to the Town Council in 2018, but he was appointed in 2017 after a former member had passed away—he was appointed to fill that vacancy for a year, and then he was up for election. Second Warden Risom is also a member of the intervenor group, the Committee for the Great Salt Pond, and he has been a member of that group for approximately seven or eight years. He is the treasurer for the Committee for the Great Salt Pond, a position where he is elected by the members, and has been for approximately two years, and he had been the president for three or four years. Outside of public service, his family owns a yarn business on Block Island.

In his capacity as a member and officer of the Committee for the Great Salt Pond, Second Warden Risom has been involved in the Champlin's litigation; he testified many years ago at a CRMC hearing and worked with Attorney Prentiss in his capacity as legal counsel to the Committee. Second Warden Risom testified that his service as a Town Councilperson and with the Committee for the Great Salt Pond are distinct and separate but that the time period of his service did overlap. In his capacity as an officer of the Committee for the Great Salt Pond, he participated in the hiring of a lobbyist. The lobbyist was hired because there were a number of issues that the Committee for the Great Salt Pond saw in front of them, not specifically about the Champlin's application.

Second Warden Risom did not recall whether or not the minutes for the December 7, 2020 Town Council meeting had been approved by the council. He testified that it would be unusual not to approve or review a set of minutes that far back, but he does not have any specific recollection of seeing the meeting minutes from the December 7, 2020 meeting. He was at the December 7, 2020 meeting and did not recall whether Attorney Prentiss was at the meeting. He testified that he did vote at the meeting regarding the offer to mediate. Prior to voting Second Warden Risom did not indicate on the record his involvement with the Committee for the Great Salt Pond, but he testified that everybody knows he is on the Committee.

Second Warden Risom testified that he learned about the invitation to participate in mediation by email at the end of November or early December 2020 from counsel for the Committee for the Great Salt Pond. He also testified that the subject of mediation between the Champlin's parties was discussed at the Committee for the Great Salt Pond meetings in February or March 2021. He testified that he did not believe that the Committee for the Great Salt Pond had an executive board meeting in November or December 2020, but they had regular meetings in November 2020. Mr. Risom testified that the subject of mediation in the Champlin's case did not come up at the meeting in November 2020. He did not think there was a meeting in December 2020, but at the January 2021 meeting the subject of the litigation came up though the mediation was never discussed. He testified that he did not recall if the Committee for the Great Salt Pond voted whether to participate in mediation. Second Warden Risom testified that the Committee for the Great Salt Pond hired a publicist named Joe Baerlein to represent them in the Champlin's matter; he was hired in January or February 2021. The purpose of hiring him was to help the Committee for the Great Salt Pond communicate "these issues." Tr. 45, Aug. 12, 2021. He testified that since the Committee for the Great Salt Pond had a meeting on January 21, 2021 where

the minutes of December 17, 2020 were approved, there must have been a December 2020 meeting. Pl.'s Ex. 22. However, he did not recall whether the Champlin's mediation was discussed at the November or the December meeting.

Second Warden Risom first learned of the subject of Champlin's mediation with a note from counsel for the Committee for the Great Salt Pond at the end of November 2020. He further testified that the CRMC agendas are forwarded to everybody on the Town Council when they come out. He also testified that the agenda was sent to the Town Clerk, and that the agenda indicates that litigation concerning Champlin's and CRMC was listed. He testified that he did not do anything to follow up and did not report this to the Committee for the Great Salt Pond. He also testified that he was not tracking the Champlin's litigation in his capacity as Second Warden or as Treasurer of the Committee for the Great Salt Pond. He testified that the Committee for the Great Salt Pond was involved in preparing a press release concerning the Champlin's mediation.

Mr. Risom testified again that he learned of the offer of mediation at the end of November 2020 from an email from the Committee for the Great Salt Pond's counsel, but he did not recall the exact date. He testified that this email was also sent to the other parties at that time but talked about a communication Attorney Prentiss had with the Town's attorney, Solicitor Merolla, rather than discussing the mediation itself. He testified he did not try to find out what the details were because it was his understanding that there would be a Town Council meeting on December 7, 2020. Mr. Risom testified that he did not feel an obligation to discuss anything with the Committee for the Great Salt Pond or with the president of the Committee for the Great Salt Pond or with any of the other Intervenor groups.

Regarding the press release that was prepared, Second Warden Risom testified that Mr. Baerlein's office prepared the press release and others had input, edits, and comments. The

"others" he referred to are the Committee for the Great Salt Pond, Andy Dupont, the Land Trust, and Attorney Prentiss. Second Warden Risom testified that he did fact check some of the facts from the press release, and that the objective of the Committee of the Great Salt Pond participating in the press release was to make clear the position that the Committee and others took because it had been a long issue. Tr. 103, Aug. 12, 2021.

Second Warden Risom testified that he was appropriately described as an opponent of Champlin's. He testified that he did not know anything about the conversation between Solicitor Merolla and Justice Williams. He then testified that he "did not know anything about any conversations like that until very recently," and he "did not know anything about it at that time." *Id.* at 105-106. The Second Warden then testified that he heard that there are "questions about any conversations with Williams and Merolla." *Id.* at 106. He testified that he heard that from Solicitor Merolla after the hearing in this Court started. Mr. Risom testified that he did not know if Solicitor Merolla had done anything to engage in mediation or discuss mediation with the CRMC since November 30, 2020 and he did not know if the Town's position on mediation changed at all since December 7, 2020.

On examination by Attorney DeSisto, Second Warden Risom testified that he knew Tom Palmer as part of the Baerlein team and he worked with the Baerlein Group on this matter. Second Warden Risom testified that he did not discuss the potential for mediation with the president for the Committee for the Great Salt Pond. He also testified that there are many issues before the Town of New Shoreham, and the Champlin's expansion is one of many, but given the long history, it is talked about. He testified that he has had meetings with the CRMC in connection with other issues about a handful of times, but he has never had any communications with the staff since November 2020 regarding the Champlin's issue.

Second Warden Risom's testimony was revealing in indicating that he, and others, knew of the mediation in November 2020, but did nothing about it. He was reluctant to show animosity toward the Champlin's application until it was clear that he had been labelled as an opponent, when he seemed to embrace the label. He then lessened the importance of the issue on Block Island, in contrast to Councilperson Stover's testimony. It was odd that he did not try to find the communications between the attorneys and the mediator, given his involvement in the issue. Second Warden Risom seemed personable, respectful, and his answers were deliberate, though he often seemed to be trying to understand the direction the examiners were heading toward. Clearly, he wanted to protect the opposition to Champlin's and did not wish to assist Champlin's at all. His credibility is therefore lessened, but where he acknowledged openly that he had received word of mediation in November 2020, the Court finds that contrary to his interest and very credible.

IV

Analysis

A

Did CRMC and Champlin's Have Authority to Mediate?

A threshold issue presented to this Court in this remand is whether the CRMC and Champlin's had the authority to mediate this litigation—considering the procedural posture of the case—an appeal had been filed in the Superior Court, the Superior Court issued a decision regarding the appeal, and the Supreme Court granted writ of *certiorari*.[2]

[2] Champlin's suggests that the Intervenors have waived their opportunity to question the authority to mediate or the results of the mediation, as they decided not to participate in mediation, referencing *Sturbridge Home Builders, Inc. v. Downing Seaport, Inc.*, 890 A.2d 58, 65 (R.I. 2005). The Court rejects this contention.

At the outset, our judicial system recognizes that alternative dispute resolution is favored; it aids in judicial economy and is frequently beneficial to the parties involved, presses the parties to resolve their own differences and reach an acceptable accord, and generally costs less than lengthy litigation. Furthermore, the Rhode Island Supreme Court has frequently encouraged parties to engage in meaningful settlement negotiations. *Ryan v. Roman Catholic Bishop of Providence*, 941 A.2d 174, 186 (R.I. 2008) (citing *Greensleeves, Inc. v. Smiley*, 942 A.2d 284, 294 n.19 (R.I. 2007)) (describing the long pendency of that case as regrettable and expressly encouraging "the parties and their attorneys to make every effort to dispose of the remaining bone of contention at this time by engaging in meaningful settlement negotiations"); *Northern Trust Co. v. Zoning Board of Review of Town of Westerly*, 899 A.2d 517, 520 (R.I. 2006) (mem.) ("[w]e are keenly aware of the judiciary's obligation to see to it that litigation be not unduly or improperly prolonged"). The Court further explained that "[i]t is very much an important part of the policy of the courts of Rhode Island (and courts in general) to encourage the amicable settlement of disputes, whether by mediation or otherwise." *Ryan*, 941 A.2d at 186 (citing *Zarrella v. Minnesota Mutual Life Insurance Co.*, 824 A.2d 1249, 1253 n.2 (R.I. 2003)) (observing that "the parties would have been better served by mediation"); *Skaling v. Aetna Insurance Co.*, 799 A.2d 997, 1012 (R.I. 2002) ("It is the policy of this state to encourage the settlement of controversies in lieu of litigation."); *see also United States v. Davis*, 261 F.3d 1, 27 (1st Cir. 2001) (noting that there is a "strong public policy in favor of settlements") (internal citations omitted); *Arruda v. Sears, Roebuck & Co.*, 273 B.R. 332, 345 (D.R.I. 2002) ("in Rhode Island, courts favor the settlement of litigation disputes"). Finally, the Court in *Ryan* stated, "[o]ur judicial system encourages settlement because it serves several laudable purposes, among them lessening the strain on scarce judicial resources and preventing litigants from sustaining significant costs." *Ryan*, 941 A.2d at

186. Recently, the Rhode Island Supreme Court has acknowledged the prudence of settling lengthy litigation. In *DeCurtis v. Visconti, Boren & Campbell Ltd*., 252 A.3d 765, 773 (R.I. 2021), Justice Robinson expressed, "I wish to echo the sentiment that is cogently expressed in footnote 10 of the Court's opinion to the effect that settlement of this long-brewing and complex dispute would be in the best interest of all concerned." *Id*. (citing *Skaling*, 799 A.2d at 1012) ("It is the policy of this state to encourage the settlement of controversies in lieu of litigation.")).[3]

Indeed, the judiciary now recognizes that it should take the posture of promoting resolution of cases pending trial and appellate review when it is possible and reasonable to do so. It is commonplace in modern litigation for two or more parties to meet on their own and focus on what they can agree on. This ranges from plea bargaining in criminal cases, mandatory arbitration in the texts of contracts, and professional mediation in everything from contested divorces to mass tort cases. Courts across the country have taken an active role in encouraging parties to open the doors of communication with adverse parties and to assist in that effort when it can do so fairly.[4]

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[3] Additionally, the Rhode Island Supreme Court Rules include the Appellate Mediation Program. Rule 35 of the Rhode Island Supreme Court Rules, entitled Appellate Mediation Program, states:

> "The purpose of this rule is to afford a meaningful opportunity to the parties in all eligible civil appeals to achieve a resolution of their disputes in a timely manner as early in the appellate process as feasible through the assistance of the Supreme Court Appellate Mediation Program and with the help of designated mediators."

The rule further states that "all civil cases that have been appealed from a trial court will be eligible for participation in this program with the following exceptions[.]" *Id*. The only exceptions are applications for postconviction relief, petitions for *habeas corpus*, cases brought by prisoners in the custody of the Department of Corrections, cases where one or more party is *pro se*, appeals from the family court, juvenile cases, and petitions for extraordinary relief; criminal cases are also not included in the program. *Id*. While this was a private mediation, not a Rule 35 mediation, the rule demonstrates that mediation is favored.

[4] In Florida, administrative agencies are required to advise on the availability of mediation. F.S.A. section 120.573. Massachusetts provides for alternative dispute resolution, including mediation, within its Division of Administrative Law Appeals. MGLA 7, section 414. Maryland requires its

It is not unusual for jurors to be summoned, witnesses to be subpoenaed, and date certain trials set by the courts, when—on the morning of the trial—the court is told that the case has settled over the weekend. While several of these cases may need court approval of the resolution (including all resolutions in criminal proceedings), settlements are often reached without court intervention or without the other parties knowing in advance. Therefore, it strains credulity when the various Intervenors here, including the Attorney General, claim it was inappropriate for the parties to even enter settlement discussions.

The initial function of the CRMC was to conduct an administrative hearing to determine whether to grant Champlin's an assent to expand the existing marina. Pursuant to Rhode Island's Administrative Procedures Act, G.L. 1956, chapter 35 of title 42, these hearings are conducted after a license application has been submitted to a state agency or a violation has been issued by that agency. Counsel from the agency present the agency's position at a quasi-judicial hearing while the applicant or alleged violator has a right to be heard. Pursuant to the rules of the Administrative Procedures Act and consistent regulations of the particular authority, an evidentiary hearing is conducted, and a ruling is issued. The parties are then afforded an opportunity to appeal that ruling to the courts. Section 42-25-15. The administrative hearings in this case concluded by the CRMC decision of September 27, 2013.

The role of the administrative agency changes after the final agency decision is issued. As it is the ruling of the administrative agency that is being contested, it is the agency or department

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administrative law judges to receive forty hours of mediation training for administrative law cases. *The Other Side of the Bench*, Maryland Bar Journal, 39-FEB MDBJ 58. The Federal Administrative Dispute Resolution Act explicitly authorizes the use of mediation to resolve controversies in its administrative programs, when the parties consent. 5 U.S. C. A. section 571(3).

which issued the decision who is called upon to defend it. The regulators, licensors, and departmental officials then represent the department or agency in the Courts.[5] While other parties may also advocate the department's position and the attorneys who prosecuted at the administrative hearing level may be the same attorneys who defend the administrative ruling, the judiciary is being called upon to determine whether that ruling was appropriate. As the role of the department or agency has changed from that of quasi-judicial authority to that of advocate for the agency ruling, it is logical to conclude that agency advocates can discuss their case and reach settlements when they have authority from the agency. Again, they no longer sit in a quasi-judicial role, but as an advocate of the agency decision.[6] Once an agency decision is appealed to the Superior Court pursuant to the Administrative Procedures Act, the agency becomes a party to the lawsuit and is subject to the same rules as other litigants. *See Sartor v. Coastal Resources Management Council*, 542 A.2d 1077 (R.I. 1988). The Administrative Procedures Act defines "party" as "each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party." Section 42-35-1(14). To conclude that there is no authority for a department to consider alternatives to its own decision would be to conclude that every administrative appeal must proceed to a full hearing on its merits, even where the department itself no longer desires to proceed.

This Court finds that when Champlin's appealed the CRMC decisions of January 11, 2011 and May 6, 2011, the CRMC's actions were no longer that of an administrative agency acting as

[5] Such cases are similar to appeals from various local authorities, such as zoning appeals per G.L. 1956 § 45-24-69.

[6] Our Supreme Court has condemned the practice of dual role of the prosecutor in an administrative case becoming the prosecutor while also serving in a quasi-judicial capacity. *Davis v. Wood*, 427 A.2d 332, 337 (R.I. 1981). Attorney DeSisto was neither the prosecutor (in a license application case where he was an advisor to the board), nor did he sit in a judicial capacity.

an adjudicator, but that of an administrative agency acting as an advocate before the judiciary. In other words, the CRMC became a party to the appeal in the Superior Court. As such, the CRMC and Champlin's, as two parties, could enter settlement discussions and proceed to mediation. During this ten-year travel, it is probable that they were encouraged by several judges to do so.

The CRMC statute provides the CRMC with explicit authority to mediate or otherwise resolve contested cases. CRMC officials testified that it is a practice to mediate contested cases. The statute provides:

> "All contested cases, all contested enforcement proceedings, and all contested administrative fines shall be heard by the administrative hearing officers, or by subcommittees as provided in § 46-23-20.1, pursuant to the regulations promulgated by the council, provided, however, that no proceeding and hearing prior to the appointment of the hearing officers shall be subject to the provisions of this section. Notwithstanding the foregoing, the commissioner of coastal resources management shall be authorized, in his or her discretion, to resolve contested licensing and enforcement proceedings through informal disposition pursuant to regulations promulgated by the council." G.L. 1956 § 46-23-20.

While it is unclear whether a Commissioner has been appointed, the General Assembly clearly intended the CRMC to have the ability to resolve cases in litigation, regardless of whether an administrative agency hearing was complete.

The regulations of the CRMC are more explicit:

> "C. Modification of Assents and Final Decisions
> "1. At any time prior to the expiration of an Assent, the full Council by majority vote may, based upon the evidence presented to it, modify an Assent. The City or Town Clerk and the local building official in the community shall be notified of the modification.
> "2. The Council authorizes the Executive Director in his discretion to modify an Assent or final decision of the Council when the requested modification is consistent with the prior approval of the Council and the applicant and staff review have clearly demonstrated to the Executive Director's satisfaction that the project's overall impact to the State's coastal resources will be less than or equal to the existing Assent or decision." 650-RICR-10-00-1.8.

Although no assent ever issued here, the statute and regulation demonstrate that settlement is favored. Of course, there was no clear authority provided to this Court to suggest that mediation is prohibited.

Finally, the Court is persuaded by the United States Supreme Court case *Local Number 93 v. City of Cleveland*, 478 U.S. 501 (1986). In *Local No. 93*, the Vanguards, an organization of Black and Hispanic firefighters employed by the City of Cleveland, filed a class action charging the city and various city officials with discrimination on the basis of race and national origin in hiring, assigning, and promoting firefighters in violation of the Civil Rights Act of 1964. *Id*. at 504. Local Number 93 of the International Association of Firefighters, AFL-CIO, C.L.C. moved to intervene as a party-plaintiff prior to the entry of the consent decree. *Id*. at 506. The City and the Vanguards negotiated the first consent decree and submitted it to the District Court for approval. The Union contested the entry of the consent decree arguing that as an intervenor its consent was required for approval. The Court then deferred the first consent decree. *Id*. at 509. The City and the Vanguards negotiated a second consent decree with the involvement of the Union, although the Union continued to object to the consent decree. *Id*. at 510. The District Court approved the consent decree overruling the Union's objections. *Id*. at 511. The Union ultimately petitioned the United States Supreme Court. *Id*. at 513. Part of the Union's appeal was challenging the validity of the consent decree on the ground that it was entered without the consent of the Union. *Id*. at 528. The Court held that, "[a] consent decree is primarily a means by which parties settle their disputes without having to bear the financial and other costs of litigating. It has never been supposed that one party—whether an original party, a party that was joined later, or an intervenor—could preclude other parties from settling their own disputes and thereby withdrawing from litigation." *Id*. at 528-29. Thus, the Court held that, "while an intervenor is entitled to present

evidence and have its objections heard at the hearings on whether to approve a consent decree, it does not have power to block the decree merely by withholding its consent." *Id.* at 529.

Here, the Intervenors do not have the ability to block the mediated settlement itself, but this Court finds that the Intervenors have the right to notice and an opportunity to be heard before the MOU is ratified or adopted here. As in *Local 93*, the Intervenors at bar should have the opportunity to suggest why the MOU is deficient. However, this Court's role on remand was to determine if the mediation properly occurred, and this Court finds that it was proper for the mediation to occur when it did.

The Attorney General's office and the Intervenors assert that the CRMC did not have jurisdiction to mediate with Champlin's because the CRMC no longer had jurisdiction once it transmitted the administrative record to the Superior Court in 2013. However, CRMC was not performing the mediation. Instead, the CRMC was acting as a party to the mediation just like Champlin's; CRMC was not acting as an agency or as an adjudicator when it participated in the mediation.

Therefore, because there is a strong public policy of encouraging settlement of cases through alternative dispute resolution and because the CRMC and Champlin's were each a party to the appeal before the Superior Court (and subsequently the Supreme Court), they had the authority to enter into mediation.

B

What Notice is Required for Mediation and was Sufficient Notice Given?

The next issue this Court must consider is what notice is required when entering into settlement discussions and what is considered to be sufficient notice. Mediation, as defined by § 9-19-44, means the "process in which an impartial third party who is a qualified mediator, who

lacks authority to impose a solution, helps participants reach their own agreement for resolving a dispute, whether or not a judicial action has been filed[.]" Section 9-19-44.

Mediation is an informal proceeding. Justice Williams, an experienced and proficient mediator, testified that "[mediation] is very informal and it is designed for the parties to reach a settlement." Tr. 20, July 27, 2021. Mediation is extra-judicial, often occurring without judicial intervention at all. Hence it does not require formal notice.

> "Mediation discussions often unfold in an informal, unstructured way, without procedural rules about who can speak, what they say, or when and how they say it. Unlike arbitration, where an arbitrator issues a decision that may or may not be binding on the parties, mediation gives parties and their representatives space to decide what arrangements make the most sense for their situation and create tailor-made solutions; thus, even with similar facts and the same legal standards, mediation outcomes can be different. Moreover, unlike settlement conferences or early neutral evaluation, there need not be a court case for parties to mediate. Thus, what defines mediation is its informality and adaptability, and it is these qualities that led to its institutionalization." Lydia Nussbaum, *Mediation As Regulation: Expanding State Governance Over Private Disputes*, 2016 Utah L. Rev. 361, 369 (2016).

Paramount in the objections to the mediation were allegations that the Intervenors received no notice of the mediation or were led to believe that mediation would not occur without them.

This Court finds that sufficient, actual notice was given. Notice of the mediation was provided to all parties who had entered into the Supreme Court writ of *certiorari* case at the time of mediation,[7] in several respects. Notice was given as follows:

First, in November and December 2020, the intervening parties were represented by Attorney Daniel Prentiss. Attorney Prentiss represented the Block Island Conservancy, the Block Island Land Trust, the Committee for the Great Salt Pond, and the Town of New Shoreham. *See*

[7] The Rhode Island Attorney General was not a party to the pending Supreme Court case wherein a writ of *certiorari* had been issued, SU-2020-168 MP, until after its Motion to Intervene had been granted by the high court on February 12, 2021.

Second Motion for Extension of Time, August 17, 2020 in the Supreme Court case. On December 15, 2020, the attorney for Champlin's filed a motion for extension for filing a statement in the Supreme Court case. This motion was certified to all attorneys and indicates in the text that the basis for the extension is because Champlin's and CRMC "are engaged in mediation before Retired Chief Justice Williams." The motion was granted on the same day.

Second, the Court specifically has found that each member of the New Shoreham Town Council and the Town Solicitor received copies of the November and December 2020 meeting agendas of the CRMC within days of their issuance. Plaintiff's Exhibits 12 and 13 are emails which were sent by the CRMC to certain entities that had requested that they receive notice of CRMC hearings. Attached to those emails (and to the exhibits) were the agendas of those meetings. Separate agendas for November and December 2020 indicate that the Champlin's litigation would be discussed in Executive Session. During this time, the proceedings in the Supreme Court appeared relatively dormant: The high court had granted *certiorari* on November 30, 2020, and each of the parties was preparing their Rule 12A statements in December. It would be odd that something was pending before the commission for discussion. However, the Intervenors, as well as their attorneys, were constantly monitoring the activities of one another during this controversy. The Town Council and the Committee to Preserve the Great Salt Pond were particularly active through the years of litigation, even hiring a lobbyist and a publicist to supplement their attorneys. Second Warden Risom was communicating, concerning mediation, with each group. The minutes of the meetings of the CRMC, publicly available on the Secretary of State's website, revealed the topics discussed at the November 24, 2020 CRMC meeting. The minutes reflect that the CRMC voted to "authorize mediation with Champlin's Realty Associates and the CRMC." Pl.'s Ex. 19.

Third, while Attorney DeSisto for CRMC had reached out to Town Solicitor Merolla to request participation in the mediation, his November 30, 2020 email said that CRMC would only mediate if New Shoreham did so. Defs.' Ex. EE. Attorney DeSisto and Justice Williams attempted to telephone Attorney Merolla before the Town Council voted on whether to participate. She did not return their calls. When Justice Williams and Attorney Merolla spoke the day after the council rejected participating in mediation, the judge "indicated my disappointment and what I assure was going to be the disappointment of the parties and indicated that it was my belief that **both parties would proceed with mediation notwithstanding the refusal to participate by New Shoreham and the other entities**." Tr. 29, July 27, 2021 (emphasis added). Justice Williams continued, "I indicated, as I already said, that the mediation would go forward. Unfortunately, without the intervenors offering suggestions or participate." *Id.* at 30.

Fourth, this is no small issue. The application is pending review in our state's highest court, once again. As Town Councilperson Stover testified, the topic of Champlin's is "in the ether in Block Island" and discussed often among the town leaders. He admitted to discussing Champlin's with the Block Island Land Trust leadership, the Block Island Conservancy, and the Committee for the Great Salt Pond. Attorney Prentiss represented each of the groups, and at hearing represented the Town of New Shoreham and all private group Intervenors. Second Warden Risom testified that he received an email concerning the mediation in November 2020 from Attorney Prentiss. It is reasonable to infer that each of the groups knew Justice Williams was attempting to mediate the issues, and they were welcome to participate.

With all of this, there is no doubt that the Intervenors, including the Town Council, received notice and knew of the mediation. Still, this became the major focus of the Superior Court hearing. It is therefore particularly disturbing that the Intervenors agreed to issue a press release on the

night of the January 13, 2021 council meeting acknowledging that, "On November 30, the Town of New Shoreham was informed by counsel for the CRMC that CRMC had agreed to engage in 'mediation' with Champlin's." It then stated that, "The other three parties to the case . . . were not informed of any 'mediation.'" Pl.'s Ex. 18. This statement was incorrect.

It is true that Attorney DeSisto wrote on November 30, 2020 that the CRMC would only mediate if the Town participated. Defs.' Ex. EE. However, on December 9, 2020, Justice Williams informed the Town Solicitor that Champlin's and CRMC would mediate without them. This should have come as no surprise. By then it was obvious the Intervenors would not mediate—they even refused to return telephone calls until the Town Council had acted. On December 15, 2020, they were told by the Supreme Court filing that the two were "engaged in mediation." Further, there is nothing to preclude some parties from attempting to forge a settlement, even though other parties may not want to participate in discussions.

The November 24, 2020 minutes of the CRMC do not provide that the agreement to enter mediation is conditioned upon the Town's participation. Pl.'s Ex. 19. Even if it were a condition of the CRMC, the attempts to include all parties at the mediation were obviously doomed to fail. Attorney DeSisto and Acting CRMC Chairperson Coia participated in the mediation. An MOU was sent to Mr. Coia and others on the CRMC prior to the December 29, 2020 meeting. Tr. 38-40, Aug. 2, 2021. The agreement was then executed and ratified by the CRMC. If the CRMC had conditioned mediation on the Town's participation, it did not require their participation when it ratified the MOU.

Therefore, due to the various communications, and the informal nature of mediation, this Court finds that the Town and the Intervenors had sufficient, advance notice of the mediation. While the Intervenors may have suspected that the CRMC would never mediate without them, it

was clear that the doors of communication had been opened, a seasoned professional mediator had been enlisted, and the high court had been asked to give mediation time to proceed. Given the informal nature of mediation, and the Town's obvious reluctance to participate in any settlement discussions, it is no surprise that CRMC and Champlin's began to talk on their own.

When the two principal parties opened the door to settlement discussions, the Intervenors made a calculated decision to not participate. With the two principal parties demonstrating their obvious desire to resolve differences, now armed with a vote of the CRMC, and having already enlisted a prominent mediator, this tactical decision was risky business. Not only did they refuse the entreaty—New Shoreham refused to take telephone calls. It is no surprise that CRMC and Champlin's talked without the Town or others. Even as seasoned counsel and litigants knew settlement was being discussed, they did not object. They did not come forward. CRMC continued to march on, discussing the matter again in late December 2020. Still, the Intervenors remained dormant, never asking to be heard at the mediation[8] or before CRMC.

It is the same objectors—the Town and the public interest groups—which claim that mediation cannot be conducted after an agency has issued a final decision. There is no bar to such discussions or to drafting a preliminary agreement. Indeed, as noted above, the courts welcome such efforts to forge a settlement.

C

Is the MOU a Final Decision?

The final issue this Court must consider is whether entry of final judgment in accord with the MOU is appropriate. While objecting Intervenors do not have the authority to block a mediated

[8] From the Intervenors' standpoint, who would be better to be heard at the mediation concerning the minimized risks of continued litigation and the practical concerns for implementing the terms of a settlement?

settlement from occurring, they are "entitled to present evidence and have [their] objections heard[.]" *Local No. 93*, 478 U.S. at 529. "The key consideration in this type of process inquiry is whether there has been a fair opportunity to present relevant facts and arguments to the court, and to counter the [settlement]." *Puerto Rico Dairy Farmers Association v. Pagan*, 748 F.3d 13, 20 (1st Cir. 2014) (internal quotation omitted). "[T]hird party intervenors who object that they are adversely affected by a settlement between a government entity and a private party should be provided with adequate notice and an opportunity to have these objections heard." *Id.* However, "[a]n intervenor lacks the power to block a consent decree merely by withholding its consent." *Id.*[9] This Court finds that no such opportunity has yet been provided to the Intervenors here. A hearing should be held providing them with the opportunity to present evidence and have their objections heard.

Fairness hearings are settlement review proceedings where courts consider "the fairness, reasonableness and adequacy of the proposed [s]ettlement" prior to its approval. *Lamarque v. Fairbanks Capital Corp.*, 927 A.2d 753, 766 n.23 (R.I. 2007). The Lamarques had refinanced their real property through Fairbanks. After a foreclosure sale, the Lamarques brought suit in

[9] In 2004, Suiza Dairy, Inc. (Suiza) and Vaqueria Tres Montijas, Inc. (VTM) filed suit against the Milk Industry Regulatory Administration for the Commonwealth of Puerto Rico (Spanish acronym ORIL) challenging a "then-existing regulatory structure of the milk industry." *Puerto Rico Dairy Farmers*, 748 F.3d at 16. In 2005, the Puerto Rico Dairy Farmers Association (PRDFA) entered as a defendant-intervenor. *Id.* In 2008, ORIL developed and filed Regulation No. 12 with the court which detailed new standards for the regulatory structure of the milk industry. *Id.* Suiza and VTM both objected to Regulation No. 12 and PRDFA filed a separate complaint against ORIL regarding Regulation No. 12. *Id.* at 16-17. In October 2013, the parties reached a settlement agreement regarding Regulation No. 12 without involving the intervening party, PRDFA. *Id.* at 17. PRDFA filed a motion to reject the settlement agreement on November 6, 2013, but the court accepted and incorporated the agreement into a judgment on November 7 without addressing the motion to reject. *Id.* at 18. On appeal, the First Circuit Court of Appeals found that although PRDFA was not able to bar a settlement agreement between parties by withholding its consent, "the third party intervenors . . . should be provided with adequate notice and an opportunity to have their objections heard." *Id.* at 20.

2002. In 2003, a consolidated class action commenced in the U.S. District Court for the District of Massachusetts. In November 2003, a settlement agreement was filed. A fairness hearing was conducted in the federal suit. The federal court approved the settlement, certified the class, and entered final judgment dismissing all claims of class members.

Fairbanks filed for summary judgment in the R.I. Superior Court based on *res judicata*. The R.I. Supreme Court, affirming the grant of summary judgment, held that plaintiffs' claims were covered by the class action even though the Lamarques were absent in the federal suit. Our high court found that notice was properly given by the federal court, according to the instruction set by the federal court. Therefore, the Lamarques' suit in Superior Court was barred by *res judicata*.[10]

In *U.S. v. Carpenter*, 526 F.3d 1237 (9th Cir. 2008), environmental groups moved to intervene to object to a proposed settlement between the United States and Elko County, Nevada allowing repairs to a road on U.S. Forest Service land. Having allowed the groups intervenor status, the Ninth Circuit vacated the approval of the settlement, as the intervenors were excluded from participating in the settlement review proceedings. "However, [we] recognize that the intervenors whose claims are not the subject of a settlement cannot veto that settlement." *Carpenter*, 526 F.3d at 1241.

As the Supreme Court more succinctly stated in *Local 93*, if, after the fairness hearings, a court approves a settlement, the court's approval "cannot dispose of the valid claims of nonconsenting intervenors[.]" *Local No. 93*, 478 U.S. at 529. "[Those] claims remain and may be litigated by the intervenor" if properly raised. *Id.* However, the Court noted "the consent decree

[10] Justice Robinson dissented, finding that broader collateral review of the federal judgment was required. *Lamarque*, 927 A.2d at 767.

entered here does not bind Local 93 to do or not do anything. It imposes no legal duties or obligations on the Union at all . . ." *Id.* at 529-30.

Here, the Court has sufficiently aired all questions of proper notice, and it has done so at a full evidentiary hearing. However, the Superior Court's scope was limited in this hearing to "findings of fact and conclusions of law concerning the 'propriety and conclusiveness' of the purported settlement and the validity of the MOU." Supreme Court Order, June 11, 2021. This Court has not construed this Order to allow a broad-based examination of the terms of the settlement itself.[11] Presuming, without finding, that the Intervenors are claiming objections other than conclusiveness and propriety, the Intervenors should be provided with an opportunity to "present evidence and have [their] objections heard," *Local No. 93,* 478 U.S. at 529, pertaining to the terms of the settlement. Here, the only claim raised by the Intervenors concerns the MOU, so there will be no further litigation in this case if the MOU is approved.

Clifford v. Raimondo, 184 A.3d 673 (R.I. 2018) is an example of a fairness hearing in Rhode Island, albeit in a different context. After a class action concerning changes to the retirement benefits of government employees was settled, certain unions and retirement

[11] There were few questions at hearing concerning the "propriety and conclusiveness" of the MOU itself. After the hearing, in his brief, the Attorney General asserted that the plan in the MOU violates CRMC's own regulations. R.I. Attorney General Mem. at 27, Aug. 20, 2021.

On one hand, the Attorney General asserts that the Goulet Plan, now the basis of the MOU, violates CRMC's own regulations. On the other, CRMC acknowledges that implementation and approval is conditioned on complete engineering reports being submitted and approval by the U.S. Army Corps of Engineers. The parties have executed and approved an MOU which is just that—a written understanding of what the parties agreed upon in mediation and their intended path.

The Attorney General's assertions that the MOU does not conform with the CRMC plan is merely a comparison of the different findings of fact in the MOU compared to the 2011 CRMC decision. No expert or fact witness testified that the findings in the MOU are inadequate or incorrect. The 2021 findings are different from those in 2011, and the proposal itself is very different. CRMC accepted the MOU. Presumably, the CRMC adopted the new findings and has determined that they adequately support the MOU.

associations continued to disagree. The trial court found that the settlement warranted an initial presumption of fairness and was within the range of reasonableness, heard the objections, and approved the settlement. Our high court found the analysis and procedure of the trial court to be procedurally appropriate. This Court adopts a similar approach here: Although several objections (such as sufficiency of notice and ability to mediate) have already been heard, a final hearing on the fairness and legality of the settlement is now appropriate.

V

Conclusion

All parties were aware that Champlin's and the CRMC were seeking to mediate the decades-old controversy. When the public groups and New Shoreham refused to even discuss a resolution, and New Shoreham was told that the mediation would continue without their participation, it was appropriate for Champlin's and the CRMC to mediate without them. The courts favor all litigants' attempts to resolve their differences, and no party may independently block their efforts. However, the objectors to the MOU have a right to be heard before a court if it is considering adopting that MOU as a judgment.

In answer to the direct questions of the high court, this Court has set forth findings of fact and conclusions of law concerning the propriety and conclusiveness of the purported settlement between Champlin's and CRMC, and the MOU itself. The settlement and the MOU were conducted and created with propriety and are sufficiently conclusive. The formation of this settlement and MOU conformed to conventionally accepted standards of behavior, and the MOU itself is sufficiently conclusive. This Court finds that another hearing is necessary to allow for an opportunity to be heard (although the Intervenors were provided with sufficient opportunities to be heard before this Court).

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Champlin's Realty Associates v. Coastal Resources Management Council**
CASE NO:	**WC-2011-0615 and WC-2011-0616**
COURT:	**Washington County Superior Court**
DATE DECISION FILED:	**September 9, 2021**
JUSTICE/MAGISTRATE:	**Lanphear, J.**

ATTORNEYS:

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