

The marina is owned by John Manafort, a Rowland financier. The marina had a DEP permit for work granted in 1990( 12 year old permit!), before he owned it. He recently got the marina through some sort of foreclosure. Well, the permit had expired( some dispute as to when this actually was) but he went ahead with the work in the spring / summer this year anyway. The work entailed a 200' + dock which spans across the opening to Hyde Creek, a waterway traditionally used by residents who live "up the creek" ( well, now they are), and previously used by Earl Brockway's marine business. The neighbors called DEP and Army Corps, who both sent staff for a look; and then it seemed to stall at DEP "HQ" ( what a surprise). However, even more surprising, the DEP issued a violation notice to the marina last week! What they actually decide is another thing though, and they may let the marina off with a slap and tickle. DEP "HQ" seems to be looking for some sort of compromise as opposed to just enforcing the statutes and requiring the removal of the new work and starting of a new permitting process. Of course the reason the marina did the work illegally was to avoid a new permit process because they know that it would be much more strenuous than the process in 1990, and with many more issues to hurdle. So if DEP approaches it this way, the marina wins no matter what kind of "fine" or "compromise" they must make.

Old, but still current, (cynical, but unfortunately too often true) business maxim: "IT IS EASIER TO GET FORGIVEN, THAN IT IS TO GET PERMISSION". Is this acceptable?

Some other info about this case:

- 1) 16 families have joined together to protest this floating dock that Island Cove Marina owners built across the channel, and the loss of their riparian rights.
- 2) The permit granted in 1990 states, a three-year permit granted with a possible one-year extension. How did this permit extend to Feb. 16, 2002?
- 3) It is reported the DEP reviewers were misinformed and never knew that the creek existed. It isn't shown anywhere on the permit application plans.
- 4) Neighbors remember this dock work being done in spring (April), and took pictures on 6/18/02, of the fixed dock that connects the shore, and floating dock being built. Owners claim the floating dock was in before Feb. 16. Many neighbors disagree.
- 5) What action does the Attorney General's office play in a violation of state law? Manafort has hired lawyer and lobbyist Jay Malcynsky.
- 6) This could also be another "road ending" case. In 1995 the town's attorney (Jeremiah Donovan) and a consulting attorney looked into the matter of the road that is now the marina's parking lot. While there is some question of legal title, the conclusion of the consultant was that nothing showed an abandonment or transfer of rights ever occurred, nor did this marina ever gain title. The plans for the permit show the "road" (dotted in) and the note "road and ROW, to be abandoned." Is it possible the marina doesn't even own the property?

- 7) Brockway Boat Works was operating on the creek far back, until Earl Brockway died in 1997. He hauled large fishing boats and up to 34 foot sailboats there. He spent his life building all size boats that were taken through this channel.
- 8) These new docks are more than 200 feet long, and have completely cut off the "normal and historic" channel used as access to an active and navigable creek. This waterway has been used by families, and marine business' alike for many years, and now this access is severely obstructed by these illegally built structures.
- 9) Published quotes attributed to representatives of the DEP appear to indicate the agency is trying to find some sort of "compromise" solution, and this will of course work best for the marina. They have reportedly requested that only a portion ( 40') of these docks be removed. It might seem reasonable to take an approach of "working something out with the neighbors" if it was simply a matter of a "neighborhood" dispute; but doesn't the state government, the DEP, and the Attorney General's Office, have a responsibility to hold any citizen responsible to abide by the laws of CT, as well as specific permit requirements, and statutes?
- 10) Some of these comments by the DEP recently make me wonder whether they believe these rules are just to be enforced for "some" people, but not for "everyone".
- 11) The issue of "when" the permit lapsed, and then "when" the work was done, is being made a big issue by the DEP and Manafort. This may be a red herring anyway. The news articles and Manafort keep saying he and L. Caldarella,( the previous owner and 1990 permit holder), are the current marina owners. However, the tax assessors records show the current owner to only be J. Manafort. Caldarella is shown to have lost property in foreclosure. Does Manafort as current owner and the authorizing party of the recent work, even ever have rights to this permit anyway? The permit did not automatically transfer to a new owner, and would have required written application and authorization. Did this ever take place? It is noted in the permit that the unauthorized transfer would be a violation ( section 22a-98, and 361). The original permit holder, and any contractors involved should be aware that they can be held legally responsible for the unpermitted work, any consequent remediation work, costs, and/or fines. Also, to further muddy the trail, Manafort has seemed to say his company did most of the work, but some contractors did "minor parts" of it. The DEP has said, that this makes it difficult to ascertain when the work was really done. The implication seems to me that they are looking for an easy way to drop this matter, by saying “maybe we can't hold the owners responsible for any violation, as we can't ‘prove’ a case?” Someone bought materials, has invoices , and what's more, I really question if Manafort's Co. actually put in the pilings? The comments by DEP seem to indicate they feel any real investigation is not their responsibility. They have actually asked the neighbors if they can prove when the work was done!

And that is why I am asking for all your help,  
and because of the following:

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Maybe this case would be a good addition to the River Riparian Rights Group Mission, all our other groups involvements, and Colins Web Site.

I would hope a broad coalition involvement might help broaden all our focus from "just" private docks to all issues related to CT. River protection. I think part of that requires highlighting the DEP's general lack of enforcement and meaningful permitting policies, procedures, and requirements. Given this DEP notice of violation, this case could possibly lead to the broadcast of a good "message". This will only happen though if the DEP doesn't let the marina owner walk away easily. I think anything short of requiring total removal and a new permit application would be a violation of state government responsibilities. I am concerned that the DEP will play politics and take some superficial action unless enough important groups weigh in and put pressure on the them and the Attorney General to strictly enforce the statutes. We have a head start here with the DEP Notice of Violation, and I'm sure they wouldn't have issued this if the case wasn't quite strong, or if the neighbors hadn't been so vocal in an election year. To me, the sheer arrogance of this owner is a frightening message to all of us. A "savvy" business person spending such a large sum of money to illegally construct work, when he must have known negative reaction and DEP complaints would ensue, indicates remarkable confidence that he would "get away with it". This confidence didn't happen overnight, and was born by continued government lack of oversight. This owner probably isn't the only one who has "heard" this message. I believe it is critical for a new "message" to be heard.

I think the Deep River Marina Ad Hoc permit process, which evolved after the "interventions", illustrates certain important lessons:

1) The original permit, and permit process, was ridiculously flawed, and didn't seriously consider most important issues, except the dredging timing, methods, and disposal. It almost became reality, so process changes are vitally needed. The DEP staff kept saying they had to function the way they did, but my reading of the statutes doesn't show me that they had to "exclude" others involvement in the review process, nor "required" that no Public Hearing would be held!

2)The informal process which actually led to the positive changes to the permit conditions grew out of many perspectives, and utilized very broad expertise. This was due to the many groups who Intervened. This in some way should be the official process before any permit "approval" ( Tentative or any other type).

3) The resulting process only occurred because the many Intervening groups and individuals worked together and forced it. This was only possible because of 3 criteria: some of the intervening groups were well established and had previous credibility, and were well known to be able to succeed with their missions; some individuals and groups had relevant legal capability and showed a resolve to follow that track as far as needed; and also, importantly, all intervenors approached the matter from a generally "reasonable" attitude. I believe this showed the owners of the marina that they could best hope to resolve the matter by working with the groups. ( yes I include myself in that category, even with my side tracks for "theatre" which were intended to keep the "focus" and "pressure" on the marina)

4) If many groups and individuals work on a continuing basis to achieve their common purposes ( even though there may be many differences also) change can be made. One group alone stands almost no chance of achieving this goal.

The real lesson for me is this: There must be a coalition of groups and individuals who work in the future to achieve these goals with any significant permit and decision concerning the CT. River. This is a mission which I believe is far beyond any of the individual issues which we have all been involved in, and must be approached as a specific cooperative goal. The River Forum, while a positive step to allow public "discussion", still is designed to place the DEP and the groups which already have the most influence on the process, as the "experts" in these matters. If they are the current experts and decision makers, then what has caused the "problem:?" I think it is naive to think that it is simply a matter of gaining "knowledge" or "new information" from short (5) minute speeches. I think this is mainly a feel good endeavor, and dangerous in some ways for just that reason. Mere forums will not change the "hearts and minds", let alone the wallets, of those in the decision making process. If these entities could be counted on to make important changes in policy and governmental attitude without "real" intervention by the broader array of environmental groups, the "forums" wouldn't even be needed.

I hope this current Island Cove violation may be a vehicle for all groups to show a cooperative resolve. I hope all will weigh in to the DEP and AG's Office, and to speak to the public with their concerns. I also hope that we all express the view that the violation must be seriously enforced, with removals and fines, and a new permit process must be required; maybe this could help take us some way down the road to a new "message" being heard.

John K.