



Waterford-East Lyme Shellfish Commission
Meeting Minutes
Thursday November 15, 2018



Members present: J. Patrick Kelly, Tom Bowlen, Paul Spakowski, Larry Tytla, Eric Kanter, and Peter Harris (arrived at 7:59pm)

Absent: Elizabeth Gelinis and Fred Grimsey

Guests: Tim Londregan and Lou Bull

- 1) The meeting was called to order at 7:41 pm and a quorum established by acting Chair J. Patrick Kelly. Peter Harris is delayed because of snowstorm traffic.
- 2) The agenda was modified by the Acting Chair to take the Dock Applications first:
 - a. Dock Application for 29 North Edgewood Road, Niantic was presented by Bob Conigliaro of Gerwick Mereen! After discussion a motion by Bowlen, seconded by Kanter to approved the application. 4 to 1 vote with Spakowski voted against the motion. Motion passed!
Chair Peter Harris arrived at meeting and assumed the Chair.
 - b. Dock Application for 46 Niantic River Rd., Waterford was presented by Bob Conigliaro of Gerwick Mereen! After discussion a motion by Kanter and seconded by Kelly to approved the the application. 2 to 4 voted with Kelly, Bowlen, Spakowski, Tytla voted against motion. Motion defeated.
 - c. Dock Application for 4 Bayside Ave., Waterford was presented by Keith Neilson of Docko, Inc. After discussion a motion was made by Kelly and seconded by Bowlen to approved application. 3 to 3 vote with Titla, Spakowski, Kanter voting against the motion. Motion defeated.
- 3) The minutes of the October 18, 2018 meeting were reviewed. The minutes were accepted on a motion by Mr. Kelly, seconded by Mr. Spakowski; all in favor, motion passed.
- 4) The Treasurer's report for October 2018 was presented including the financials and bank reconciliation. The Treasurer's report was accepted on a motion by Spakowski, seconded by Bowlen all in favor, motion passed.
- 5) Lou Bull reported that the status line is saying that area A is open to shellfishing. Kelly said he will email Allisa Dragan.
- 6) Old Business-
 - a. Aquaculture Policy Statement (see correspondence below)
 - b. Chairman Harris said that Niantic Bay Shellfish Farm Application and Tri-Commission Sub-Committee will be dropped from agenda due to the opinion from the EL Town attny (see correspondence below).
- 7) New Business

Dock Applications were acted on earlier in meeting. No other New Business
- 8) Ex-Officio comments-

Dan Cunningham not in attendance

FILED

Nov 19 20 18 AT 11:30 AM PM
Kenneth Bull
EAST LYME TOWN CLERK

9) Correspondence –

Chairman Harris reported on a letter from Mark Nickerson the East Lyme First Selectman that the East Lyme Town Attorney Edward O'Connell rendered an opinion that WELSCO does not have the powers to lease in the Niantic River. There was a lengthy discussion with a recommendation from Mr. Kelly that a joint meeting with both town's First Selectmans and Town Attorneys be arranged with Kelly, Harris, and Tytla in attendance representing WELSCO. The purpose is to review State Statues CHAPTER 492 LOCAL SHELLFISHERIES on Local Shellfish Commissions powers that are relevant to WELSCO's activities.

10) Public Input

Lou Bull discuss seeding oyster in the river and Tim Londregan spoke on different ways to do it.

10) The meeting was adjourned at 9:23 pm on a motion by Mr. Spakowski, seconded by Mr. Bowlen.

Respectfully submitted,

J. Patrick Kelly
Secretary Pro-Tem

Town of

Mark C. Nickerson

First Selectman

MNickerson@eltownhall.com



East Lyme

108 Pennsylvania Ave.

P.O. Box 519

Niantic, Connecticut 06357

Phone (860) 691-4110

Fax (860) 739-2851

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^{PC}
Attorneys at Law

EDWARD B. O'CONNELL
TRACY M. COLLINS*
PHILIP M. JOHNSTONE+*
CHARLES C. ANDERSON
KERIN M. WOODS+
ELLEN C. BROWN*
MARK S. ZAMARKA
CATHERINE A. MARRION
TIMOTHY D. BLEASDALE
RACHAEL M. GAUDIO+*

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



WALLER
SMITH &
PALMER^{PC}
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

