

**CITY OF NORWALK
NORWALK HARBOR MANAGEMENT COMMISSION
SEPTEMBER 23, 2009**

ATTENDANCE: Tony D’Andrea, Chair; Henry Palau, Michael Harden, Tony Mobilia, John Romano, Jack Callahan, Pat Clark, Dr. John Pinto

STAFF: Michael Griffin, Harbor Master; Geoff Steadman, Consultant

OTHERS: John Roberge, Roberge Associates; Devin Santa, RACE. LLC; Andrew Lord, Martha Cullina LLP; Matthew Bakowski, RACE, LLC; Neil Buono, Mason; Dave Woodward, Norwalk Resident; Allan Fishman, Vantage Point

CALL TO ORDER

Mr. D’Andrea called the meeting to order at 7:35 p.m.

ROLL CALL

Mr. D’Andrea called the roll, and stated the members as listed above were present and that Mr. Cebrian and Mr. Mobilia had excused absences.

CHAIRMAN’S REPORT

Mr. D’Andrea submitted his report and highlighted that over 63 contacts on various topics were received, he reviewed Water Quality Report outline and Norwalk River sites of high contamination; and he attended Norwalk Shellfish Commission and MWQC meetings. He listed the correspondence received including Norwalk Shellfish Commission minutes, a letter from Redniss and Mead regarding the Vantage Point, and an application from John Hilts for Richard Scalise.

Mr. D’Andrea then read a letter from Fisher International to Michael Griffin regarding feedback on moorings as follows:

...You asked for feedback on the process for getting a mooring in the harbor... I’m happy to say was smooth and painless... we got everything we needed from you, and even got DMV paperwork done easily. Your relationship with the mooring inspectors was helpful as Norm knew exactly what to do without me having to get involved... Thanks very much. I can’t really think of anything that would have improved the process.

APPLICATION REVIEW COMMITTEE

Ms. Clark presented Item 2009-10: David Woodward, 16 Tonetta Circle, East Norwalk: to retain and maintain a Seawall, install a 52' Berthing Facility including 4 x 24 pole supported Pier; 3 x 18 Ramp; 10 x 10 Float Pilings w/Float Stops; and 2 Boat Lifts.

Ms. Clark stated that this was a revised application that has been in the review process and has been the subject of lengthy discussions for quite a while, and had been previously tabled until a public hearing could be held. She provided a background of the application as contained in previous meeting minutes and findings from the DEP with copies of the draft permit for repairs to the seawall and stated that comments were required on or before September 29, 2009. She explained that the Norwalk Shellfish Commission (NSC) has submitted a letter in objection to the application that the area was an active shellfish resource and the proposed structure would interfere with the shellfish resources.

Mr. Romano asked if the NSC objection was on repairs of the wall or installation of the pilings; should property owner support maintenance and structural repairs; and if there was a compromise to bring the docks closer. Ms. Clark asked the applicant to address the Commission to answer the questions.

Mr. D'Andrea acknowledged the group of individuals and representatives in behalf of the applicant, stated that comments from the public would be heard on the item and requested that comments be appropriate in nature to these proceedings and limited to ten minutes in length.

Mr. Andrew Lord introduced himself as the legal representative for the applicant, and stated that the new design has received DEP approval in determination and has addressed concerns from the NSC. He stated that the area in question is not a state licensed area and is not designated as a shellfish resource area, and property owner's rights supersede those of owners of oyster beds. Mr. D'Andrea asked what state statute he was referring to and Mr. Lord replied CT Statute 26-249.

Mr. Romano asked if the NSC objection referred to potential damage to pilings would affect future spawning or prohibit harvesting. Mr. D'Andrea referred to the comments in Mr. Frank's letter to the Commission, and asked Ms. Clark to read the letter from Mr. Frank.

Mr. Romano stated that the letter was difficult to interpret, as Mr. Frank over-emphasized potential damages to the seawall with the piling construction more than the issue of natural shellfish resource area, and added that the DEP recommendation was received and should be the key element of consideration for the Commission.

Mr. Steadman added that the wording of the letter was a matter of interpretation, but the NSC did express serious concerns and objections with the application regardless of the DEP determination. Mr. Romano asked for the Commission to consider other comments from the applicant and to continue to hear from the representatives in attendance.

Mr. Neil Buono introduced himself as a Mason involved with the project and stated that the issue of the wall size was questionable asked why it was two feet down. Mr. D'Andrea stated that in maps it is identified as a natural shellfish resource bed and provides the genetic diversity necessary for future spawning. Mr. Lord clarified that he has looked at the maps in question and there is only DEP jurisdiction and no indication of shellfish resource areas.

Mr. Skip Guardella stated that he found it appalling to defend the HSC comments over oyster harvesting complaints when there is no scientific data provided. He added that normal propeller traffic causes more turbidity than removal of the pilings.

Mr. Steadman stated that based on the recommendation by Ms. Jacobson, the plans call for professional engineering and plans should be prepared and submitted by a licensed engineer. Mr. Buono added that wall repairs have to be done annually and he wants to be able to fix the problem on a more permanent basis to prevent it from falling down, and that something should be done.

Mr. D'Andrea asked if it was technically possible for the wall repairs to be done landward, and Mr. Buono answered no because the equipment had to be placed in a particular manner. Mr. Romano stated that this was not new but repairs to an existing support structure that was creeping water-ward 18" should be able to be done landward.

Mr. Devin Santa with Race, LLC stated that there has been no verification of any catch as it relates to the reported oyster harvesting in this area. Mr. D'Andrea stated he will find out the specific on the report. Habormaster Griffin stated that the area had just been worked two weeks prior, and it was reported that bottom conditions were merky, which is inconsistent with previous reports of hard bottom conditions that are not good for shellfish.

Mr. D'Andrea stated that with no further comments, he would now close the public comments portion of the meeting at 8:25 p.m., and thanked those residents for attending.

Ms. Clark asked the commissioners for comments in deliberation and discussion of Item 2009-10. She summarized that the application is a very difficult matter involving property owner reasonable navigation rights to Norwalk waters, and there is notice of determination by the Department of Aquaculture. She added that the HMC is bound by the state and city approval process that includes the consideration of an objection by the Norwalk Shellfish Commission.

Dr. Pinto stated that the members of the NSC made very strong comments at their meeting in opposition of this application, and Mr. D'Andrea referred to those comments that are on record in their minutes.

Mr. Steadman stated that maintenance and repair is one area, but this not a statutory issue, and when drawings are not properly prepared and planned within the new guidelines, a public hearing does not matter. He added that this is a structure and dredging permit not a title wetlands permit, and based on past practice, Army Corps of Engineers authority and DEP permit procedures there is no public hearing required.

Mr. Palau stated that the decision creates a precedent for the area and the issue really is dock proliferation. Mr. Steadman clarified that the charge for the Commission is to determine consistency with the application and based on the DEP recommendation, which has been accepted and should be on record with the HMC recommendation. Mr. Steadman added that it is unreasonable to remove pilings on an annual basis. Harbormaster Griffin added that Mr. Frank's letter is a matter of interpretation about equipment and damages, however the members of the Commission heard the strong comments that the NSC Norwalk Shellfish Commission members made at their meeting in opposition of this application.

Mr. Romano stated that although the process is not in compliance without an engineer's stamp or formal recommendation, the DEP approval does give this Commission the endorsement to approve the application with modifications or a compromise to accommodate any encroachment issues.

**** MS. CLARK MOVED BASED ON THE GUIDING PRINCIPLES SET FORTH IN THE NORWALK HARBOR MANAGEMENT PLAN, AND THE INCLUSION OF APPLICABLE INFORMATION, THE APPLICATION REVIEW COMMITTEE RECOMMENDS THE FOLLOWING MOTION TO THE COMMISSION:**

THAT THE REVISED APPLICATION #2009-10 DEP#200802445-SJ FOR DAVID WOODWARD, 16 TONETTA CIRCLE, EAST NORWALK TO RETAIN AND MAINTAIN A SEAWALL, INSTALL A 52' BERTHING FACILITY INCLUDING 4 24 POLE SUPPORTED PIER; 3 x 18 RAMP; 10X10 FLOAT PILINGS WITH FLOAT STOPS; AND 2 BOAT LIFTS IS NOT CONSISTENT WITH THE PLAN FOR REASONS INDICATED BELOW:

- 1. BASED ON OBJECTIONS OF THE SHELLFISH COMMISSION REGARDING THE IMPACT ON IMPORTANT SHELLFISH NATURAL RESOURCES.**

Mr. Romano requested the motion be amended to include a modification to the repair of the seawall as follows:

MR. PALAU MOTIONED TO AMEND THE ABOVE MOTION TO INCLUDE THE FOLLOWING CONDITION:

- 2. WITH REGARD TO THE PROPOSAL TO REPAIR THE EXISTING SEAWALL, THE HMC RECOMMENDS THAT NO DECISION TO APPROVE THE WALL REPAIR SHOULD BE MADE UNTIL SUCH TIME AS PLAN DRAWINGS PREPARED BY A PROFESSIONAL ENGINEER ARE SUBMITTED BY THE APPLICANT TO THE *OLISP* AND THE *OLISP* DETERMINES THAT THERE IS NO FEASIBLE ALTERNATIVE TO ACCOMPLISH THE PROPOSED REPAIR WITHOUT THE PROPOSED 18" ENCROACHMENT WATERWARD.**

**** MR. PALAU SECONDED.**

**** THE MOTION PASSED WITH FIVE VOTES IN FAVOR, ONE OPPOSED (MR. ROMANO) AND NO ABSTENTIONS.**

Ms. Clark presented Item 2009-09: Anthony and Elise Tomas, 18 Tonetta Circle, East Norwalk, dep#200802443-SJ Pre-Lean Permit to Remove deck and Install a 50' Berthing Facility including 4 x 18 Pile Supported Pier; 3 x 24 Ramp; 10 x 10 Float; 6 Pilings w/Float Stops to support 2 Boat/Float Lifts.

**** MS. CLARK MOVED THAT THE ABOVE LISTED APPLICATION ITEM 2009-09: ANTHONY AND ELISE TOMAS, 18 TONETTA CIRCLE, EAST NORWALK, BE TABLED UNTIL RECEIPT OF ADDITIONAL INFORMATION CLARIFYING THE WORK.**

**** MR. PALAU SECONDED.**

**** THE MOTION PASSED UNANIMOUSLY.**

Item 2009-03 (cont.) DEP#200502096: Vantage Point Assn, Inc. 100 Seaview Avenue, East Norwalk, Pre-Lean Permit to authorize and maintain structures in the East Basin. Ms. Clark said that this was a continued application that had been tabled several times previously for more information, and that there were some concerns about the encroachment of docks into the public waterways.

Mr. Steadman then gave a brief overview of the situation and reminded everyone that this situation had started in the 1980s and that Vantage Point had several unauthorized structures. A discussion about the purview of the Commission followed and Mr. D'Andrea stated that Mr. Fishman should go back to the Condominium Association with his concerns, as the application is being processed through the procedures as required, and as stated in the Condominium Association submitted paperwork.

**** MS. CLARK MOVED BASED ON THE GUIDING PRINCIPLES SET FORTH IN THE NORWALK HARBOR MANAGEMENT PLAN, AND THE INCLUSION OF APPLICABLE INFORMATION, THE APPLICATION REVIEW COMMITTEE RECOMMENDS THE FOLLOWING MOTION TO THE COMMISSION:**

THAT THE PROPOSAL FOR VANTAGE POINT ASSOCIATION, 100 SEAVIEW AVENUE, DEP #200502096 IS CONSISTENT WITH THE PLAN WITH THE CONDITION THAT THE COMMISSION RESERVES THE RIGHT TO RE-EVALUATE THE PROPOSAL AT SUCH TIME AS IT MAY BE SUBMITTED TO THE PERMITTING AUTHORITY, MODIFIED, GO TO PUBLIC NOTICE, OR WHEN ADDITIONAL INFORMATION BECOMES AVAILABLE AND BASED UPON THE CONDITIONS AS INDICATED BELOW:

- 1. NO WATER-ACCESS STRUCTURES USED FOR DOCKING OR MOORING OF VESSELS AND NO VESSELS ATTACHED TO THOSE STRUCTURES SHOULD ENCROACH INTO THE EXTENSION OF THE CITY'S SECOND STREET RIGHT-OF-WAY IN NORWALK HARBOR AS SUCH EXTENSION IS SHOWN ON THE DRAWING "GENERAL LOCATION SURVEY DEPICTING EAST BRANCH-NORWALK HARBOR," DATED APRIL 3, 1995, PREPARED FOR THE NORWALK HARBOR MANAGEMENT COMMISSION BY REDNISS & MEAD, AND ON THE PLANS ATTACHED TO PERMIT NO. SD-74129 ISSUED TO VANTAGE POINT PROPERTIES BY THE CT. DEPARTMENT OF ENVIRONMENTAL PROTECTION. ANY EXISTING STRUCTURES THAT ENCROACH INTO THE EXTENSION OF THE CITY'S SECOND STREET RIGHT-OF-WAY IN NORWALK HARBOR AND THAT SUPPORT THE DOCKING OR MOORING OF VESSELS SHOULD BE REMOVED.**
- 2. THAT VESSELS MAY BE BERTHED ALONG THE NORTHERN 90' OF THE DOCK. NO IN-WATER STRUCTURE OR VESSEL MAY ENCROACH INTO THE 10' SETBACK FROM THE FEDERAL ANCHORAGE.**
- 3. THE CONDOMINIUM ASSOCIATION SHALL PROVIDE APPROPRIATE SIGNAGE REGARDING ALLOWABLE BERTHING ALONG THE DOCK. THE SIGNAGE SHALL REMAIN IN PLACE FOR THE LIFE OF THE FACILITY.**

**** MR. ROMANO SECONDED.
** THE MOTION PASSED UNANIMOUSLY.**

PLANNING AND ZONING REPORT

Mr. D'Andrea stated there were preliminary plans submitted for the construction of a Boathouse on Cedar Hammock Island that require additional information. The plans were taken under advisement only at this time pending further information.

REPORTS

- a. **Dredging** – Dr. Pinto reported that checks had been received in the amounts of \$16,000 and \$5,000 representing savings resulting from refunds of over-estimates.
- b. **Finance** – Mr. D'Andrea stated that Mr. Cebrian will forward his financial report to the Commissioners by e-mail. He added that there are new fee structures that need to be put into place within the finance department procedures. He stated that the Commissions emphasis was on pushing the 2009-10 plan through the approval process, but there has not been a formal response to the fees. He added that this requires a meeting with the Mayor, Mike Green, Tom Hamilton and a public hearing, followed by approval by the City Board of Estimate and Taxation. He will get back to the commissioners by e-mail as to the required next steps and the necessity of scheduling a special meeting.
- c. **Boating and Harbor Safety** – Mr. Palau reported on complaints on rowing clubs from well-respected residents within the boating community, that indicate a state of “an accident waiting to happen” with respect to rowing vessels. He recommends a proactive approach to education and outreach to these groups on water safety practices.
- d. **Water Quality/Watershed Initiative** There was no report included.
- e. **Plans and Recommendations:** Mr. D'Andrea stated that Mr. Mobilia would e-mail the minutes from the meeting with Vantage Point and would advise the Commissioners if another meeting with Parks & Recreation would be scheduled.
- f. **Waterfront Advisory Committee Report.** Harbor Master Griffin reviewed his written report and highlighted that the 2009 season will conclude on October 18. He stated that a dock cart for use by boater/campers at the Veteran's Park launch ramps has been placed in service and there is a possibility of a donation of a golf cart to the Boating Center from a local restaurant. He summarized that Heartland Construction will be returning to Veteran's Park as part of their monthly contractual agreement.

- g. **Newsletter/Website** – Mr. Romano said that he needed articles for the upcoming edition of the newsletter by no later than October 15 in order to meet the deadline for the November annual meeting. Mr. Romano explained that he has been working with the IT department to develop the format required for photos and graphics and artwork, which would be compatible with the website. He added that key developments in funding and items in the news regarding water safety warrant the following input from the respective Commissioners to provide required information:

Historical Review: Henry Palau
Boating/Water Safety: Michael Harden
Financial Update: Dr. John Pinto

The above commissioners stated that they were in agreement.

STAFF REPORTS

Harbor Master/Harbor Manager

a. Harbor Manager's Report - Harbor Master Griffin reviewed his written report and highlighted revenue for the 2009 season, and 300 customer service calls during August/September related to mooring applications and timing of future dredging. He pointed out that he attended six meetings this past month regarding the Harbor, which are listed on his report.

State of CT Harbor Master's Report. Harbor Master Griffin then briefly reviewed this written report which included an overview of the Norwalk Boat Show running from September 24-27. He covered complaints from rowing groups which resulted in a meeting at City Hall held by the NHMC Harbor Safety Committee to review safety and Norwalk Federal Channel usage and radio communications. In addition he reviewed a meeting with CLP regarding planned repairs to Nexan power cables by Deroucher Marine contractor and the possible impact on Norwalk waters.

b. Consultant Report: Mr. Steadman announced that the approved Harbor Management Plan is to be published with a limited number of printed copies for distribution to select locations and interested parties may purchase hard copies for \$39.95. It will be uploaded to the website as a PDF file so that anyone from the public can download it.

Mr. D'Andrea said if no objection, the reports would be accepted. Hearing none, the report were accepted into the record.

APPROVAL OF AUGUST 2009 MINUTES

Dr. Pinto requested the following corrections:

Pg 4, under Dredging: Change Mr. Corallis to Jack Karalius of the ACOE. Delete the fourth sentence beginning with "The new amount..." On page 5, the first sentence should read "harbor, the amount of the cap material would need to come from another source. Mr. Karalius said that the cost of Phase III will be..."

- ** **MR. PALAU MOVED TO APPROVE THE MINUTES OF THE AUGUST 2009 MINUTES WITH CORRECTIONS AS NOTED.**
- ** **MS. CLARK SECONDED.**
- ** **THE MOTION PASSED UNANIMOUSLY.**

NEW/OLD BUSINESS

David S. Dunavan Scholarship applications have been made available for consideration, and Mr. Romano suggested that it should be included in the newsletter and website.

Dr. Pinto said that the annual State of the Harbor meeting will be scheduled for November and Mr. D'Andrea added that the Commissioners would be notified via e-mail by the end of September.

ADJOURNMENT

- ** **MR. PALAU MOVED TO ADJOURN.**
- ** **MS. CLARK SECONDED.**
- ** **THE MOTION PASSED UNANIMOUSLY.**

The meeting adjourned at 10:28 p.m.

Respectfully submitted,

Marilyn K. Knox
Telesco Secretarial Services