

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

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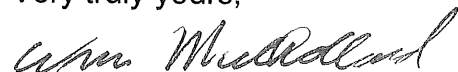
different and separate use from the operation of a marina. Specifically, Section 10.1.9 provides for: "Berthing facilities for vessels engaged in commercial fishery or shellfishery, but expressly excluding fish or shellfish processing plants." On this basis, the operation of a commercial shellfishing 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

General Statutes § 8-12. Procedure when regulations are violated

If any building or structure has been erected, constructed, altered, converted or maintained, or any building, structure or land has been used, in violation of any provision of this chapter or of any bylaw, ordinance, rule or regulation made under authority conferred hereby, any official having jurisdiction, in addition to other remedies, may institute an action or proceeding to prevent such unlawful erection, construction, alteration, conversion, maintenance or use or to restrain, correct or abate such violation or to prevent the occupancy of such building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises. Such regulations shall be enforced by the officer or official board or authority designated therein, who shall be authorized to cause any building, structure, place or premises to be inspected and examined and to order in writing the remedying of any condition found to exist therein or thereon in violation of any provision of the regulations made under authority of the provisions of this chapter or, when the violation involves grading of land, the removal of earth or soil erosion and sediment control, to issue, in writing, a cease and desist order to be effective immediately. The owner or agent of any building or premises where a violation of any provision of such regulations has been committed or exists, or the lessee or tenant of an entire building or entire premises where such violation has been committed or exists, or the owner, agent, lessee or tenant of any part of the building or premises in which such violation has been committed or exists, or the agent, architect, builder, contractor or any other person who commits, takes part or assists in any such violation or who maintains any building or premises in which any such violation exists, shall be fined not less than ten dollars or more than one hundred dollars for each day that such violation continues; but, if the offense is wilful, the person convicted thereof shall be fined not less than one hundred dollars or more than two hundred fifty dollars for each day that such violation continues, or imprisoned not more than ten days for each day such violation continues not to exceed a maximum of thirty days for such violation, or both; and the Superior Court shall have jurisdiction of all such offenses, subject to appeal as in other cases. Any person who, having been served with an order to discontinue any such violation, fails to comply with such order within ten days after such service, or having been served with a cease and desist order with respect to a violation involving grading of land, removal of earth or soil erosion and sediment control, fails to comply with such order immediately, or continues to violate any provision of the regulations made under authority of the provisions of this chapter specified in such order shall be subject to a civil penalty not to exceed two thousand five hundred dollars, payable to the treasurer of the municipality. In any criminal prosecution under this section, the defendant may plead in abatement that such criminal prosecution is based on a zoning ordinance or regulation which is the subject of a civil action wherein one of the issues is the interpretation of such ordinance or regulations, and that the issues in the civil action are such that the prosecution would fail if the civil action results in an interpretation different from that claimed by the state in the criminal prosecution. If the court renders judgment for such municipality and finds that the violation was wilful, the court shall allow such municipality its costs, together with reasonable attorney's fees to be taxed by the court. The court before which such prosecution is pending may order such prosecution abated if it finds that the allegations of the plea are true.