

**EAST LYME HARBOR MANAGEMENT & SHELLFISH COMMISSION
REGULAR MEETING MINUTES
SEPTEMBER 17, 2019, 7:30 PM
EAST LYME TOWN HALL**

Chairman
Stephen Dinsmore

Treasurer
Donald F. Landers Jr.

Secretary
Joseph Hitchery

Members Present: Don Landers, Joe Hitchery, Greg Murin, Don MacKenzie, Rick Kanter, Craig Mason

Members Absent: Steve Dinsmore

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

FILED

Sent 24 2019 AT 10:30 AM PM

(Handwritten signature)

EAST LYME TOWN CLERK

1. CALL TO ORDER: J. Hitchery called the meeting to order at 7:30 PM

2. APPROVAL OF MINUTES OF MEETING OF MAY 21, 2019

It was the consensus of the members that the minutes were correct as presented.

3. PUBLIC DELEGATIONS:

A. Public Delegations:

Keith Neilson from the Black Point Beach Club Association, updated the commission on the restoration of the middle groin. They have received the DEEP and ACOE permits. He stated he still needs the permit from the Zoning Commission. The new groin will have a new bulk head and a concrete cap when done. Neilson stated the work will be done around Thanksgiving

4. REPORTS

A. Shellfish

The Niantic River is open

B. Harbor Master

R. Johnson, Harbor Master stated they have full use of the boat. He stated the electronics on the boat were not working when he got the boat back from the town police. He spoke to the company and they are willing to send a new unit under the warranty but the installation and cables will have to be purchased

The issue of who is responsible for the repairs due to vandalism while in the possession of the town police has not been resolved.

Discussion of moorings in the upper river were discussed

C. Treasurer

D. Landers reported that he received two invoices:

- Save the River Save the Hills for pump out program-\$3,000
- WELSCO, warden and water samples for July-\$68.75

D. Ex-Officio

No report

5. OLD BUSINESS

A. Harbor Management Plan-Update

The Board of Selectmen approved the Harbor Management Plan and the accompanying ordinance. It will be sent to DEEP with minor changes. The Commission decided to order 12 copies to be printed.

B. Future Shellfish Restoration Projects

An email to S. Dinsmore from Allisa Dragan stated, "surveyed EL waters with FDA this week. I do not have the results of that. We may get limited opening of waters in the Black Point area if they are only seasonal use. We could not arrange access to the islands."

C. Former Marker 7 COP

G. Murin stated that the activity specified in the COP is different than what is being proposed. He suggested getting more information.

A communication to Timothy Londregan from Michael Grzwinski (DEEP) dated August 22, 2019, outlining 14 requests for additional information (attached) and letters from concerned entities was submitted by the Niantic River Advocacy Coalition. The letter requested all information be submitted by September 19, 2019 and a decision to be made by October 23, 2019.

T. Londregan stated that all the bullet points in the letter have been answered and he has since met with DEEP concerning the COP.

He stated that the concern about the COP being the appropriate vehicle for his operation will be answered by DEEP.

He informed the members that what is being proposed is not a processing operation. His proposal is in compliance with the town.

T. Londregan stated he can use upwellers if he chooses. He said as long as he is not bringing water above the surface then it is not considered intake discharge, upwellers are not considered as discharging water. The upwellers will not be exposed out of the water. There will be four, 8 x 20 upwellers.

T. Londregan stated he would not rule out expanding his operation.

There is an existing permit for dredging which will expire in 2020.

D. Landers will discuss with S. Dinsmore requesting all correspondence concerning the COP be sent to the committee.

T. Londregan stated he will be following DEEP and town Zoning regulations and whatever their process is they will follow their procedures. He stated that there is not a comment period for the COP in regards to the Harbor Management Commission.

6. NEW BUSINESS

A. Correspondence

NOAA has their 40th annual Milford aquaculture seminar.

Niantic River Watershed Committee is updating its watershed plans

7. FINAL COMMENTS:

No comments

8. ADJOURNMENT

MOTION: (Murin/Mason) to adjourn at 8:26 PM. Vote: Approved Unanimously

Respectfully Submitted
Sue Spang
Recording Secretary



Date: August 22, 2019

Timothy Londregan
Marker Seven Marina, LLC
59 Woodlawn Road
New London, CT 06320

Subject: Certificate of Permission ("COP") Application #201908663-COP
109-111 Main Street, East Lyme

Dear Mr. Londregan:

A review of your certificate of permission ("COP") application indicates that the following additional information is necessary in order to evaluate your proposal:

1. Please revise Part III, number one of the application materials to identify your mailing address.
2. Part III, number 7 of the application materials includes the statement "...Siltation has become more drastic. The marina is operating as a base for multiple new water-dependent commercial uses (shellfishing, fin fishing, dock construction, aquaculture). A lack of shellfish in the immediate vicinity is noticeable. The previously noted SAV bed to the east of the marina is no longer in existence." Please provide a recent SAV survey, conducted by a qualified tidal wetland botanist that supports your statement concerning the presence of the previously identified SAV bed(s). Additionally, please provide a recent bathymetric survey of the area in the immediate vicinity to support your statement that siltation has occurred since issuance of permit #201107278-MG. Will the existing marina facility be used as the home port for a charter fishing business or a dock contracting yard as stated? Please describe the upland appurtenances necessary to support these uses. Please be aware, that modification of the existing upland to accommodate the proposed uses identified in the application materials may require approval from the Town of East Lyme.
3. Please revise Part III, number 10 of the application materials to identify the coastal jurisdiction line elevation as +2.3' NAVD88 and not +3.9' as identified in the application. Please revise the application and plans accordingly.
4. Part IV, number 3 of the application materials identify the purpose, need and use of the proposed work as "Marine Construction; shellfishing; fin fishing; public access via dinghy or ease of access to small beach and aquaculture." Please specifically identify the existing or proposed structures that will be used for the five (5) identified uses at the subject site and make certain to include the need for upland support structures for each of the proposed uses.
5. Please be aware that should the pending COP application be approved, it will supersede authorization #201107278-MG in its entirety.
6. Please provide a detailed discussion of the specific activities associated with the proposed shellfish processing and proposed upland needs or appurtenances for this use. Please make certain to include in your discussion how the market size product will be transferred from the in-water structures to the upland

and from the upland to buyers, will there be a need for an upland ice house, shellfish market, anticipated hours of operation of the shellplex, upland storage location of any cages or shellfishing gear, etc.

7. Please provide a discussion of the tumbling process, including volume of water used, duration of the activity, what happens to the "waste" and by product of the process (algae, shell trimmings, etc.), does the tumbler have a filter bag attachment to collect the trimmings prior to re-entry into the Niantic River. Having a collection bag on the tumbler may reduce the potential for a slightly turbid discharge during the tumbling process, thereby minimizing potential concerns regarding water quality impacts. Please indicate the possibility of modifying your tumbler to incorporate such a collection system.
8. Please provide plans that shows the existing in-water structures in relation to in-water structures located on adjacent properties.
9. Please provide cross-sections that depict the existing bulkhead, including top of bulkhead elevation and cross-sections of the proposed bulkhead, including top of bulkhead elevation. Please make certain to show the distance from the waterward face of the existing bulkhead to the proposed bulkhead and any walers or timber soldier piles.
10. Please revise Sheet 4 of 8 to identify top and toe of slope associated with the proposed dredging. In addition, please overlay the existing bathymetry identified on Sheet 3 of 8, onto Sheet 4 of 8 which contains the footprint of the proposed dredging.
11. Please provide a copy of the analytical data for the proposed dredging. If you intend to utilize the analytical data associated with permit #201107278-MG, please be aware that the data is approximately 8 years old and the dredged material was authorized for open water disposal. The application materials identify that approximately 550 cubic yards of dredged material will be dewatered on site and spread within the existing gravel and dirt parking area on the upland. Because you are proposing to dispose of the material on site we will require new testing data to determine if the material is appropriate for on-site disposal, a grain size analysis and a recent spills history for the existing marina.
12. Please revise Sheet 4 of 8, or provide a new plan that shows the proposed staging and stockpile area(s) for the equipment and materials associated with the proposed various shoreline improvements and all sedimentation and erosion control measures.
13. The application proposes to place stone riprap at the toe of the proposed timber bulkhead to "prevent scouring." Please be aware that the placement of the proposed new stone riprap waterward of the proposed bulkhead is **not eligible** for a COP and the application materials and plans must be revised to remove this riprap.
14. This Office has received letters of concern regarding the proposed activities. Copies of these letters are enclosed for your review and response. Please provide responses to the concerns identified in each of the four (4) enclosed letters, with copies sent to me.

Accordingly, under subsection(c) of section 22a-363b of the Connecticut General Statutes, a decision regarding your application shall be made no later than **October 23, 2019**, ninety (90) days from the date of its receipt. In order to adequately review your additional submissions, we must receive this material no later than September 19, 2019. Failure to comply with this deadline will result in the denial of your application without prejudice as sufficient time is not available to evaluate the proposed work.

Please include your application number on all submissions and forward such material to my attention at:

Department of Energy & Environmental Protection
Land & Water Resources Division, Regulatory – Southeast Section
79 Elm Street
Hartford, CT 06106-5127

In addition, you should be aware that any work in tidal wetlands or waterward of the coastal jurisdiction line in tidal, coastal or navigable waters of the State without proper authorization is a violation of state law and is subject to enforcement actions by the Department of Energy & Environmental Protection and the Office of the Attorney General.

Should you wish to discuss this application, please contact me at 860-424-3674 or micheal.grzywinski@ct.gov. Thank you for your cooperation in this matter.

Sincerely,



Michael P. Grzywinski
Senior Environmental Analyst
Land & Water Resources Division
Bureau of Water Protection & Land Reuse

Enclosures – August 8, 2019 letter from Ms. Gretchen Spartz; August 11, 2019 letter from Mr. Robin Lineberger-Niantic River Advocacy Coalition; August 12, 2019 letter from Mr. Scott Gladstone; August 13, 2019 letter from Boats, Inc., Avra Hospitality/Inn at Harbor Hill Marina, Port Niantic and Three Belles Marina

cc: Timothy Londregan, marker7marina@gmail.com
Bob Conigliaro, Gerwick-Mereen, LLC, Bob@gerwickmereen.com
Christina Comeau, Army Corps of Engineers, Christina.M.Comeau@usace.army.mil
Cori Rose, Army Corps of Engineers, Cori.M.Rose@usace.army.mil
Krista Romero, CT DEEP LWRD, krista.romero@ct.gov
Dave Carey, Department of Agriculture, Bureau of Aquaculture, David.Carey@ct.gov
Bill Mulholland, Town of East Lyme, billm@eltownhall.com
Lisa Winkler, lisa@grassrootsct.com
Robin Lineberger, nianticriverac@gmail.com
Scott Gladstone, scott.gladstone@wireless-zone.com
Attorney John Casey, jcasey@RC.com
File # 201908663-COP, East Lyme

RESCUE OUR RIVER

August 8, 2019

Mr. Michael Grzywinski
CT DEEP
Land & Water Resources Division
79 Elm Street
Hartford, CT 06106

Subject: Marker Seven Marina Certificate of Permission Application

Dear Mr. Grzywinski:

We recently learned of the Certificate of Permission (COP) application filed with your department by Marker Seven Marina and shared with the East Lyme Harbor Management Commission. As part of the COP, a commercial aquaculture proposal has been included as a new and proposed use for the Marker Seven property.

It is clear that a COP is not the appropriate process for establishing a commercial aquaculture venture in the Niantic River. If we have learned anything over the last year, it is that there is local oversight and a local process, involving town leadership, Harbor Management and the Waterford East Lyme Shellfish Commission (WELSCO). In fact, we checked with the chair of WELSCO and WELSCO's attorney, Rob Avena, Esq. and both were surprised by the proposal given the recent decisions on commercial aquaculture ventures in the Niantic River.

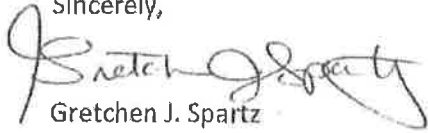
Aside from the fact that the revised Structures, Dredging and Fill (SDF) permit that is being utilized in the COP has already expired, it is clear that the inclusion of any sort of commercial shellfish venture (Hatchery, Shellfish Processing Plant, etc.) is inappropriate and has no place within a COP application before CT DEEP.

Recreational Shellfishing is an important part of the fabric of our community. Commercial ventures, however, like that proposed in the COP, have real impacts on the river, its businesses and its residents, and must be taken seriously and be subject to a public process. Given that local planning and zoning regulations expressly forbid this kind of proposal, modifying an expired SDF permit for a Marina to include a commercial aquaculture venture seems entirely inappropriate.

On behalf of Rescue our River, representing both Waterford and East Lyme residents, we would urge you to remove the shellfish component of the COP as it is not properly before the agency without having first been through a local process, public hearing, etc.

Thank you for your consideration in this matter. We welcome your feedback and look forward to your reply.

Sincerely,

A handwritten signature in cursive script that reads "Gretchen J. Spartz". The signature is written in black ink and is positioned to the left of the printed name.

Gretchen J. Spartz
East Lyme Resident
Rescue Our River

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

SCOTT D. GLADSTONE



30 NIAN TIC RIVER ROAD
WATERFORD, CT 06385

Phone (860)608-5900
Fax (860) 439-0700

Email Scott.Gladstone@Wireless-Zone.com

August 12, 2019

Mr. Michael Grzywinski
Senior Environmental Analyst
CT DEEP Office
333 Ferry Road
Old Lyme, CT 06371

Re: Marker Seven Marina

Via Email: micheal.grzywinski@ct.gov

Mr. Grzywinski,

I have been apprised Marker Seven Marina, which is located at 111 Main St, Niantic, CT has requested a COP from your office to modify/expand the scope of their waterfront infrastructure and activity on the Niantic River. If that is the case, I am formally requesting your office hold Marker Seven Marina to the same standards as other residential dwellings, commercial venues and marina's, and the **COP be denied**.

Having Marker Seven Marina go through the SDF application process would allow public input and that of other regulatory agencies.

Respectively,

A handwritten signature in black ink, appearing to be 'S. Gladstone'.

Scott Gladstone

RECEIVED

AUG 16 2019

DEEP
Land & Water Resources Division

August 13, 2019

Micheal Grzywinski
Senior Environmental Analyst
Office of Long Island Sound Programs
State of Connecticut Department of Energy and Environmental Protection
79 Elm Street
Hartford, CT 06106-5127

Re: CERTIFICATE OF PERMISSION REQUEST BY MARKER SEVEN MARINA LLC

Dear Mr. Grzywinski,

We, "Boats Incorporated, Avra Hospitality/Inn at Harbor Hill Marina, Port Niantic, and Three Belles Marina", were made aware last week that Timothy Londregan had filed a Certificate of Permission (COP) Application to modify the current Structures, Dredging and Fill Application (SDF #201107278-MG) to allow for a number of modifications to the existing permit. We have a number of concerns associated with the modifications proposed in this COP:

- (1) The original permit issued to Bayview Landing Marina (granted 7/25/12 – expired 7/25/17) was extended by DEEP in May 2019 for two years. The original permit under GENERAL TERMS AND CONDITIONS (section 1.a) explicitly states that the "permittee may request a one-year extension of the work completion date". Additionally, the permit states that the docks are to be used for "recreational boating," and to change the use to commercial shellfish processing is inconsistent with the original permit. We believe that nowhere in the definition of what activities are eligible under a COP does it state that it is permitted to change the use of a permitted structure.
- (2) We are of the opinion that this recreational marina location is not appropriate for locating a commercial shellfish processing operation given the concentration of recreational boats located in this marina district. On several occasions we have experienced first-hand the odors and noise emanating from the shellfish complex not only when the processing plant is in use but even when it is not in use. This will have a detrimental impact on the vacancy of the surrounding marinas, the local tourism industry, and the local economy.
- (3) By allowing the applicant to use a COP to make significant modifications to an existing permit, will establish precedent with DEEP for future modifications of the facility. Who is to say that this is not just the first step in a long-term plan to convert Marker Seven Marina into a full blown commercial aquaculture facility with numerous additional Shellplexes and FLOPSY's. By approving this COP, a precedent will be established making it difficult for DEEP to turn down additional similar permitted use change requests by this applicant as well as other applicants in Connecticut. We believe this approval should not be taken lightly by DEEP as this could change the processes in place by every marina and community in Connecticut.

(4) According to the COP application, the marina has been operating as a "base for multiple new water-dependent commercial uses (shellfishing, finfishing, dock construction, aquaculture)". It is unclear to us how that is possible without the appropriate aquaculture permits and why DEEP would allow that to occur.

(5) As noted in Special Condition 10 of the SDF permit: "The work specified in the SCOPE OF AUTHORIZATION is authorized solely for the purpose set out in this permit. No change in the purpose or use of the authorized work or facilities as set forth in this permit may occur without the prior written authorization of the Commissioner. The Permittee shall, prior to undertaking or allowing any change in use or purpose from that which is authorized by this permit, request authorization from the Commissioner for such change. Said request shall be in writing and shall describe the proposed change and the reason for the change." Our concern is that the ability to modify the original permit to allow commercial shellfish processing at the facility through a COP was most likely not known at the time the original permit was issued. Had the Town of East Lyme, local businesses, and the public known that the owner was going to change the use (or would have the ability change the use) to commercial shellfish processing without any opportunity for public input, they likely would have objected while the original application was under review.

(6) It is our understanding that the Town of East Lyme zoning expressly restricts the operation of shellfish processing plants in this CM Commercial District (section 10.1.19)

We strongly believe that the use of a COP to make such significant modifications to an existing SDF is inconsistent with how DEEP has acted in the past. This COP application is clearly being used as a vehicle to provide Mr. Londregan with a means to introduce commercial aquaculture into the Niantic River without having to go through a public process. DEEP has set high standards for compliance and diligence in the past and to approve significant changes to the SDF with this COP when there are so many unanswered questions and inconsistencies with the original permit does not seem reasonable. Additionally, we believe you should be very concerned about the precedent this will set for the use of future COP's to make what are arguably very significant changes to a permit. We hope you agree that this COP should be denied.

Sincerely,

Boats Incorporated: *Seth Ledy*

Avra Hospitality/Inn at Harbor Hill Marina: *[Signature]*

Port Niantic: *Seth Ledy*

Three Belles Marina: *[Signature]*

Cc: Brian Thompson, Director of LWRD
Mark Nickerson, East Lyme First Selectman
William Mulholland, Zoning Official
Senator, Paul Formica
State Representative, Holly Cheeseman