

**To: The Shoreline Preservation Task Force**

July 9, 2012

From: Frazier Bronson and Helen Wong  
63 Little Bay Lane; Branford CT 06405

**Subject: Our experiences with various Agencies after Tropical Storm Irene**

We live in the Short Beach area of Branford, and our home was one of the more hard hit residences. We lost about ½ of our seawall, our deck, and our first floor. We are still rebuilding. It would have been much faster, except for some of the issues in this document. But all our experiences were not bad – many were good, and we will also highlight some of them too.

**FEMA:** A slow and complicated process, that is still on-going.

We have Flood Insurance. We assumed that the seawall and the deck would be covered – sadly, they were not. But they were pretty good about the things inside the house, albeit slow. The inspector showed up within a week, but it took him 2 months to prepare the claim. We received partial payment 5 months after the storm, and the final payment April 5, 8 months after the storm.

Flood insurance doesn't cover the sea wall, but in our case the seawall is an integral part of the house foundation. So we believe that FEMA Housing and Families group should cover it. They agreed it was an essential part of the house, and paid a small amount [not sure how the amount was determined]. When we had the final costs, we submitted an appeal. It was denied because we couldn't supply the final Flood Insurance payment information – since we didn't have it yet ! But they are now saying that the ruling is final, even though it was another part of FEMA that caused the problem. We have been told that there is no avenue to appeal this – but we are still searching.

Suggestions for the Task Force:

- The Branford building permit fees that are required for the reconstruction project are not reimbursable by FEMA
- Work done by the homeowners is reimbursable at Federal Minimum Wage, but not at the Connecticut Minimum Wage.

**Private Homeowners Insurance:** This was a good experience.

Our carrier is Utica. Floods are excluded in our policy. We assumed that since we had Flood insurance, and since there was indeed a flood, that this would all be covered – sadly we were mistaken. Nothing outside was covered by them.

But we did have wind damage insurance, as long as the winds did not exceed 74mph anywhere in CT for more than 1 minute. Apparently they did not. In New Haven harbor there is a weather monitoring station which records wind speed and tide height. We were able to show Utica that there were high

winds for about 10 hours before the high water. Therefore, it must have been the winds that caused us to lose our deck fencing, our BBQ grill, and our deck umbrella, well before the storm surge would have gotten to them. Perhaps they felt sorry for us, but they bought it.

Suggestions for the Task Force: Homeowners insurance is becoming very difficult and/or expensive in the past few years. Many companies have stopped writing it. Others have greatly raised their rates. Ours has doubled, even after shopping around and changing to the least expensive company. The Insurance Commission must make sure that there is adequate competition for this market.

**Branford Town Officials:** They get high marks

They frequently visited the site during the first few weeks after the flood. Knowing that many of us had no phones, they passed out written information about where we could get assistance. And most importantly, since there is a sewage pumping station in front of our house that was also without power, they sent a pump truck over ever few days to empty it. We are at the bottom of the hill, you know the saying about what always flows downhill. Much to our surprise, the town Assessor's office sent somebody over to re-value our property, which had clearly been reduced in value by Irene.

Suggestions for the Task Force: Gather the list of good things the various towns and other institutions did and publicize that so that other towns/institutions can learn.

*Best practices*

**Northeast Utilities, and CL&P:** They got more blame than they deserve

We were without power for 8 days, our area was about the last to be restored, as we are at the very end of the CL&P service area. They took a lot of criticism for their slow response. But they can only do so much given the resources they now have. The criticism should be directed at the Public Utility Commission [now part of DEEP]. They have forced the divesture of the generating capability, which makes NU much smaller which reduces the excess capacity for extraordinary events like this. Furthermore, their rulings are now much more political, focusing on short term gains [lower rates] rather than long term benefits [stronger infrastructure to better withstand unusual events].

**DEEP:** Saving the worst for the last

All we were trying to do is to rebuild what we had before – nothing more. We needed to make major repairs to the seawall. We need to replace the deck [which is supported by and overhangs the seawall]. And we wanted to repair the fence. Sounds very simple – but their process is Very complicated. We need to file a Certificate of Permission [COP]. The Application instructions are 19 pages. The COP application is 10 pages. Our application was 28 pages. The cost is 375\$ [not reimbursable by flood insurance].

An Emergency Authorization was published allowing repair of sea walls, but all this did was authorize you to start the work before receiving approval. You still must fill out the entire COP and pay the money.

In the DEEP Office of Long Island Sound Programs, their purpose as stated in the COP instructions is “to conserve and protect the water and natural resources of the state and to protect life and property from erosion and flood hazards”. These are lofty goals and we fully agree with them. The replacement of the structures that have existed for more than 40 years does not conflict with the OLISP purpose.

Many people have simply gone ahead and rebuilt those structures without following the COP process. We followed the law, but got burned. Our COP approval was hijacked by a group of neighbors that has been in a 50 year feud over the fence, and most anything else done by everybody who has lived in this house [4 separate owners]. And DEEP acted like it was their mission to correct the social wrongs that some of the neighbors claim exist. The courts exist for that. The main issue is the fence, which some claim extends too far waterward. Indeed, there was a court ruling in 1967 and a subsequent appeal ruling that established the legal location of the fence, and it was in that location before the flood. But it wasn't enough for the neighbors and DEEP to abide by a court ruling.

DEEP supplied us with the elevations to use for the High Tide Line [HTL] and Mean High Water [MHW]. Our COP application showed that the deck and the seawall were above HTL and therefore not subject to DEEP jurisdiction. Our application showed that the fence was above MHW, and therefore compliant in its current location. DEEP rejected this saying we needed an A2 survey; we supplied the one we had made in 2000. That was rejected and DEEP now said we must supply a recent survey [<5y]; this requirement is not in the application instructions. Furthermore they changed the requirement to a T-2 survey with elevations, even though our A-2 survey had all the elevations on it; this too is not in the application instructions. We supplied the T-2 survey [extra cost and delay] which also showed that the deck and seawall were above the HTL and not subject to DEEP jurisdiction, and that the fence was above MHW.

DEEPs ruling finally came. They deny us the approval to rebuild the fence.

- They say that they disagree with our Registered Professional Surveyor, instead saying that his survey didn't agree with their observations [only 2 site visits]. Furthermore they now say that the elevations of HTL and MHW they supplied are not accurate for our location. I sent a letter asking what it might be that makes the water level different here than other Branford sites on LI Sound – no reply.
- They say that “site evidence” clearly shows that the deck and seawall are below the HTL, even though our Registered Survey shows that not to be the case. I requested documentation of the DEEP evidence, but none was provided.
- They then jump to the conclusion that ALL of our fence posts are below MHW even though our professional survey shows them to all be above MHW. They further more declare them “derelict” and order us to remove them. Note 1 – our application clearly showed we were

going to reuse them, they were not derelict. Note 2 – according to DEEP procedures, if they direct us to remove something, then it is their obligation to prove it is non-compliant – i.e. below MHW. They now refuse to tell us what MHW is for our site, just saying that we aren't like the rest of Branford LI Sound. And if we ever choose to rebuild it we must apply for a Structure Dredge and Fill permit, and conduct a "site-specific analysis of the HTL and MHW line". These are both very expensive and time-consuming.

- Finally they state that initiation of any authorized activity will indicate our acceptance of these conditions. Of course, this puts us in an untenable position, since we had already completed the authorized work on the seawall under the Emergency Authorization.

We wrote a letter asking for clarification, asking for modification of the COP, and asking for information about the Appeal process. The answer was not clarifying, stating that the COP cannot be modified, and that there is no appeal process.

This strong-arm tactic goes well outside their authority and their own rules. But we gave up. We had no choice as we needed to proceed with the deck and the rest of the reconstruction project.

#### Suggestions for the Task Force:

- There should be a simple and quick process that allows replacement of existing structures. If it is so complicated that it requires professionals to create the response [as we were told by DEEP and the town for the COP] then it is the wrong process.
- There must be an appeal and adjudication process within DEEP when the rights of the citizens are being abused.
- The role of DEEP OLISP must be constrained to protecting LI Sound, and not get involved in property disputes.
- Regulations or rules must be put in place and published to define how the temporary removal [or addition] of sand will be treated. A temporary removal of sand should not be allowed to cause the permanent removal of a structure that has long legally been in place [our situation]. Nor should the temporary addition of sand be used to allow the creation of a new structure.

We hope that this helps the Task Force with their mission.