

**EAST LYME HARBOR MANAGEMENT & SHELLFISH COMMISSION
REGULAR MEETING MINUTES
OCTOBER 16, 2018
7:30 PM
EAST LYME TOWN HALL**

Chairman
Stephen Dinsmore

Treasurer
Donald F. Landers Jr.

Secretary
Joseph Hitchery

FILED

OCT 25 2018 AT 9:00 AM/PM

William Murin

EAST LYME TOWN CLERK

Members Present: Steve Dinsmore, Joe Hitchery, Don Landers, Don MacKenzie, Greg Murin,

Members Absent: Rick Kanter, Bill Mountzoures

Ex Officios present: None

Guest: Ron Johnson, Harbor Master, Marc Berger, Deputy Harbor Master

1. Call to Order: S. Dinsmore called the meeting to order at 7:32 PM

2. Approval of Minutes of Meeting of September 18, 2018

MOTION: (Murin/Hitchery) to approve the September 18, 2018 minutes as presented. **Vote:** Approved Unanimously

3. Public Delegations

Maria Benvenuti, 1 Raymond Lane, Waterford, CT. representing the Niantic River Advocacy group submitted for the record a communication encouraging the Commission to review the WELSCO plan for consistency with the town's Harbor Management Plan as well as state statutes. She informed the members that the Waterford Board of Selectmen came out against the WELSCO policy.

4. Reports

A. Shellfish

No report

B. Harbor Master

Ron Johnson reported that he received a letter of appointment from Governor Malloy to the Harbor Master position which he submitted to the Commission. M. Berger stated that he and the Harbor Master will be reviewing moorings and provide a report at the next meeting.

C. Treasurer

D. Landers informed the members he submitted three invoices for payment.

Date	Invoice #	Amount
6/18/18	1635392	\$116.18
7/18/18	21208	\$587.77
8/13/18	21333	\$1288.96
total		\$1994.91
Total due minus 50%		\$ 997.45

He received two new invoices from WELSCO for the month of August and September for Warden Patrol and water sampling for \$25.00 and \$31.25 respectively.

D. Ex-Officio

No Report

5. OLD BUSINESS

A. Harbor Management Plan-Update

S. Dinsmore reported that the Board of Selectmen have tabled the plan and ordinance twice until all the language was satisfactory. It is on the Board of Selectmen's agenda for November 27, 2018.

6. NEW BUSINESS

A. Correspondence

The correspondence submitted by the Niantic River Advocacy group was also received by email and sent to all members.

B. WELSCO Aquaculture Policy Statement

S. Dinsmore reminded the members that J. Hitchery and D. MacKenzie will be representing the Commission on the WELSCO subcommittee. He stated the policy as written is not acceptable to the Commission.

Peter Harris, chairman of WELSCO informed the Commission that so far he is the only representative from WELSCO to the subcommittee. He has invited the Waterford Harbor Management Commission to be part of the subcommittee but they have declined the offer.

S. Dinsmore explained the Commission's process and responsibility when an aquaculture application comes before the Commission:

- 1. WELSCO approves the application**
- 2. The application is sent to Army Corps of Engineers for review**
- 3. The application is sent to DEEP**
- 4. The application is sent to Bureau of Aquaculture**
- 5. A form is sent to the East Lyme Harbor Management to determine if the application is/is not consistent with their Harbor Management Plan**

7. FINAL COMMENTS

P. Harris stated he had just come from the Waterford Board of Selectmen where the proposed WELSCO policy was discussed. The Waterford town attorney stated that according to state statute, WELSO has no authority to issue aquaculture licenses only to lease areas in the Niantic River. P. Harris stated that the Waterford First Selectman, Dan Stewart was opposed to type II aquaculture in the Niantic River on the Waterford side.

S. Dinsmore reported that a meeting with the CEO and the developer for the 90-acre solar farm at the headwaters to the Niantic River Watershed was held and discussion of the storm water runoff was addressed. The company was not aware of the sensitive hydrology and are willing to have an independent consultant for the project.

8. ADJOURNMENT

MOTION: (Landers /Kanter) to adjourn at 8:02 PM

Respectfully Submitted

Sue Spang
Recording Secretary



Dannel P. Malloy
GOVERNOR
STATE OF CONNECTICUT

September 27, 2018

Ronald L. Johnson
11 Town Road
Niantic, CT 06357

Dear Mr. Johnson,

Pursuant to Sections 4-1 and 15-1 of the Connecticut General Statutes, it is my pleasure to appoint you as the Harbor Master for the town of East Lyme, for a term beginning September 27, 2018 and ending July 1, 2021.

Sincerely,

A handwritten signature in blue ink, reading "Dannel P. Malloy".

Dannel P. Malloy
Governor

- cc: Nickerson, Mark First Selectman of the Town of East Lyme
- cc: Honorable Denise W. Merrill, Secretary of the State
- cc: Honorable Kevin Lembo, Comptroller
- cc: Messrs. John Geragosian and Robert Kane, Auditors of Public Accounts
- cc: Carrie Rose, Legislative Library
- cc: Commissioner Robert Klee, Commissioner, Department of Energy and Environmental Protection
- cc: Brian Thompson, Department of Energy and Environmental Protection
- cc: Dr. John Pinto, President, Connecticut Harbor Management Commission
- cc: James P. Redeker, Department of Transportation

Dinsmore, Stephen D SDINSMOR@gdeb.comHide

T Niantic River nianticriverac@gmail.com

o

C mount6 mount6@aol.com, **rick.n.kanter** rick.n.kanter@gmail.com, **dflanders** dflanders@atlanticbb.net, **J c osep** Hitchery jhitchery@gmail.com, **Don MacKenzie** don@boatsinc.com, **Greg**

M g murin555@gmail.com, **mnickerson** mnickerson@eltownhall.com, **Robert**

Avena ravena@avenakeppelaw.com, **Dan**

Steward dsteward@waterfordct.org, **rbrule** rbrule@waterfordct.org, **ptd33** ptd33@aol.com

You are welcome to provide input at our meeting. I can provide procedural comment as I did, but I cannot provide further discussion without filing an agenda due to FOI requirements. Email discussions are not captured and are not subject to review by other interested parties.

Steve Dinsmore

D448 Ship Control Trainers

(860)433-8665

Additionally, Section 10, Item b: “As authorized by Section 22a-113p of the Connecticut General Statutes, the Harbor Management Commission may review, and make recommendations consistent with the Harbor Management Plan, on **any proposal affecting the real property on, in or contiguous to the Harbor Management Area** as submitted to, or proposed by, all other Town commissions and departments...” (emphasis added).

Section 10, Item c: “The Harbor Management Commission may review for consistency with the Harbor Management Plan: ... (2) **all proposed uses or activities occurring below the Mean High Water Line;**” and Section 10, Item d states the commissions and boards shall send your commission a copy of **any proposal** at your request and you shall be given 35 days to review **prior to the taking of any action**. This would include policy revisions that affect activity in the harbor as well as any application for an activity that affects the harbor (e.g. a proposed lease application). This should all occur far before it reaches the State level of consideration. (emphasis added)

Finally, Section 10, Item e: “The Harbor Management Commission shall determine the consistency of the proposed projects with the Harbor Management Plan **and make recommendations to the appropriate board or commission.**” (emphasis added). This clearly assumes the consistency review process (e.g. not a form that is part of a specific State application) is happening at the board and commission level – prior to reaching the State. It is not efficient nor fair to an applicant to wait so far into the process before rendering a consistency determination. The Attachment E is for a specific expression of an activity related to a specific application.

Will the issue of WELSCO exceeding the explicit and limited authority granted to them by General Statutes § 26-287, referring only to WELSCO granting “licenses” for the “taking” of shellfish, continue to be ignored?

Respectfully,
Robin Lineberger
Niantic River Advocacy Coalition



----- Forwarded message -----

From: **Niantic River** <nianticriverac@gmail.com>

Date: Thu, Oct 11, 2018 at 12:59 PM

Subject: Re: WELSCO Authority <<Not-Sensitive>>

To: <SDINSMOR@gdeb.com>

Cc: <mount6@aol.com>, <rick.n.kanter@gmail.com>, <dflanders@atlanticbb.net>, Joseph Hitchery

<jhitchery@gmail.com>, Don MacKenzie <don@boatsinc.com>, Greg M <gmurin555@gmail.com>,

<mnickerson@eltonhall.com>, Robert Avena <ravena@avenakeppelaw.com>, Dan Steward

<dsteward@waterfordct.org>, <rbrule@waterfordct.org>, <ptd33@aol.com>

Chairman Dinsmore:

Thank you for your response. However, it is not just the Attachment E (consistency review form) as part of the DEEP SD&F application process where your commission is to render a consistency review. The town ordinances clearly state that your commission is to be engaging in a **review process** coordinated with the **local boards and commissions** (e.g. not waiting until an activity rises to the level of state consideration) to provide determinations of consistency for all activities or proposals that affect the harbor management area.

According to the town ordinance Section 9, Item d: “The Commission shall have the authority to **review and make recommendations on proposals affecting real property in and contiguous to the Town’s Harbor Management area as submitted to or proposed by any commission**. . .” (emphasis added). WELSCO’s Aquaculture Policy Statement, notwithstanding being a violation of their statutory authority, is a proposal to vastly alter how the Niantic River is used by proposing to allow commercial farming consisting (as of today) of 10 acres of the river consumed by structures that alter navigation, safety, environmental conditions, recreation, economic impacts to the community, public use, to name a few. There is no location on the river where this will not sit directly in front of existing businesses, scenic overlooks or private property. Your commission has not only a duty to weigh in on that, but the authority to do so.

Furthermore, Section 10, Item a: “A Town “Harbor Management Consistency Review” **process** shall be carried out by the Harbor Management Commission to ensure effective implementation of the Harbor Management Plan and to provide **coordinated, efficient and comprehensive review of the proposed projects and activities affecting the Harbor Management Area**.” (emphasis added). Note this does not say ‘fill out a form once it gets to the DEEP application stage;’ it says you must have a consistency review **process** and it should be carried out with coordination and efficiently and comprehensively for **any activity** that affects the harbor. WELSCO’s revised policy statement drastically affects the activities that may occur in the harbor. Waiting until a specific expression of that activity (e.g. an application) gets all the way to the State level is not a coordinated process nor efficient nor comprehensive nor fair to an applicant. An applicant should know before starting the State and Federal application process if your commission deems an activity to be consistent or not with the harbor management plan.

----- Forwarded message -----

From: **Dinsmore, Stephen D** <SDINSMOR@gdeb.com>

Date: Thu, Oct 11, 2018 at 7:54 AM

Subject: RE: WELSCO Authority <<Not-Sensitive>>

To: Niantic River

<nianticriverac@gmail.com>, mount6@aol.com <mount6@aol.com>, rick.n.kanter@gmail.com <rick.n.kanter@gmail.com>, dflanders@atlanticbb.net <dflanders@atlanticbb.net>, Joseph Hitchery <jhitchery@gmail.com>, Don MacKenzie <don@boatsinc.com>, Greg M <gmurin555@gmail.com>

Cc: mnickerson@eltownhall.com <mnickerson@eltownhall.com>, Robert Avena <ravena@avenakeppplelaw.com>, Dan Steward <dsteward@waterfordct.org>

Thank you for your input.

We receive a consistency review form from DEEP as part of the structures application. This where we provide comment for activities within our jurisdiction that impact harbor management. We need to be providing input to a regulatory agency that is actually making an approval.

Peter's question on whether we have to approve or deny revisions to their Aquaculture Policy statement was a different issue. We, as a commission, want to work with them to revise their statement. They feel we should approve or deny. Town attorney believes that we do not have a statutory requirement to provide them input within their arbitrary window. We're still discussing the issue.

Steve Dinsmore

D448 Ship Control Trainers

(860)433-8665

water. And there are another 6 acres at stake that could look just like this. This has huge implications to the businesses, residents, tourists and recreational users of the river from a safety, navigation, economic and public access perspective, not to mention the liability issues to the town. If you continue to allow WELSCO to act beyond its authority, they have every intention of binding the town to a legal agreement that is not consistent with your harbor management plan and open the town to significant liability.

Respectfully,
Robin Lineberger
Niantic River Advocacy Coalition



ADVOCACY COALITION

From: Niantic River <nianticriverac@gmail.com>

Date: Wed, Oct 10, 2018 at 5:17 PM

Subject: WELSCO Authority

To: <sdinsmor@gdeb.com>, <mount6@aol.com>, <rick.n.kanter@gmail.com>, <dflanders@atlanticbb.net>, Joseph Hitchery <jhitchery@gmail.com>, Don MacKenzie <don@boatsinc.com>, Greg M <gmurin555@gmail.com>

Cc: <mnickerson@eltownhall.com>, Robert Avena <ravena@avenakeppelaw.com>, Dan Steward <dsteward@waterfordct.org>

Dear Commissioners:

It has come to our attention that WELSCO is under the false impression that they are not required to provide your commission with the opportunity to review and comment on policies and/or proposals that affect the harbor management area under your purview. This impression comes from an email that WELSCO Chair Peter Harris sent to East Lyme legal counsel asking the following question:

“Does East Lyme have a similar statute that states the EL Harbor Management must **approve or deny** any revisions to the WELSCO Aquaculture Policy Statement?”
Emphasis added.

While it is true that the harbor management commission does not have to “approve or deny,” the harbor commission does have the authority to review, comment and issue a determination of consistency with the harbor management plan. Any commission proposing to affect property in, on or contiguous to the harbor must forward their proposal to your commission and you have 35 days to render an opinion. Should you not render an opinion within that 35 day window, your lack of response will be considered concurrence.

Please see EL Town Ordinances 9 and 10 on pages 198-200 <https://eltownhall.com/wp-content/uploads/2008/09/CHARTER-ORDINANCES-AND-SPECIAL-LAWS-2014.pdf>

Not only is this requirement in the town ordinance, but is also driven by CT Statute 22a-113p <https://codes.findlaw.com/ct/title-22a-environmental-protection/ct-gen-st-sect-22a-113p.html>

WELSCO is operating outside of their statutory authority in granting themselves permission to expand their powers to add commercial aquaculture to the limited authority the state granted them. General Statutes § 26-287 refers only to WELSCO granting “licenses” for the “taking” of shellfish. A license is different from a lease, and taking shellfish is different from shellfish cultivation, particularly Type II commercial aquaculture. **Moreover, delegations of authority from the Connecticut General Assembly to municipal entities are strictly construed; there must be express authority granted for municipal agency action to be lawful.**

East Lyme Harbor Management Commission and town leadership has a duty to stop WELSCO from acting outside of its authority in your harbor management jurisdiction. The attached document shows images and details of what WELSCO is intending for Lease Area 2 in East Lyme along Cini Park / Route 156: more than 12,000 pieces of gear spread over a 4 acre parcel with more than 90% of the gear visible and sticking out of the

1:08 PM (5 hours ago)

Niantic River <nianticriverac@gmail.com>

to SDINSMOR, mount6, rick.n.kanter, dflanders, Joseph, Don, Greg, mnickerson, Robert, Dan, rbride,

Understood. I specifically request this be entered into the official correspondence to your commission.

A hard copy will be presented at your next meeting.

Respectfully

Robin Lineberger

Niantic River Advocacy Coalition

