

**EAST LYME HARBOR MANAGEMENT & SHELLFISH COMMISSION
REGULAR MEETING MINUTES
AUGUST 19, 2019, 7:30 PM
EAST LYME TOWN HALL**

Chairman
Stephen Dinsmore

Treasurer
Donald F. Landers Jr.

Secretary
Joseph Hitchery

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

Members Absent: Rick Kanter

Ex Officios Present: Selectman Dagle, Harbor Master Ron Johnson, Deputy Harbor Master Mark Berger

1. CALL TO ORDER: S. Dinsmore called the meeting to order at 7:30 PM

2. APPROVAL OF MINUTES OF MEETING OF JULY 15, 2019

MOTION: (Landers/Murin) to approve the July 15, 2019 minutes as presented. Vote: Approved

FILED

3. PUBLIC DELEGATIONS: None

August 23 20 19 AT 11:51 AM/PM
Brooke Harris ATC
EAST LYME TOWN CLERK

4. REPORTS

A. Shellfish

Pete Harris, Chair, WELSCO reported the Niantic River is closed.

B. Harbor Master

Harbor Master Johnson reported the Harbor Master boat was loaned to the Police Department in early July while the PD boat was undergoing repairs. Although the loan was expected to be only for a few days, more than 6 weeks have passed, thereby preventing the Harbor Master from any water activity. Additionally, the boat was vandalized while in possession of the PD incurring a \$2,400 repair bill that was sent to the Harbor Master for payment. Johnson asked the Commission for help in resolving these issues. After further discussion, Dinsmore said he would take this up with First Selectman Nickerson.

C. Treasurer

Landers reported a bill received for June Warden patrol and sampling for \$31.25. Payment will be made to WELSCO. Also received bill for Harbor Master boat repair for \$2,481.80. No action will be taken on payment of this until the issue of responsibility is resolved.

D. Ex-Officio

Dagle reported the one issue remaining before BOS approval of the Harbor Management Plan and updated Ordinance relates to public access points on the river. Consultant Steadman spoke with Town attorneys who agreed to use the existing Plan original wording. Approval of the Plan and Ordinance will be on the BOS September agenda for action.

5. OLD BUSINESS

A. Harbor Management Plan-Update

Dinsmore added to Dagle's report that the Round Rock ROW ownership question remains undetermined but the Town should investigate and resolve the issue in the future. Hitchery noted the Town does not maintain the water access portion of the road. While there may be a question regarding ROW ownership, use of the ROW exists by deed to certain Saunders Point property owners and is not a public access point.

B. Future Shellfish Restoration Projects

Dinsmore plans to speak with DABA in the coming week.

6. NEW BUSINESS

Correspondence

COP received from Marker 7 Marina for extensive work. It was noted the COP was based on a previously approved permit which expired before any work commenced. A subsequent request by Marker 7 Marina for a two year extension was granted which expires this year. Discussion ensued addressing whether the extension was properly granted and the question of whether this COP is in fact a substantial change from the original SDF application, which did not include a shellfish processing facility, thereby necessitating a new SDF application. See attached letter to DEEP from the Niantic River Advocacy Coalition (NRAC).

Dinsmore and Landers agreed that this Commission is allowed to comment on a COP at any time during the approval process by DEEP.

COP received from State of Connecticut for extensive repair and maintenance of the Niantic River Route 156 bridge. Channel work requires narrowing of the channel to 75' and will be done November to January. Superstructure work from Spring 2020 to Fall 2022 will require one-way vehicular traffic over the bridge.

7. FINAL COMMENTS

Robin Lineberger presented the essence of the NRAC letter.

8. ADJOURNMENT

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

Respectfully submitted,
Joe Hitchery
Secretary

SUBMITTED VIA EMAIL: micheal.grzywinski@ct.gov

August 11, 2019

Mr. Micheal Grzywinski
Senior Environmental Analyst
CT DEEP Office of Long Island Sound Programs
333 Ferry Road
Old Lyme, CT 06371

Re: COP of Marker Seven Marina LLC

Dear Mr. Grzywinski

It has come to our attention that Marker Seven Marina LLC via its member, Timothy Londregan, has filed a COP with the intent to alter a previously permitted SDF that:

1. Expired in 2017 (the year before Mr. Londregan moved his unpermitted Niantic Bay Shellfish Farm (NBSF) shellfish processing structure known as the 'Oysterplex' to the Marker Seven location);
2. Was approved for a marina, not an aquaculture hatchery and/or shellfish processing facility;
3. Was processed through the required public process with Army Corps of Engineers as well as DEEP so that those affected by the permitted activity had the benefit of a transparent and public process through which the public could comment;
4. Had extensive engineering and environmental analysis, all of which has since expired.

On the first page of the COP, the applicant is asked to describe the project. The response is "Modification of current SDF, change of materials and smaller scope." The SDF was permitted for a marina. Yet the applicant goes on to describe a completely different use, which is that of an aquaculture facility. This isn't a 'smaller scope' it is an entirely *different* scope.

The applicant states on Page 8, Item 7 "The marina is operating as a base for multiple new water-dependent commercial uses (shellfishing, finfishing, dock construction, aquaculture)." That is correct. But this new activity is not permitted. The applicant, operating as NBSF, is processing shellfish on a structure known as the 'Oysterplex' and for which DEEP is on public record is a structure, not a vessel, and must be retained under the SDF application process. It has not gone through the permitting process since it was illegally placed in the river in July of 2016 and is in its fourth season operating with no permits. East Lyme Zoning Regulations also forbid berthing facilities for shellfish processing (see zoning regulations page 31 item 10.1.9).

Yet, the applicant goes on to claim on Page 13, Item 7 "The marina holds the current SDF for all noted activities discussed." This is not true. The previously permitted (now expired) SDF was not permitted for aquaculture activity. Thus, the response appears to be factually incorrect.

Despite the applicant's claim on Page 11, Item 4 "All of which the local Shellfish commissions have indicated interest in joining forces to establish a re-seeding project." There is a significant difference between a public/private re-seeding project and a commercial aquaculture processing facility. One has nothing to do with the other and seems gratuitously added here in an attempt to conflate support for the activities being requested for permit. Further, there is no direct linkage between the COP or SDF, and the independently proposed Public-Private re-seeding project offered by Rescue Our River.

Page 14, Item 12 – the applicant answers NO when asked "Is any portion of the work for which authorization is being sought now complete or under construction?" Yet the applicant, operating as NBSF, is currently operating a shellfish processing facility and hatchery on the docks that is unpermitted and has remained unpermitted since inception in July 2016. Thus the response appears to be factually incorrect.

Finally, in the NDDDB Request form – Part IV Project Information, the applicant states these are "...nominal changes to an already active permit..." Not only is this completely misleading, we would argue that an expired SDF that went through a public process for expansion of a marina, in keeping with all of the other neighboring businesses, that is now attempting to be morphed into a commercial aquaculture processing facility and hatchery – is hardly a "nominal" change. To then use the vehicle of a COP, making it a non-transparent, non-public process, disallowing any of the neighboring businesses and community to voice comment to such a drastic change in scope to a previous permit is highly inappropriate.

It is not clear to our organization why DEEP would not hold the applicant to the same standards and processes to which others in the community are held accountable? What the applicant wants to achieve at the Marker Seven location may well be a welcome addition to the waterfront, but how are we to know when it is disingenuously cloaked as a "nominal change" to a permitted marina? Using the vehicle of a COP to fundamentally alter the scope and intent of the previous permit, that did go through a public and transparent process, from a marina to a commercial aquaculture facility, thus excluding the voice of the neighboring businesses and community affected by this, is specious. Further, there appears to be a number of factual inaccuracies in the applicant's responses to the COP.

We request that the COP be denied, and the applicant be required to go through the SDF application process that all other citizens are required to go through when requesting to put structures in public trust waters.

Respectfully,

Robin Lineberger
Niantic River Advocacy Coalition

Cc: Brian Thompson, Director LWRD
Attorney Timothy Hollister
First Selectman Mark Nickerson
Senator Paul Formica
State Representative Holly Cheeseman
William Mulholland, Zoning Officer
Stephen Dinsmore, East Lyme Harbor Management/Shellfish Commission