

**EAST LYME HARBOR MANAGEMENT & SHELLFISH COMMISSION**  
**REGULAR MEETING MINUTES**  
**NOVEMBER 20, 2018**  
**7:30 PM**  
**EAST LYME TOWN HALL**

Chairman  
Stephen Dinsmore

Treasurer  
Donald F. Landers Jr.

Secretary  
Joseph Hitchery

**Members Present:** Steve Dinsmore, Joe Hitchery, Rick Kanter, Bill Mountzoures Don MacKenzie, Greg Murin,

**Members Absent:** Don Landers

**Ex Officios present:** Selectman Dagle; Harbor Master Ron Johnson

**FILED**

**1. Call to Order:** S. Dinsmore called the meeting to order at 7:30 PM

Nov 27 2018 AT 10:15 AM/PM  
*(Signature)*  
EAST LYME TOWN CLERK

**2. Approval of Minutes of Meeting of October 16, 2018**

Change the following:

Page 2 ¶ 5...attorney stated that according to state statute, WELSCO has no authority to issue aquaculture licenses leases only leases licenses.

Page 3 ¶ 1, ~~S. Dinsmore~~ **D. Landers** 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.

**MOTION: (Murin/Hitchery) to approve the October 16, 2018 minutes as amended. Vote:Approved. In favor-Dinsmore, Hitchery, MacKenzie, Murin, Montzoures. Opposed-none. Abstaining-Kantner**

**3. Public Delegations**

P. Harris for WELSCO informed the members he met with First Selectman Nickerson who then was going to meet with the East Lyme town attorney, Ed O'Connell. The town attorney's legal opinion is that WELSCO does not have authority to grant leases in the river and therefore WELSCO has decided to suspend their proposed aquaculture amendments, the application on file, and the tri-subcommittee which was established. WELSCO will be following their 2002 aquaculture policy. Harris stated it would be a financial burden to challenge the opinion. He clarified that WELSCO has always had authority to grant licenses for scallop season or clamming or oysters in the Niantic River. He believes the legal opinion is a grey area but someone with a financial interest may decide to challenge it. The letters from Attorney O'Connell and First Selectman Mark Nickerson were submitted by the Chairman.

Keith Neilson from DOCKO. INC. informed the members he discussed a COP with DEEP for rebuilding of a concrete sea wall on property located between #27 and #31 Saunders Drive. DEEP asked him to submit proof of registration of the two pole ("clothes-line") mooring lines which he claims have been at the property since the 1960's. He is looking for records to be able to pursue the application. He was informed by members that in 2009 the Commission requested people to register their existing trolley lines and numbers were then assigned, but there were no permits issued related to the registrations. There is no record of any mooring registration by the property owner. It was S. Dinsmore's opinion that the registration of trolley lines should not be part of the COP application process. He then read a letter from Mr. Grzywinski of DEEP relating to the mooring poles and lines which stated the management and

issuance of any moorings in East Lyme is under the jurisdiction of the East Lyme Harbormaster and the HMC. S. Dinsmore stated that the Commission does not permit trolley lines.

**MOTION: (Murin/Kantner) to add to *New Business*, discussion of the DEEP Permit consultation form for 29 North Edgewood Rd, Niantic, CT. Vote: Approved Unanimously.**

#### **4. REPORTS**

##### **A. Shellfish**

The Niantic River has been closed but R. Kantner just received notice from Ledgelight Health District that the river will open at sunrise the following day.

##### **B. Harbor Master**

Ron Johnson reported that the H.M. Boat received damage due to the rough conditions during the last storm. He trailered the boat to Defenders which they then repaired. He submitted a bill for \$620.00.

He inquired about winterization for the boat and any maintenance schedule which the Commission may have in place.

The members discussed whether New London uses the boat and if they should be sharing in the cost of the boat and maintenance.

R. Johnson stated that the mooring in the bay was inconvenient and wanted to know if it could be moved to the Niantic River. It was the consensus of the Commission that the mooring should be in the river.

R. Johnson informed the members that he looked at the winter stick which is south of Quarry Dock Rd and it needs to be taken out as it is a navigational hazard.

It was determined that the H.M. boat could not pull the marker out.

Discussion ensued on the suitability of the current H.M. boat for the tasks required. S.

Dinsmore will verify who holds the title to the boat.

##### **C. Treasurer**

In the Treasurer's absence, S. Dinsmore reported the bill submitted for boat repair along with an invoice received from WELSCO for patrol and water testing for \$62.50 are the only bills for the month.

##### **D. Ex-Officio**

Selectman Dagle informed the members that the Harbor Management Plan is not on the upcoming agenda for the Board of Selectmen.

S. Dinsmore stated it was sent back to the Town from DEEP for confirmation concerning public access areas in Saunders Point. When this is received, a letter of approval from DEEP will then be issued. A Public Hearing can then be held on the Plan.

##### **E. Tri Commission Sub Committee**

The sub committee has been suspended.

#### **5. OLD BUSINESS**

##### **A. Harbor Management Plan-Update**

Previously discussed

## 6. NEW BUSINESS

### A. DEEP Consultant Form-29 North Edgewood, Niantic.

Bob Conigliaro, Gerwich Mereen LLC., 191 Boston Post Rd East Lyme, submitted an application to retain and maintain an existing stone and mortar 164' bulkhead and a 6' X 11' fixed pier structure on the north side of Smith Cove. They are proposing adding a 15' ramp followed by a 5' x 20' float with four pilings to hold the float in place. There is also an existing marine railway they are asking to retain and maintain. There are two permits from the 60's, one for dredging and one for a timber wall which was not built. There was approval for a larger structure but they are not proposing something that large. B. Conigliaro stated he attended a WELSCO meeting and they suggested removing tie-off pilings from the north and south side of the project and his client agreed to the recommendation. He stated Aquaculture has signed off on the plan and he is waiting to hear from ACOE and if WELSCO found it consistent with their plan.

**MOTION: (Murin/Hitchery) the Commission finds the application for 29 North Edgewood, Niantic CT consistent with their Harbor Management Plan. Vote: Approved Unanimously.**

## 7. CORRESPONDENCE

Letter from DEEP concerning COP's. The Commission has always assumed that COP applications received have completed the DEEP approval process. According to this letter that is not necessarily the case owing to the timing of meetings and the possibility that DEEP may be holding on approval awaiting additional information which may have been requested of the applicant. DEEP therefore has agreed to take into consideration what the Commission has to say even if the comment period has passed.

Discussion with First Selectman concerning the Commissions role in the permitting process. S. Dinsmore asked if WELSCO is not issuing leases does that responsibility fall under the Commissions jurisdiction. Nickerson advised not to accept any applications for that activity. S. Dinsmore reminded the members that the Commission has delegated authority for shell fishing permits in the river to WELSCO.

## 8. FINAL COMMENTS

Discussion of the history of shell fishing in the river and the authority of permitting took place.

## 9. ADJOURNMENT

**MOTION: (Mountzoures /Murin) to adjourn at 8:36 PM**

Respectfully Submitted

Sue Spang  
Recording Secretary

# Town of

Mark C. Nickerson  
First Selectman  
MNickerson@eltownhall.com



# East Lyme

108 Pennsylvania Ave.  
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Niantic, Connecticut 06357  
Phone (860) 691-4110  
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November 14, 2018

Mr. Peter Harris  
Chairman  
WELSCO  
5 South Ridge Road  
Niantic, CT 06357

Mr. Harris,

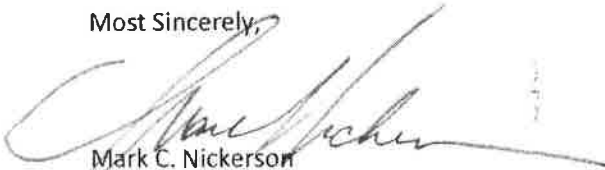
I wish to commend you and the entire WELSCO commission on the fine work you have done over the past several years surrounding the aquiculture application. Your perseverance has been inspiring. On behalf of the citizens of East Lyme (and Waterford), I wish to thank you for your dedication and volunteerism, especially in the face of so much conflict.

In light of the increased attention this application has received, and the legal firestorm it is likely to produce, I asked our town attorney to research and weigh-in on your role in leasing areas in the Niantic River in order to protect your commission members and our town. As you are well aware, being a state agency has certainly made this situation more complicated than expected yet we find the enabling statute crystal clear.

The final judgment from our lawyer is that your commission should stay clear of leasing area in the Niantic River. His letter is attached. I would ask that WELSCO denies the current application without prejudice. I'm sure this application will be taken up by another commission in the future that will have the full authority and support of our town charter and applicable ordinances.

Once again, I thank you for your service to our towns and the fine work you have done to date.

Most Sincerely,



Mark C. Nickerson  
First Selectman  
Town of East Lyme



WALLER  
SMITH &  
PALMER<sup>PC</sup>  
Attorneys at Law

EDWARD B. O'CONNELL  
TRACY M. COLLINS\*  
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ELLEN C. BROWN\*  
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OF COUNSEL:  
ROBERT W. MARRION  
ROBERT P. ANDERSON, JR.  
FREDERICK B. GAHAGAN

+ ALSO ADMITTED IN RI  
\* ALSO ADMITTED IN MA

November 13, 2018

Mark Nickerson, First Selectman  
East Lyme Town Hall  
108 Pennsylvania Avenue  
Niantic, CT 06357

Re: Waterford – East Lyme Shellfish Commission

Dear Mr. Nickerson:

You have requested our advice regarding the power of the Waterford – East Lyme Shellfish Commission (“WELSCO”) to grant leases for the taking of shellfish from the waters of the Niantic River.

WELSCO's enabling statute, Conn. Gen. Stat. §26-287 provides, in pertinent part, that WELSCO may “license such taking [of shellfish] and, in connection therewith, adopt reasonable regulations and fix license and permit fees.” Among the fundamental principles of statutory construction are that the legislature was aware of what it was doing when enacting a statute, that each word in the statute must be given effect, and that the statute cannot be interpreted to authorize an action which the statute does not expressly authorize. Applying these principles to WELSCO's enabling statute, it is noteworthy that the word “license” appears twice in the same sentence describing WELSCO's powers and the word “lease” appears nowhere in the statute. It is evident that the legislature was aware of what it was doing when it authorized only licenses, and not leases, because most statutes pertaining to shellfish commissions authorize these commissions to grant leases. Here, the absence of the word “lease” is significant, inasmuch as it differentiates WELSCO's power from the powers of most shellfish commissions.

There is a basic distinction between a license and a lease. A lease grants to the lessee the exclusive right to make use of a defined area for a specified period of time, and enables the lessee to exclude others from the leased premises. A license is more

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Attorneys at Law

in the nature of temporary permission to make use of a defined area, but usually does not grant exclusive use. Applying the principle that the powers of WELSCO are limited to actions which the statute expressly authorizes, it is our advice that WELSCO may grant licenses for the taking of shellfish, but may not grant leases for such purposes.

If you have any questions or comments, we would be pleased to respond.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ed O'Connell", written in a cursive style.

Edward B. O'Connell of  
Waller, Smith & Palmer, P.C.

EBO:cmc