

SHELLFISH COMMISSION MEETING MINUTES

**City of Norwalk
Shellfish Commission Meeting
April 10th, 2008**

CALL TO ORDER 7:09 PM

ATTENDANCE

Commission: Jack Casagrande, Pete Johnson, Dr. Serena, John Frank
Staff: Tom Closter
Police: Sgt LaPak
Advisory: Capt. Dave Hopp, Harbormaster Mike Griffin
Guest: Tim Pramer (Mayor Moccia was invited, but did not attend).

MINUTES OF LAST MEETING

March minutes approved with one correction by Dr. Serena, 2nd by Pete Johnson
Change spelling of Jenny's upholstery in Treas. report to Jerry's

TREASURER

Comm. Johnson reports:

NAME	DATE	AMOUNT	REASON
BALANCE	2-29-08	\$6832.48	
INTEREST	Interest February	\$23.00	
DEPOSIT			

EXPENSE

BALANCE	3-31-08	\$6,855.48
BALANCE	a year ago 3-31-07	\$24,238.72
BALANCE	two years ago 3-31-06	\$20,543.41

SECRETARY

Chairman report April, 2008

At the December 6th meeting we reviewed a situation in which a Fairfield resident, Stuart Bell, had filed a petition with the DEP for a declaratory judgment seeking to overturn long-standing DEP policy of not accepting applications for new dredging for private residential docks. On behalf of the Commission, on Nov 28th, I filed an application for intervening party status in this process because Norwalk Shellfish Beds will be endangered if that DEP policy is overturned. I filed before the Dec. meeting, at the last possible opportunity, because there was a deadline of Nov 30th. I first became aware of the problem when a public notice was in the Hour. After consulting a number of people, both within the commission and outside the commission, I wrote up the reasons I thought we should get involved and submitted them to the Law Dept, Peter Nolin, Corp Counsel, early in November. Mr. Nolin, as an acquaintance of the Fairfield resident, felt he

personally should not be involved, and passed my email along to his deputy, Bob Maslan. In a private conversation, Mr. Nolin told me he understood why we needed to intervene and encouraged me to meet the deadline with, or without, Mr. Maslan's assistance. Mr. Maslan later asked, by email, if I was getting involved for myself or for the commission. That was made clear in the draft he had, but I replied it was for the commission and asked for a brief meeting. I did not ask for much of his time, but I did ask for technical assistance preparing our petition, not an opinion. I also made him aware of the deadline. After the election Mr. Maslan became Corp Counsel. When Nov 28th came and I still had no further response, with the deadline two days away, I mailed the application for

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intervening party status that we reviewed at the Dec meeting. Intervening party status was granted to the Norwalk Shellfish Commission and to the Aquaculture Bureau, in a notice dated Dec 28th, and received in January. Commissioner McCarthy said, in the notice, that our requests "demonstrate their respective responsibilities for shellfish and their concern about the impacts of dredging on shellfish, including shellfish habitat" Mr. Maslan sent a letter, dated Dec 26th, and received in January. Mr. Maslan's letter gave his opinion that: "the law dept is not able to assist you in this regard, as the powers and duties of the Shellfish Commission do not include intervening in DEP proceedings that do not involve shellfish beds located within the boundaries of Norwalk Harbor." He did not address my request for a brief meeting. I am convinced that, if he had found time to meet, Mr. Maslan would have understood the risk to Norwalk shellfish beds and agreed, as Comm. McCarthy did, that we had a responsibility to intervene in this matter. At the Feb. 7th commission meeting, this was discussed. Somehow, the conflict between Mr. Maslan's opinion and our intervening party status was brought to the Mayor's attention the next day and he came to believe I was acting improperly, as an "independent agent" without review and approval of the law department or the Shellfish Commission. He called Comm. Johnson the following Monday to forbid use of the name of the Commission or the City at the DEP hearing that night. He did not call me, although he had made it a point to get my cell phone number (a local call). Comm. Johnson made some changes in the comments I had prepared for him to present, and took out any reference to the Commission or the City when he read it into the DEP hearing record. He did not identify himself as a commissioner. This put us in the awkward position of having gotten intervening party status and then not showing up or submitting written comments for the record, although our status as an intervening party, and his as a commissioner, are public record.

We later (Feb 21st) learned that corp. counsel Maslan, without ever talking to me or the rest of the commission, faxed a letter to DEP the day of the hearing (Feb 11th) stating that I had acted without Shellfish Commission or law dept approval and the request for status (already granted by DEP) does not reflect City of Norwalk position. There is no indication in that letter who authorized it, what communication, if any, he may have had with Mr. Bell and/or his attorney, or if he is acting as an "independent agent". If any liability arises out of getting intervening party status, he has gone on record for the City that I acted alone, not as an authorized agent for the City, essentially setting me up, for

whatever consequences may ensue. It is not likely to be a problem, but it is troubling and may violate the law on City liability. I have talked to him and he seemed surprised I felt he had put me personally in an uncomfortable position.

The charge has been made that I, as chairman, acted for the commission, without first putting intervening in this matter on our agenda and getting a prior vote by the commission, and prior approval by the law dept.. I do not dispute that. That happens frequently, usually when there are deadlines to meet. I act, in good faith, to fulfill our responsibility to protect the shellfish resources in Norwalk Harbor and communicate Commission position to other agencies, primarily DEP, following guidelines published with our management plan. In this case, I unsuccessfully sought law department guidance/assistance, as our guidelines do not foresee this unusual situation. If the Commission had decided that intervention in this matter was not something we wanted to do, withdrawing our petition for status after the December meeting would have been easy, before DEP acted on it.

The charge was also made that I should not have communicated with the DEP about docks that were installed for Northeast Utilities at Sheffield Island without a permit. They were resting on the bottom at low tide and damaging underlying shellfish beds. It was said that I should have first put that on our agenda and gotten a prior vote by the commission and prior approval from the Law Dept., while the shellfish bed under the docks was being damaged at each low tide. We have made criminal complaints for damaging natural beds without getting prior approval from the Commission or the Law Dept. (Nowinski & Gardella at Calf Pasture Island))

A similar charge was made by the Mayor at the December Water Pollution Control Authority meeting, that Comm. Johnson and I had no business speaking as commissioners about problems at the sewer plant. Somehow, his comment was left out of the minutes of that meeting. We had spoken about ongoing odor problems, and the quality of the information they are getting from OMI and Harold Alvord, which are important indicators of how well, or not, the plant is being managed. We also attended their November

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meeting and reported on that at our December meeting. Plant operation seems to be getting worse.

Communications

Dec 19th Permit issued to Marion Green for dock in Farm Creek.

Jan 23rd DEP approved CL&P silt containment cage attached to trenching device. Good concept, but should be bigger. We asked for details but only got them late in January. We suggested cage should be wider, longer, and not as high, but DEP approved design as submitted.

Dec 27th Application by Karen Casey for modification of existing dock at 45 Rowayton Ave. found incomplete by DEP. Response from applicant pending. Design provides for dock to regularly rest on bottom and we objected to that, by email to DEP.

Dec 29th COP issued to Charles Brennan at Nykled Terrace for repair & maintenance of existing seawall and rip-rap revetment.

Dec 29th A COP 4-40 permit to repair existing 38 ft. stone pier was issued to Ava Roosevelt. at 14 Nathan Hale Dr. A 4-40 application to add ramp and dock another 37 ft is pending. Total encroachment of approx 75ft, will encroach on bed 201. 75 ft project does not qualify for 4-40-COP. Email sent to DEP. Work proposed by applicant as a single 75 ft project, divided into two COP 4-40 permits by DEP.

Jan 18th public notice on application of Halmi/Weimer at 18 Rocky Pt Rd for a set of stairs to the bottom, adjacent to an existing seawall. Impact on natural bed there is minimal. No objection, email sent to DEP.

Jan 24th public notice on application of Eaton at 20 Point Rd for small landing with stairs to beach and davit for small boat. Application is 3rd design for this site and is minimally invasive. Email sent to DEP, no objection.

Jan 29th Illegal NU docks at Sheffield Island reported to DEP & NU, removed.

Feb 12th Application by Vantage Point condominium, after the fact, for maintenance work done w/o permit in 2005, rejected as incomplete. Developed area, no shellfish impact, included for your information only.

Feb 13th Project at 90 Sono Landing (former Farans-Pepco site). Involving repair of bulkhead and install dock system on historically developed (dredged) area does not impact natural bed, no objection, email sent to DEP

Feb 13th Project at 45 Rowayton Ave, previously reviewed under applicant name Casey and objected to because design provided for dock to regularly rest on bottom. Under new owner, Dudley, design has been modified to put dock in deeper water. Site had been dredged in the 50s, and natural bed was destroyed. We don't know if natural bed has re-established. Commission approved withdrawal of earlier objection. Objection withdrawn by email to DEP.

Feb 15th Project in Farm Creek, formerly Berringer property, now Lasser, has been re-designed to keep a floating dock off the bottom with a bench for it to land on, similar to other recently permitted sites where there is no water at low tide. Our previous objection has been withdrawn. Email sent to DEP.

Feb 25th COP permit issued for Norwalk Boat club maintenance dredging and dock repair/replacement. Developed area, no shellfish impact, included for information only. Dredging of approximately 3,000 cu yds. (600 yds of the 3000 will require 10,000 cu yds of cap material).

Mar 3rd Permit for maintenance dredging and relocation and addition to, and realignment of, dock issued to Norwalk Yacht Club.

Mar 12th Investigation by Dept of Consumer Protection of complaint by Chair, acting on his own behalf, against Mr. John Hilts, for providing engineering services without a license, has been concluded with no violation of consumer protection law found. Mr. Hilts prepares applications for permits for pier, dock, seawall, and similar projects and co-operated fully with Consumer Protection investigation. It seems that their investigation clearly established that what Mr. Hilts does is clerical, in that he prepares applications, but he does not do any of the engineering or surveying and has records to demonstrate that. I have apologized to Mr. Hilts for any inconvenience.

Mar 12th Silt containment device approved in Jan. was found impractical, modified, made considerably smaller, and immediately approved by DEP despite comment from the chair that much smaller device could not possibly be as effective. Length went from 20 ft to 12 ft

Mar 14th revised design has been submitted for Shackley at 5 Cudlipp St. New design calls for much smaller pier (69') with davits and no floating dock. Effect on shellfish should be minimal. We had strongly objected to an earlier design and this design meets our objections. Ok by Comm. Serena, 2nd by Comm. Johnson. Unanimous.

Mar 20th City proposes replacing culvert under Calf Pasture Beach Rd. Info only. Pond is tidal and should be protected. Notify DEP, no objections as long as pond is protected from silt during construction and any storm drains connected to culvert are filtered.

Mar 27th Revision of Roosevelt application at 14 Nathan Hale Dr now calls for 4 pilings to anchor the dock. Dock will impact private leased bed #201.

Mar 28th Application by Michael Gray for modification of existing pier, ramp and dock has been sent back by DEP for more information.

Apr 2nd Application for pier ramp and dock at 3 Cudlipp St for a Mr. Morningstar. Dock should have 3ft of water at low tide.? If true, we should have no objections. Ok by Comm. Serena, 2nd by Comm. Johnson, unanimous.

UCONN/Sea Grant is looking for part-time help at Avery Point May 1 through Jan 31. Info only.

UCONN has invited us to attend a seminar on thurs Apr 24th from 3:30 to 6:30PM on the dangers of commercial fishing...No fee..

Uconn Sea Grant, is offering two day training class for shellfish commissioners in the use of GIS/GPS computerized mapping. Classes will be at Avery Point campus in Groton on 14th -15th of April and 16th & 17th at Sound School in New Haven. There is no expense, except travel. Chair intends to participate.

We still have no word from the Mayor on filling the vacancy on the commission, although he has told the council he would appoint Mike Griffin as soon as he got a response from the attorney general's office.

Chair has learned that William Ciaurro of Bridgeport worked for the State Shellfish commission years ago while he was harbormaster in Bpt, in the 70's, with no reported conflict.

COMMITTEES

HEALTH DEPT

Mr. Closter reports:

4.59 inches of rain in March vs. 7.52 last year and average since 1987 of 3.74 inches.

There were 224 calls in February. There was a closure in the CAA area for over 1/2 inch of rain from 3/5 through 3/16 and 3/19 through 3/26. There was a complete closure from 3/8 to 3/16. There were no notices of by-pass reported.

WASTEWATER TREATMENT

Comm. Johnson reports odor problem seems to be much better. Chemical they are adding at the de-watering plant seems to be effective. There was brief discussion over chances of that chemical getting into the harbor. Chair believes it is only introduced to the sludge being trucked away.

WATER QUALITY

Tom Closter reports Water Quality Committee did not meet. There was discussion of

recent studies showing pharmaceuticals getting into water through wastewater treatment plants around the country and having an effect on marine life. No study has been done and reported in Norwalk, and we have not seen effects. Doctor Serena points out that a lot of medicines pass through the patients and into the sewer system and medicine being dumped is probably not the greatest source. No waste water treatment plants that we know of make any effort to remove waste pharmaceuticals, but effects on marine life may require it soon..

PERMITS

Mr. Casagrande reports permits are all distributed to outlets, no report at this time of any sales

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POLICE

Sgt LaPak reports for March 20 hrs patrol, no arrests. Arrangements have been made to replace red flags, believed to be a donation. He expresses the opinion that flags system is outdated and should be changed. No OT or boat expenses charged to the Commission this month. Boat has been hauled and bottom painted and is back in the water.

ADVISORY

Capt. Dave Hopp states water temperature is 43 degrees.

HARBOR MANAGEMENT

Harbormaster Griffin discussed dredging project and areas of concern. Scope of project has been reduced, for lack of funding, Cap material will be coming from North Cove in Saybrook. City and State have helped with funding.

Motion made by Mr. Johnson, 2nd by Dr. Serena to accept committee reports.

OLD BUSINESS

Broadwater project is ruled out by New York State as inconsistent with NY coastal management plan. Announcement made this afternoon by Gov Patterson.

NEW BUSINESS

Mr. Casagrande moves next meeting move to May 8th, 2nd by Mr. Johnson, Unan.

NEXT MEETING

Thursday May 8th , 2008

MOTION TO ADJOURN

At 9:10PM by Dr. Serena, 2nd by Mr. Johnson