

**EAST LYME ZONING BOARD OF APPEALS
PUBLIC HEARING AND REGULAR MEETING
MONDAY, JANUARY 13th, 2020
MINUTES**

A Public Hearing and Regular Meeting of the East Lyme Zoning Board of Appeals was held on Monday, January 13, 2020 at 6:30 PM at the East Lyme Town Hall, 108 Pennsylvania Avenue, Niantic, CT.

PRESENT: Steve Carpenteri, Chairman, John Smith, Secretary, Mike Foley,
Debbie Jett-Harris, Kevin Mace

ALSO PRESENT: Attorney Timothy Bleasdale, Waller, Smith & Palmer, representing
Wm. Mulholland Town Zoning Official
Attorney William Sweeney, TCORS, representing the Zoning
Board of Appeals
Attorney Thomas J Londregan, Conway, Londregan, Sheehan &
Monaco PC, representing Marker Seven Marina LLC, Timothy 'TJ'
Londregan III
David Schmidt, Alternate
Wayne Blair, Alternate

FILED

ABSENT: No One

Jan 23 2020 AT 10:40 AM/PM
Wm Mulholland
EAST LYME TOWN CLERK

1. Call Meeting to Order

Chairman Carpenteri called the Public Hearing to order at: 6:30 PM. He introduced the members of the Board and Attorney Bleasdale who is representing Mr. Mulholland, ZEO and Attorney Sweeney who is representing them – the Zoning Board of Appeals.

Prior to opening the Public Hearing Mr. Carpenteri read a number of ground rules regarding how the meeting would be conducted to ensure that all in attendance are treated in a respectful and courteous manner. He said that Attorney Bleasdale representing Mr. Mulholland would present first; then the appellant or his representative; the Board members would ask any questions that they might have and then they would hear comments from the public. The Legal Ad ran in the New London Day on January 1 and January 9, 2020 and is in the file along with the notices that have been sent to the abutters.

2. Read Notice of Public Hearing

Mr. Carpenteri read the Public Hearing Notice and opened the Public Hearing of:

East Lyme Zoning Board of Appeals Case 1-2020 Application of Marker Seven Marina LLC, Applicant, Niantic River Marina LLC, Owner, appeal of the Cease and Desist order of the East Lyme Zoning Official dated October 7, 2019 regarding a parcel known as 109-111 Main Street and appears on the East Lyme Assessor's Map 12.1, Lot 56, and Map 12.2, Lot 1.

Mr. Carpenteri then called upon Attorney Bleasdale, representing Mr. Mulholland, Zoning Official.

Attorney Bleasdale said that this is not about aquaculture or shell fishing but of the use of the docks at Marker 7 Marina. He provided a map of the area for the record which was entered as ZEO Exhibit 1. He noted that there is a red circle on the map depicting the area north of the road that fronts on the river. He also submitted ZEO Exhibit 2 another map with a red lined area one of which is especially close to the shore noting that most of the marinas are in this area. He also cited the Harbor Management Plan and entered it as ZEO Exhibit 3. And, a copy of Section 14 of the Zoning Regulations was entered as ZEO Exhibit 4 citing the Coastal Site Plan Review Requirements and Exemptions. He noted that Section 10 of the Zoning Regulations governs uses for the CM District. In 1987 the Harbor Management Commission was created and they adopted a Harbor Management Plan. Further in a Supreme Court Case – Rapoport v. ZBA City of

Stamford the State gave authority to municipalities up to the mean high water line. The Zoning regulations can regulate the number of boats, moorings and use of those spaces. He submitted ZEO Exhibit 5 – the East Lyme Harbor Management Plan dated May 5, 1994. He then played a minute and a half video (CT Style Live) showing the activities in the area by Mr. Londregan. He asked that they pay special attention to the large tumbler cylinder on the boat at the dock area.

(Note: Attorney Londregan said that for the record he had no objection to the video being played and that he had received a copy of it the previous Friday.)

Attorney Bleasdale said that the tumbler device in the video is processing the oysters – cleaning and chipping their shells by Mr. Londregan’s own admission in that video.

Further – the definition of a marina – from the dictionary cites ‘pleasure boats’. The Rapoport Case specified that if a definition was not supplied then a reasonable common sense one is used. In Section 10.1.1 of the Zoning regulations it states the general description and purpose of marina use.

Attorney Bleasdale cited the Zoning Cease & Desist Order stating that it contained the following findings or directives:

- The current zoning approval for the property located at 109-111 Main Street is a 2011 approval of a CAM Site Plan to use the property as a marina pursuant to Section 10.1.2 of the EL zoning Regulations. (paragraphs 1 and 2 of the order)
- The Zoning Regulations do not define ‘marina’, the ZEO is using the common meaning of the term as defined by the Merriam-Webster dictionary, which is a ‘dock or basin providing secure moorings for pleasure boats and often offering supply, repair, and other facilities’ (paragraph 2 of the order)
- The 2011 zoning approval for the property is limited to a marina serving recreational or pleasure boats
- The zoning regulations classify the ‘berthing’ of commercial shell fishing boats as a different and separate use from the operation of a marina.
- The operation of a commercial shell fishing business at Marker Seven Marina is a violation of the current zoning approval for the property.
- Section 10.1.9 prohibits shellfish processing in this zone and certain processing activities occurring as a part of the berthing of the commercial shell fishing boat are a violation of the zoning regulations.
- The Order requires that Mr. Londregan Cease and Desist from operating a shell fishing business at Marker Seven Marina unless and until he applies to the Zoning Commission for a Coastal Area Management (CAM) Site Plan Review seeking approval for such use.

He asked that for the reasons cited in his opposition to the Londregan appeal that they uphold the order of the Zoning Official dated October 7, 2019. A summation of his presentation was entered as ZEO Exhibit 6.

Attorney Thomas J Londregan, place of business 38 Huntington Street, New London, CT said that he represents Thomas ‘TJ’ Londregan III’s Niantic Bay Shellfish Farm. He said that he would outline his defense and that he had focused in on the Cease & Desist order the essence of it being that they are being cited for operating without CAM site plan review and approval.

He said that 99% of what ‘TJ’ Londregan does takes place beyond the mean high tide line and East Lyme has no jurisdiction there – it is the State of CT that has that jurisdiction. The State of Ct controls water ward of the mean high tide line. The State has also allowed Towns to form Harbor Commissions which are considered advisory only.

With regard for a public marina – East Lyme would have jurisdiction if it was operating on land or had an impact on the land – such as with parking. ‘TJ’ Londregan’s only effect on the land is –

- He carries bagged shellfish down the dock
- He ices the shellfish
- He places them in a cooler or box

He noted that in Section 14 of the EL Zoning Regulations that 14.2.1 cites exemptions and this includes shell fish. Item A in 14.2.1 cites harvesting of crops and Item F cites preserving shellfish. In the Cease & Desist it cites processing plant – but processing is not what ‘TJ’ is doing – he takes a raw oyster in a shell and it leaves the same way. He noted that in his packet of exhibits that item G is a letter dated today (1/13/2020) signed by the Commissioner of Agriculture noting his opinion of what is being done by ‘TJ’s’ operation.

The current CAM approval is limited to a marina for pleasure boats and the 2011 CAM was an expansion of the docks from 80 to 144. The area has always been a commercial marina and the Town told the DEEP in May 2019 that the 2011 site plan was no longer valid however in October 2019 they used it as part of the

Cease & Desist order saying that it is only for the use of pleasure boats. He asked that they please concern themselves with the two issues – what activity takes place water ward of the mean high tide area and what activity happens land ward where you will find that Niantic Bay Shellfish Farm is not operating a 'processing plant'. They have a raw commodity activity. He cited Page 3 of his Exhibit A regarding Coastal site plan reviews and asked 'TJ' what he does water ward and land ward and why he thinks that he is here this evening. He stated that there is no reason for a CAM review for activities beyond the mean high tide mark. Commercial boats have always been at this marina and there were originally 80 slips there with no restrictions on the boats that could use the slips. He noted that they were cited for noise. Also, the Cease & Desist cited violation of Section 10.1.9, however when you look at that Section it cites 'shellfish processing plants' – but – there is no processing plant and no processing as it is a raw oyster. 'TJ' said that he thinks that he had been cited for the noise as that is what he has been told.

Attorney Londregan then presented his composite exhibits – Londregan Exhibit Package - Exhibits A-H to the members and proceeded to question 'TJ' with regard to who he is; what he does; what he owns; his background; his understanding of water ward and land ward of the mean high tide line and what the Town has jurisdiction of; what he does on a typical day (Itemized throughout Exhibit A pages 1-94); if his tumbler is needed for the growing and sorting of the oysters (tumbling is part of the process as noted in a Dept. of Agriculture letter in the exhibits); the zone that they are located in (CM See Sections 10.1.9 & 10.1.12); CAM exemptions (Exhibit A pgs 20-24); testimony of Alfonso Morgillo stating that since 1966 the marina has had commercial fishing vessels; notation of emails from the Town First Selectman; 'TJ' response to email and subsequent call for a meeting with the First Selectman (Mr. Mulholland also present); ZEO email to DEEP regarding 'shell fishing facility' and that the CAM site plan approval expired (Exhibit A pg 37); Town is telling the DEEP that 'TJ' is running a processing plant and a Cease & Desist will be issued (Exhibit A pgs 38-39); was 'TJ' informed of whom had directed the ZEO to issue the C & D (No); 'TJ' letter to First Selectman Nickerson following meeting at Town Hall (Exhibit A pgs 40 – 48 noted – are not processing and activities are beyond mean high water mark, further has gone above and beyond to make improvements with regard to the tumbler 'noise'; improvements which it was noted he is not required to do and which zoning does not have jurisdiction over); C & D noted that the zoning commission made the definition (Attorney noted that none could be found in any minutes); (cited pictures of non-recreational boats on the docks Exhibit A pgs 58-72 and the dock leases in that area Exhibit A, pgs 75 – 86); Cited Exhibit A pg 91 and pgs 92-93 regarding EL First Selectman proclamation recognizing Agri-business; and Noted his response to Exhibit K – letter from EL Town Attorney to the DEEP citing Oak Bridge/Rogers and DiPietro v ZBA Milford cases and subsequent cases Rapoport v ZBA Stamford – noting that it is the State of CT that regulates activity water ward of the mean high water mark.

Attorney Londregan said that he had some questions for Mr. Mulholland and asked if he could have him answer them.

Discussion ensued and a break was taken regarding this matter.

Attorney Sweeney stated that Mr. Mulholland would not testify as he has Counsel to represent him and Attorney Londregan has distilled his questions to six (6) and Attorney Bleasdale would answer them. The questions would be directed to the ZBA Chairman to ask.

Mr. Carpenteri asked Attorney Bleasdale:

- Is it correct that the 2011 approval was only for expansion from 80 slips to 144 and did not affect the rest of the property?

Attorney Bleasdale said that he would have to say he would have to disagree as that is a 'too narrow' view of the application which is in the record. It applied to the entire property and it was slips for recreational boating.

Mr. Sweeney asked that the answers be kept brief and a 'yes' or 'no' if possible -

- Who directed the ZEO to issue the C & D order before the investigation was completed as was stated in the May 15, 2019 email to Marcy Balint.

Attorney Bleasdale replied the ZEO takes direction from the Zoning Commission and the First Selectman and that the C & D order was issued in October – long after the May 15, 2019 email.

- The Cease & Desist Order states that the Zoning Commission interpreted a 'Marina' to be for pleasure boats only – at what meeting did the Commission do that.

Attorney Bleasdale said that if it was formally adopted at a meeting; the fact is that the ZEO frequently acts on behalf of the Zoning Commission and you are here this evening to determine if that was an accurate interpretation.

- There is no physical processing plant on the land – is that true?

Attorney Bleasdale said that he could not say for certain if it comes on land, the tumbler does not appear to be fixed in one location.

▪ Is this the first C & D order issued for a marina not being all for pleasure boats
Attorney Bleasdale noted that this is not a relevant issue for this Board at this time.

Attorney Sweeney noted that they accepted into the record Londregan submitted Exhibits A-H with Exhibit G being the Dept. of Agriculture letter that was received today.

Mr. Carpenteri asked if the Board had any questions for them.

Ms. Jett-Harris asked 'TJ' to turn to pg 40 of the exhibit – and the first paragraph of his letter – noting that the letter said that he had made improvements that he was required to do –

'TJ' said that it was that he was not (sic) required to do.

Ms. Jett-Harris thanked him for the clarification.

Mr. Mace asked Attorney Londregan for a definition of a processing plant.

Attorney Londregan said that to his way of thinking it is a physical structure – constructed, a building where items are off-loaded to; and not a piece of equipment.

Mr. Foley asked Attorney Bleasdale if he represented Mr. Mulholland personally or for the Town.

Attorney Bleasdale said that he works for Waller, Smith & Palmer who is the Town Counsel. He works closely with Attorney O'Connell and explained that because they could not represent the ZBA also that he represents the ZEO.

Mr. Mace asked Attorney Bleasdale what he sees happening here versus what is happening at Cini Park in the same zone.

Attorney Bleasdale said that is not really the issue here tonight of what is taking place in each area. They are not properties that have been approved in the same way. The C & D order says that you can't berth your boat there until you go through the CAM review. The Cini Park docks are commercially leased.

Mr. Mace asked if Cini Park went through the CAM review process.

Attorney Bleasdale said that he did not know.

Mr. Mace asked if they are zoned the same – CM.

Attorney Bleasdale said yes.

Attorney Londregan commented again that you do not have to have a CAM review for the harvesting.

Attorney Bleasdale said that they are only citing what is happening at the dock in the marina. The CAM exemption is not for putting shellfish on ice; it is for preservation/conservation.

Attorney Londregan said that the tumbler which can be operated anywhere is attached to a vessel at the dock. You saw that in the video.

Mr. Carpenteri asked 'TJ' if he worked elsewhere before starting his commercial business here.

'TJ' said that he worked for Mr. Malinowski on Fishers Island for 2+ years and out of a commercial vessel in New London.

Mr. Carpenteri said – so your first business of your own is here in East Lyme.

'TJ' said that was correct.

Attorney Sweeney representing the ZBA asked if one or both of the attorneys could point out where the vessel is actually berthed at Marker 7.

Attorney Bleasdale pointed out an area that is closer to the shore noting that either slip area is within the marina.

'TJ' noted the area.

Attorney Sweeney said that just to be clear – he noted that the berthing location of the shell fishing vessel is on the long ward dock area about halfway down.

'TJ' said yes.

Mr. Carpenteri asked what the tumbling process specifically does to the oyster.

'TJ' said that the tumbler (pg 12-13 of Exhibit A) is used to produce a tougher shell; for grading which is part of the growing process; and to clean out predatory animals to allow oyster success.

Ms. Jett-Harris asked how long the tumbler typically runs and how many oysters it entails.

'TJ' said that the growing season is typically from May to November and it runs usually daily from 7 to 3; and on drying days from 8 to 2. Usually there are 1200 oysters. From May to November it probably runs 30 hours per week M-F and off-season maybe an hour or two per week. A bushel basket is 10 gallons which takes probably five to seven minutes to run through the tumbler.

Mr. Smith noted that they originally were in the marina but vacated when the piling was destroyed by the storm.

'TJ' said yes – those areas were hit by the storm and the piles were removed by WELSCO and that story still continues.

Mr. Smith asked if being at Marker 7 now is somewhat easier.

'TJ' said yes.

Mr. Carpenteri asked if there were any other questions from the Board – hearing none –

He called for comments from the Public noting that he would take comment from the sign-up sheet and asked that they stick to the (5) five minute limit as they have a number of people who wish to speak.

Mr. Smith noted that he had Public Exhibits #1 – Letter from Steve Malinowski, President, PhD - Fishers Island Oyster Farm, Inc. to the ZBA Board in favor of the restorative impacts of Bivalve aquaculture and Public Exhibits #2 – email from Sally Uden dated January 10, 2020 speaking in support of Niantic Bay Shell Fish.

Attorney John Casey, Robinson & Cole, 88 Howard St., New London, CT said that he is a partner with Robinson & Cole and represents Boats Inc. this evening as well as three other private marinas – Avra Hospitality/Harbor Hill Marina; Port Niantic and Three Belles Marina. He noted that together they provide summer dockage for over 600 boats and this provides significant economic benefits to the Town. These marinas in the lower Niantic River are of the opinion that 109-111 Main Street is not an appropriate location for a commercial shellfish processing operation and these businesses and their customers have experienced the odors and noise emanating from the applicant's 'Oysterplex', not only when the processing plant is in use but even when it is not in use. He further read his letter into the record which can be found as Public Exhibits #3 in the file.

Mr. Carpenteri asked that they please stick to the 5-minute rule.

Scott Leahy, 133 Main St, Niantic, CT said that he is the new owner of Boats Incorporated a 175-slip marina and boat dealership that has been operating in this location for over 60 years. He noted that he purchased the business in 2018 and spent a great deal of time researching the regulations prior to the purchase. He said that he supports the Cease & Desist order and read his letter into the record – entered as Public Exhibits #4.

Terry Lineberger, 20 Niantic River Road, Waterford, CT said that she represents the Niantic River Advocacy Coalition and they are against an illegal aquaculture farm in the Niantic River. She read her previously submitted letter which is entered as Public Exhibits #5 in the record.

Paul Daversa, 361 Mago Point Way, & Niantic River Rd., Waterford, CT said that he got involved in this because of Mr. Londregan's attempt to put aquaculture there. He cited his observations and asked that they uphold the C & D.

Mr. Carpenteri again reminded the public to stick to the issues at hand – the subject of berthing of the vessel and if it is a processing plant and not other issues.

Stanley Parchaiski, 13 Savi Ave., Waterford, CT said that he has been a dockage customer of Boats Inc. for 33 years and he thinks that this process is noisy and it stinks. He said that they are not allowed to process shell fish here. He submitted his comments – entered as Public Exhibits #6

Mr. Sweeney entered Public Exhibits #7 – from Thomas Annulli to Steve Carpenteri, ZBA Chairman citing that he lives in Old Lyme and is a customer of Boats Inc – he cited the economic impact of having approx. 500 boats in that area and asked them to support the C & D and; Public Exhibits #8 from Stuart & Sharon Carroll to Steve Carpenteri, ZBA Chairman citing that they are Boats Inc customers and feel that the marina

area is for the recreational boaters who come to this Town as an escape and to stop what is going on at marker 7.

Bruce Parks, 29 High Street, Niantic, CT said that he was thrown off track on not wanting comments about the river. He first said that he does not know 'TJ' Londregan, but has never seen him 'speeding' on the river although some of the other boaters do. Everyone says that you have to save the river – well what he is doing is one of the best things that you can do for the river. Where do you think the water goes from all of these developments that the Town is building – it goes to the river. He said that he supports his business and wished him good luck.

Tom Kalal, 80 Grassy Hill Rd, East Lyme, CT said he is in support of aquaculture in our Town and that they should be encouraging such activity. He noted that he visited the site (with Ms. Hardy from the BOS) and it was not smelly or noisy or trash-like. The smell probably comes from the row upon row of boats with marine engines that leave a sheen of oil on the water and pollute it. Entered as Public Exhibits #9/

Gene Buonanno, 2 Winchester Court South, East Lyme, CT said that he lived in Waterford for 40 years and in East Lyme for the past 30 years. He is at slip #22 at marker 7 Marina directly across from the vessel they are referring to – it is not smelly, it is not noisy and he has people who come to visit and they carry on a conversation without any issues. He said what they are talking about may be coming from all of the other boats in the area.

Steven Schafer, Stella Mar Fishing Company, 28 Southfield Ave., Stamford, CT said that he is here to uphold the integrity of 'TJ' and the business that he is in. He said that he does what Tim does but in Stamford, CT. Tim is an honest man who does exactly what he says he is going to do. He explained how oysters are farmed and how the tumbler operates noting that it is crucial to the survival of the oysters to have like size together. He is in the same business and it is hard work and the piece of equipment is not part of an 'oysterplex' or processing plant as has been said this evening. He noted that the Statutes are written in such a way as to encourage cooperation between stakeholders. He said that he is fully in support of Niantic Bay Shellfish and Tim Londregan.

Steven Dinsmore, 57 Chesterfield Road, East Lyme said that he is the Chairman of the East Lyme Shellfish Commission and that they have been following this but have not come to a Commission decision on this. They do not have jurisdiction over shell fishing in the Niantic River – that is WELSCO. He asked that they continue the public hearing so that they can come to some consensus as they are working on an update to their plan and would like to make comments.

Attorney Londregan said that they do not have any jurisdiction.

Attorney Sweeney said that they could hear from Attorney Bleasdale and Attorney Londregan after this segment on this issue.

Mark Christensen, 66 Grass Hill Road, East Lyme said that he is the Chair of the EL Agribusiness sub-committee of the EL Commission for Conservation of Natural Resources and he wanted it known that the subcommittee fully supports agriculture in all of its forms as defined by CGS 1-1(q) which includes aquaculture. The current POCD also clearly supports aquaculture. He submitted his notes and the BOS Minutes where the EL Agribusiness Proclamation was approved and a copy of CGS 1-1 (q) for the record. This was entered as Public Exhibits #10.

William Christensen, 66 Grassy Hill Road, East Lyme said that he was there to speak in favor of Niantic Bay Shell fishing and for farmed shell fishing in the Niantic River and Bay area. He said that he is a junior studying Aquaculture and Fisheries Sciences at URI. He said that he could not express how disappointed he is by the arguments put forward against Mr. Londregan and his company. With respect to the so-called 'processing' he asked if they were to go apple picking or strawberry picking and put the apples or strawberries in a bag or box – would they be considered a processor? The answer would be no – and the shell fish that he is harvesting is the same as they are not being opened or tampered with in any fashion. He said that he has worked at an Oyster business in Noank and as for the smell – there are two restaurants right there which are not affected by any smell. He submitted his statements which were entered as Public Exhibits #11.

Michael Stepski, 17 Maple Road, Quaker Hill, CT Captain of the Tartan II explained that all there was in the marinas was fishing boats and it is the pleasure boats which have in recent times pushed out the fishing business. He said that the likelihood of getting local product is more and more scarce – 90% of our seafood is shipped in from other countries. He said that he is happy that Cini Park has the leases. Tim produces a high quality oyster that maintains the sweetness. He said that they do not want to become another fake seaside Town with fish shipped in from other countries. He submitted his statements – entered as Public Exhibits #12.

Bill Carr, 23 Cherry Street, Niantic, CT said that he has lived here for many years and that he supports Tim and his company. He said that he recalls years ago eating Niantic Seafood in San Francisco. If they do not support this industry – it will become extinct. The East Lyme symbol is he scallop shell.

Seth Garlick 5 Orchard Street, Niantic, CT said that he was recently clamming and that the reason why it gets later and later each year opening the clamming season is due to all of the boats that are in the area and it is this that prohibits everything.

Julia-Hope Liebig, 60 Grand St., Niantic, CT said that she works for Harbor Hill Marina and read a letter from Andrew Chafoulias, the Founder and CEO of Avra Hospitality who purchased Harbor Hill Marina in 2018. He voiced his opinion in opposition to Marker 7 Marina for shell fishing as he feels that the Niantic river is a recreational river. He noted the awards that Harbor Hill has received. This was submitted and entered as Public Exhibits #13.

John Herde, 114 Chesterfield Road, East Lyme, CT former owner of Marker 7 Marina – said that he hears a lot of accusations from John Leahy and Harbor Hill people who recently purchased the Boats Inc and Harbor Hill Marina properties. He said that they claim that they did their due diligence – well Mr. Londregan was there in 2018 and if they did their due diligence then they saw him there prior to their purchases. Further, no one approached him or called him complaining about smell or anything else so with these folks trying to railroad this man out of here tonight is ludicrous. Further his wanting to know who made the complaint is relevant –as they never made a complaint while he was there – he said that this meeting is about zoning and a lot of these accusations are totally false.

Sherry Rose, said that she lives in Southington, CT, at 171 Beecher St. She keeps her boat right at Marker 7 and she spends her summers here with her grandchildren – and there is no noise or smell and they do not have any issues – further the water during the past two summers has been cleaner due to his operation as the oysters help clean the water. She said that she can sleep through it and that there is more noise when they power-wash the docks than with the tumbler in use. She said that she fully supports the shell fishing.

Kurt Hayes, 13 Joyce Court, Niantic, CT said that as the zoning board he commended them. He said that he thinks that they need to work together and with Waterford on the issue as there is a concern for the river.

Mr. Carpenteri asked if anyone else wished to speak –
Hearing no one -

Attorney Sweeney said that they would allow Attorney Bleasdale and Attorney Londregan to make final comments and then the Board can decide if they want to continue or close the hearing.

Attorney Bleasdale said that they are not there about aquaculture – they are not against that. He said that he would have to agree with Attorney Casey with regard to having to look at the type of activity that has been here and the intensity. He also commented on what Mr. Shaffer said noting that they have to seek the proper approvals and the Cease & Desist order cited that they need to seek CAM approval. He submitted that they do not need to keep the hearing open or wait for or seek input from Mr. Dinsmore and his commission as when they apply for CAM approval they can weigh in at that time.

Attorney Londregan said that the regulations clearly cite their operation as being exempt from CAM review. With regard to Mr. Casey and his comments – they indicate that they clearly want you to choose pleasure boats over their business. With respect to 'processing' a raw oyster is taken out in a shell and when it is bagged and leaves the area it is still a raw oyster in a shell. Only the State has jurisdiction water ward and the Harbor Management Commission has no jurisdiction over shell fishing – their role is only advisory.

Section 14 of the Zoning Regulations cites the exemptions from the CAM – it states that they are not to interfere with the commercial fishing industry. The Town zoning commission did not interpret the commercial marina zone to be only a pleasure boat zone. Mr. Leahy complaining about the slips and noise – noise is not part of the cease and desist. He noted the various items that were mentioned such as football fields of cages – he asked that they not be side tracked by the rhetoric that has been iterated that has nothing to do with this. He asked that they use common sense and that they give 'TJ' the young man a chance as he is working hard for the Town. He said that he also does not think that they should keep the Public Hearing open as Harbor Management does not have any jurisdiction here.

Attorney Sweeney suggested that they also add the Zoning Regulations and the POCD as exhibits to be part of the file. If they feel comfortable with the information that they have, then they can close the public hearing however; they need to be aware that they cannot discuss this among themselves or with anyone. They can review the information on their own.

****MOTION (1)**

Mr. Foley moved that this Public Hearing be closed.

Mr. Smith seconded the motion.

Vote: 5 – 0 – 0. Motion passed.

Mr. Carpenteri closed the Public Hearing at 10:50 PM.

Mr. Sweeney reminded everyone that they cannot talk to anyone about this case. They will come up with another date to make the decision.

Mr. Foley and Mr. Smith suggested not waiting long to commence a meeting for the decision.

NEW BUSINESS

▪ **Election of ZBA Chairman and Secretary**

Mr. Sweeney called for nominations for the position of Chairman of the ZBA.

****MOTION (2)**

Ms. Jett-Harris nominated Mr. Carpenteri for the position of Chairman of the ZBA.

Mr. Smith seconded the motion.

Mr. Sweeney called for any other nominations –

Hearing none – he called for a vote on the nomination of Mr. Carpenteri

Vote: 5 – 0 – 0. Motion passed.

Mr. Sweeney called for nominations for the position of Secretary of the ZBA.

****MOTION (3)**

Mr. Carpenteri nominated Mr. Smith for the position of Secretary of the ZBA.

Mr. Foley seconded the motion.

Mr. Sweeney called for any other nominations –

Hearing none – he called for a vote on the nomination of Mr. Smith

Vote: 5 – 0 – 0. Motion passed.

ADJOURNMENT

Mr. Carpenteri called for a motion to adjourn the meeting.

****MOTION (4)**

Mr. Foley moved to adjourn this meeting of the East Lyme Zoning Board of Appeals at 10:55 PM.

Mr. Smith seconded the motion.

Vote: 5 – 0 – 0. Motion passed.

Respectfully submitted,

Karen Zmitruk,

Recording Secretary

(Note: ALL Exhibits are part of the ZBA file)