



Devon Yacht Club Aquaculture Lawsuit Is Settled

By Christopher Walsh | January 14, 2019 - 11:59am

A lawsuit filed one year ago by the Devon Yacht Club in Amagansett that sought to bar leaseholders in Suffolk County's Shellfish Aquaculture Lease Program from conducting oyster farming activity was settled last week, a county official said.

The club, founded in 1908 and incorporated in 1916, filed a lawsuit in State Supreme Court seeking to bar leaseholders situated near the club from undertaking or continuing any action related to oyster farming at lease sites granted by the county's Aquaculture Lease Board in July 2017, or engaging in any other activity that would interfere with sailing.

Along with the Aquaculture Lease Board, the lawsuit named the Amagansett Oyster Company, based in Amagansett, the Suffolk County Planning Department and its director, individual leaseholders, the Town of East Hampton, and the State Department of Environmental Conservation.

DeWitt Davies, the County Planning Department's chief environmental analyst, said on Jan. 9 that the Amagansett Oyster Company will withdraw from a lease site that the club's officials said interfered with its members' boating activities and posed a navigational hazard, and apply for a new lease site. The county has agreed to expedite that new lease application, he said.

Mr. Davies spoke at a meeting at East Hampton Town Hall at which county officials discussed the Aquaculture Lease Program's 10-year review. The meeting, hosted by the town trustees, was for stakeholders to ask questions and submit comments on the program.

"I think in the overall scheme of things, this sets the right tone moving forward for the 10-year review," Dorian Dale, the director of sustainability and chief recovery officer for the county, who sits on the aquaculture lease board, said on Monday. "It establishes the county's understanding that there are many stakeholders and it was important to, at the end of the day, come to resolutions that are as mutually acceptable as possible. I don't mean that will always be the case, but it is the spirit in which we want to move forward. We see how the world doesn't function when there isn't cooperation."

Linda Margolin, an attorney for the plaintiff, said on Monday that her client was pleased with the settlement. The Amagansett Oyster Company would "apply for a different mooring

that's not intrusive," she said, while "the rest of the lease sites turned out not to be at issue for one reason or another."

The county agreed that the club will be notified "so we can be part of the stakeholder discussion going forward," Ms. Margolin said, and its officials and members "are looking forward to what they hope and expect is a constructive conversation going forward."

Recreational sailors, kayakers, paddleboarders, and other users of Gardiner's Bay "weren't scoped out as stakeholders in the conversation that should have been ongoing," Ms. Margolin said.

Francis McMahon of the Amagansett Oyster Company said on Monday that the lawsuit and settlement had no direct bearing on his business, as he has yet to begin operating in the bay. "My lease was never finalized by the board, once the lawsuit by Devon was filed," he said.

Once the Aquaculture Lease Board approves his new lease site, he must still apply for permits from the Coast Guard, the D.E.C., and the Army Corps of Engineers before he can begin operating in the bay. "It's going to be a while," he said.

The lawsuit initially surprised him, he said, but after meeting with Curtis Schade, the yacht club's commodore, "I understood their concern. If we are going to coexist here, we're going to have to reach consensus and compromise — that's what Curtis and I were able to do. They've got a right to continue using that body of water as they have been. We have a right to farm and produce oysters in that bay. We need to figure out ways to come together, to see that mutually acceptable situations are worked out. That's exactly what happened in this case."

Mr. McMahon's family has been part of the community since the 1940s and has owned property in the town since the mid-1950s, he said, and "the sustainability aspect of aquaculture is very interesting to me. The health of the bay and the rest of Long Island Sound is very important to me."

The Aquaculture Lease Program was established after New York State ceded title to approximately 100,000 acres of bottomland to Suffolk County in 2004, and authorized the county to implement an aquaculture lease program for the region. Parcels are leased within a delineated zone for private, commercial shellfish cultivation. The zone includes D.E.C.-issued Temporary Marine Area Use Assignment locations, historically private oyster grants, and other contiguous areas where any impacts or conflicts arising from aquaculture activity have been deemed minimal, according to the program's overview.

By the fall of 2017, members of the club and residents who live along Gardiner's Bay had expressed their unhappiness about the changing seascape brought about by the appearance

of 10-acre oyster farms offshore. In its lawsuit, the club cited vested property rights, past access, and navigability, among other issues.

Bivalves such as oysters, hard clams, and scallops filter the water as they feed. This helps to mitigate an overabundance of nutrients that promote algal blooms such as brown tide, which can kill shellfish and finfish. Dense shellfish populations on farm sites, according to the county, will also augment the spawning potential of native populations.

This article has been updated with the version that appeared in print on Jan. 17, 2019.

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