

Amended

**EAST LYME HARBOR MANAGEMENT & SHELLFISH COMMISSION
REGULAR MEETING MINUTES
NOVEMBER 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 Rick Kanter, Craig Mason

Members Absent: Greg Murin, Don MacKenzie,

Ex-Officios Present: Harbormaster Ron Johnson

Ex-Officios Absent: Selectman Dagle

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

2. APPROVAL OF MINUTES OF SPECIAL MEETING OF OCTOBER 22, 2019
MOTION: (Landers/Mason) to approve the October 22, 2019 minutes as amended.

CALL TO ORDER: ~~J. Hitchery~~ **S. Dinsmore** called the meeting to order at 7:31 PM
Add: Ex Officios Absent: Selectman Dagle

FILED

Vote: Approved Unanimously

December 2 20 19 AT 11:49 AM/PM
Bruce Peterson ATC
EAST LYME TOWN CLERK

3. PUBLIC DELEGATIONS:

A. Public Delegations:

Fred Wise, 138 Niantic River Road asked the commission to elaborate and communicate what they know about items 5B and 5C (Old Business Future Shellfish restoration project and Former Marker 7 COP-Approved by DEEP). F. Wise specifically wanted to know about the Cease and Desist, issued by the town of East Lyme.

4. REPORTS

A. Shellfish

The Niantic River is open, the bay is open and area F is open.

B. Harbor Master

R. Johnson, Harbor Master presented an estimate for \$1293.00 from Boats Inc. for winterization of the Harbor Master boat. As per the MOU with the Town of Waterford an invoice for half of the cost will be issued.

R. Johnson stated that most boats are out of the water and off their moorings.

R. Johnson informed the members he had researched the two large moorings in the upper Niantic River. The moorings are for the purpose of tying up large boats in the event of a large storm or hurricane. One of the moorings is for the Sunbeam 5, R. Johnson contacted Mr. Wadsworth and asked him to consider moving the mooring so it is not so close to the channel.

C. Treasurer

D. Landers reported that he received the 50% reimbursement from Waterford in the amount of \$713.99.

There has been \$5309.66 spent out of the \$10,000 budget.

J. Hitchery read portions of the grant proposal for the Harbor Master boat, specifically where the Parks and Recreation and Police would have use of the boat. He stated it would be reasonable to expect them to help pay for the upkeep and maintenance of the boat. J. Hitchery stated that according to the grant proposal the boat was mainly to be used for port security.

S. Dinsmore stated that Parks and Rec have no claim or intention to use the boat and due to recent history he is not going to pursue sharing of the boat with the police.

C. Mason stated he will research the grant to ascertain if the boat can be sold and under what conditions. S. Dinsmore will discuss the issue with the First Selectman.

MOTION: (Landers/Kanter) to approve the winterization of the Harbor Master boat for 50% of the \$1293.45 estimate, not to exceed \$650.00. Vote: Approved Unanimously.

D. Landers informed the members that he is not aware if the bill for the boat vandalism has been paid. He gave it to the police chief for payment and has not received an update. The budget will be discussed at next months meeting.

S. Dinsmore will discuss the status of the vandalism bill with the First Selectman.

D. Ex-Officio

No report

5. OLD BUSINESS

A. Harbor Management Plan-Update

S. Dinsmore presented an email from Geoff Steadman communicating that DEEP does not like one line in the Harbor Management Plan. The line is on page 3-12, the last line of paragraph headed:

Use of Town-Owned Street Ends and Water Access Right-of-Ways.

The line reads: *The Town Attorney has indicated that efforts to clarify the current titles on street end and water access right-of-ways likely will be costly and time-consuming.*

MOTION: (Kanter/Mason) to remove the sentence: *The Town Attorney has indicated that efforts to clarify the current titles on street end and water access right-of-ways likely will be costly and time-consuming*, from Page 3 of the Harbor Management Plan. Vote: Approved Unanimously.

B. Future Shellfish Restoration Projects

R. Kanter informed the Commission that a public/private partnership involving WELSCO and private individuals to seed two areas of the Niantic River with 100,000, 25-30 mm oysters. The objective would be that the oysters will help clean the river and possibly provide recreational harvesting of the oysters. The permit from DABA has been approved for transport of the oysters from Noank to the river.

MOTION: (Landers/Kanter) the Commission fully supports the efforts by WELSCO and private individuals for the restoration of oysters in the Niantic River. Vote: Approved Unanimously.

C. Former Marker 7 COP

S. Dinsmore stated he was unaware of any actions by the town concerning the property purchased by T. Londregan. He stated that once he became aware of the COP for the

property he contacted DEEP and asked to be put on all correspondence relating to the COP. When he received the first communication from DEEP it was to inform him that T. Londregan's COP had been approved.

The Cease and Desist (C&D) order as well as a letter by Attorney Timothy D. Bleasdale for the Town of East Lyme, was provided to the commission by Terri Lineburger. The C&D states that the proposed activity is a change of use as provided in a previous Coastal Area Management (CAM) application, therefore not an approved use by zoning regulations. The letter from Attorney Bleasdale cites concern about the COP approval. He states DEEP should have denied the COP application by Londregan as it violates the Coastal Management Act and East Lyme zoning regulations.

Pete Harris, WELSCO stated that they have nothing to do with the application.

S. Dinsmore will discuss the issue with the First Selectman.

F. Wise informed the commission that T. Londregan is presently using the tumbling machine and the debris is going into the river.

6. NEW BUSINESS

A. Correspondence

The approved COP for a dock on Quarry Dock Rd was received.

A letter from the Town Clerk advising the commission that they needed to submit their meeting dates for 2020 by December 31, 2019.

A notification of CAES on January 11, 2020-Gathering of the Shellfish Commissions

B. Sampling to Identify Bacterial Sources

The Niantic River Watershed Committee had a public outreach meeting in which they discussed applying for a grant to determine the bacterial sources in the Niantic River. D. Landers stated that a DNA test can be done of the water samples to pinpoint if the bacteria is coming from birds, agriculture, septic or other sources. He stated they do not have a clear handle on the source of bacteria which creates nutrient overload in the river.

7. FINAL COMMENTS:

Terry Lineburger stated that the commission knew about the application by T. Londregan and his plans for Marker 7 but she believes that the commission was not proactive where T. Londregan's activities were concerned. T. Lineburger stated the Marker 7 structures should have gone through the SDF process. She stated Londregan has been operating in the Niantic River without proper permits since 2016. Various people have tried to make the members aware of his activities. She told the members she would forward any documentation concerning T. Londregan and his operations.

8. ADJOURNMENT

MOTION: (Kanter/Hitchery) to adjourn at 8:48 PM. Vote: Approved Unanimously

Respectfully Submitted
Sue Spang
Recording Secretary



WALLER
SMITH &
PALMER^{PC}
Attorneys at Law

October 7, 2019

VIA EMAIL TO michael.grzywinski@ct.gov

Michael P. Grzywinski
Senior Environmental Analyst
Department of Energy & Environmental Protection
Land & Water Resources Division, Regulatory – Southeast Section
79 Elm Street
Hartford, CT 06106-5127

RE: COP APPLICATION #201908663-COP
MARKER SEVEN MARINA, LLC
LETTER OF CONCERN IN OPPOSITION

Dear Mr. Grzywinski,

This office represents the Town of East Lyme. We are submitting this letter of concern on behalf of the Town regarding Certification of Permission (“COP”) Application #201908663-COP, which was made by Marker Seven Marina, LLC. The Town respectfully submits that the Department of Energy and Environmental Protection (“DEEP”) should deny the COP for the reasons stated herein.

In recent submissions to your office, Timothy Londregan, the manager of Marker Seven Marina, LLC, has provided you with inaccurate information regarding the Town’s position on his application and regarding the zoning status of the marina’s current activities. **The Town opposes Mr. Londregan’s current application. DEEP should deny the COP because it involves activities occurring in violation of the Connecticut Coastal Management Act (“CMA”), General Statutes § 22a-90 to 22a-111, inclusive, and is in violation of the East Lyme Zoning Regulations (“Regulations”). Mr. Londregan’s activities are currently the subject of a cease and desist order from the East Lyme Zoning Official. A copy of the order is attached hereto as Exhibit A.**

The marina is located at 109 – 111 Main Street, Niantic, in the Town’s CM Commercial District, which is governed by Section 10 of the Regulations. See Section 10 of the Regulations attached hereto as Exhibit B. This is a marine commercial district containing land with frontage on certain public waterways and adjacent parcels. The Regulations provide for a number of permitted uses, including but not limited to the operation of marinas/yacht clubs (10.1.2) and berthing facilities for commercial shellfishery vessels (10.1.9). However, prior to obtaining a permit to commence a permitted use in this zone, the CMA requires that the proposed use undergo a Coastal

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*
JONATHAN R. AUBIN

OF COUNSEL:
ROBERT W. MARRION
ROBERT P. ANDERSON, JR.
FREDERICK B. GAHAGAN

* ALSO ADMITTED IN RI
+ ALSO ADMITTED IN MA

Area Management (CAM) Site Plan review by the Zoning Commission ("Commission"). Commencing a use without first obtaining CAM approval from the Commission is a violation of both the CMA and the Regulations.

On August 4, 2011, the Commission approved a CAM Site Plan for the operation of Marker Seven Marina, then known as "Bayview Landing Marina." See attached 2011 CAM approval attached hereto as Exhibit C. Since that time, Marker Seven Marina has operated under this CAM approval. The current CAM approval is limited to the operation of a marina pursuant to Sec. 10.1.2 of the Regulations. Because the Regulations do not define "marina," the Commission has adopted the common meaning of the term as defined by Merriam-Webster Dictionary: "a dock or basin providing secure moorings for pleasure boats and often offering supply, repair, and other facilities." This means the CAM approval is limited to using the marina for recreational or pleasure boating.

The 2011 CAM application sought approval for use as a Sec. 10.1.2 marina only. The Regulations are clear that berthing facilities for commercial shellfishing vessels are classified as a separate and distinct use in the CM District. Specifically, Sec. 10.1.9 defines this use as "berthing facilities for vessels engaged in commercial fishery or shellfishery, but expressly excluding fish or shellfish processing plants." This means that in order to use the marina as a berthing facility for a commercial shellfishery vessel, Mr. Londregan is required to submit a CAM Site Plan for review by the Commission. To date, Mr. Londregan has not done so.

Additionally, Mr. Londregan's commercial shellfishery operation involves certain processing activities that are not permitted in the CM District and which could not be approved by the Commission. Sec. 10.1.9 expressly excludes from the permitted uses "fish or shellfish processing." The processing of seafood is understood to mean any change, alteration, or step in a series of steps to alter the condition of the food or product from its raw state to the form in which it will be sold or distributed. This includes, but is not limited to, processes to remove sand, grit, and other debris, as well as shucking and/or packaging of food. It is our understanding that Mr. Londregan currently engages in processing activities on a commercial shellfishery vessel that is berthed at Marker Seven Marina. This is a violation of the CMA and the Regulations.

The above described zoning violations are currently the subject of a cease and desist order and may also become the subject of a zoning enforcement action in the Superior Court pursuant to General Statutes § 8-12. Under these circumstances, it would not be appropriate for DEEP to grant Mr. Londregan's COP application for activities that are currently in violation of CMA and the Regulations.

Additionally, please be aware that while this letter concerns the Town's enforcement of a current CAM approval, the Town is in no way waiving its claim of jurisdiction over certain activities occurring in the Niantic River pursuant to General Statutes § 22a-103 (granting zoning jurisdiction to effectuate "land and water use strategies" under the CMA); DiPietro v. ZBA of Milford, 93 Conn. App. 314, 320 (2006)

(CMA demonstrates legislative intent for State and coastal municipalities to share concurrent jurisdiction waterward of the mean high water mark within the provisions of the Act); Oakbridge/Rogers Avenue Realty, LLC v. PZB, 78 Conn. App. 242 (2003) (upholding municipal zoning regulations that regulated the number of boat slips, berths, moorings and similar spaces). The Town may elect to further exercise its jurisdiction pending review of the activities and uses Mr. Londregan ultimately proposes for Marker Seven Marina and adjacent waters of the Niantic River.

Very truly yours,



Timothy D. Bleasdale, of
Waller, Smith & Palmer, P.C.

cc: Mark Nickerson, East Lyme First Selectman
William Mulholland, Zoning Official
Timothy Londregan
Attorney John Casey, by email
Bob Conigliaro, Gerwick-Mereen, LLC, by email
Christina Comeau, Army Corps of Engineers, by email
Cori Rose, Army Corps of Engineers, by email
Krista Romero, CT DEEP LWRD, by email
Dave Carey, Dept. of Agriculture, Bureau of Aquaculture, by email
Lisa Winkler, by email
Robin Lineberger, by email
Scott Gladstone, by email

Town of

P.O. Drawer 519

Zoning Department

William Mulholland,

Zoning Official



East Lyme

108 Pennsylvania Ave

Niantic, Connecticut 06357

(860) 691-4114

Fax (860) 691-0351

October 7, 2019

CEASE & DESIST ORDER TO:

Timothy Londregan, Managing Member
Marker Seven Marina, LLC
111 Main Street
Niantic, CT 06357

Alfonso Morgillo, President
Niantic River Marina, Inc.
1130 Whalley Ave.
New Haven, CT 06515

Janet Myers, President
Niantic River Transmission Co.
113 E. Main Street
Niantic, CT 06357

Timothy Londregan, Managing Member
Niantic Bay Shellfish Farm, LLC
59 Woodlawn Road
New London, CT 06320

RE: 109 – 111 Main St. – Marker Seven Marina

Dear Mr. Londregan,

On August 4, 2011, the East Lyme Zoning Commission approved a Coastal Area Management (CAM) Site Plan for the operation and improvement of Marker Seven Marina, then called "Bayview Landing Marina," at the property located at 109 – 111 Main Street. Since that time, Marker Seven Marina has operated under this CAM approval. It has recently come to my attention that Marker Seven Marina is in violation of the current CAM approval because an unpermitted commercial shellfishing business is being operated from the property without undergoing CAM Site Plan review and approval.

The current CAM approval is limited to the operation of a marina pursuant to Sec. 10.1.2 of the East Lyme Zoning Regulations (the "Regulations"). Because the Regulations do not define "marina," the Zoning Commission ("Commission") has adopted the common meaning of the term as defined by Merriam-Webster Dictionary, which is "a dock or basin providing secure moorings for pleasure boats and often offering supply, repair, and other facilities." This means that CAM approval for a marina is limited to using the marina for recreational or pleasure boating.

The 2011 CAM application did not seek approval for any other use. The Regulations classify the docking or berthing of commercial shellfishing vessels as a

(00478257.1)



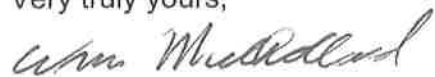
different and separate use from the operation of a marina. Specifically, Section 10.1.9 provides for: "Berthing facilities for vessels engaged in commercial fishery or shellfishery, but expressly excluding fish or shellfish processing plants." On this basis, the operation of a commercial shellfishing business at Marker Seven Marina is a violation of the current CAM approval. Further, the shellfish processing activities occurring as a part of this business are prohibited by Sec. 10.1.9 and also constitute a zoning violation.

As a result of this finding you, the above listed persons and/or entities, are hereby ordered to **Cease & Desist** the operation of an unpermitted commercial shellfishing business at Marker Seven Marina (109 – 111 Main Street) within 10 days of receipt of this order. Failure to comply will result in legal action by the Town to ensure compliance with this order. Fines and penalties shall be in accordance with General Statutes § 8-12, Chapter 124, and may be assessed against the property owner, Niantic River Marina, LLC, and any user of the property, including but not limited to yourself, Marker Seven Marina, LLC, Niantic Bay Shellfish Farm, LLC, and Niantic River Transmission, LLC. A copy of General Statutes § 8-12 is enclosed for your convenience.

In order to resume operation of your commercial shellfishing business at Marker Seven Marina, you must apply to the Commission for a new CAM Site Plan review of the proposed use of the marina as a berthing facility for vessels engaged in commercial fishery or shellfishery. Please be aware that the Regulations do not permit the processing of seafood of any kind as a part of any activity in the CM Zone, which is the zone in which Marker Seven Marina is located. The processing of food is understood to mean any change, alteration, or step in a series of steps to alter the condition of the food or product from its raw state to the form in which it will be sold. This includes but is not limited to processes to remove sand, grit, and other debris, as well as shucking and/or packaging of food.

If you have any questions please feel free to contact my office.

Very truly yours,



William Mulholland
Zoning Official

Cc: Michael P. Grzywinski, Dept. of Energy and Environmental Protection
Mark Nickerson, East Lyme First Selectman