

RECEIVED

JUN 21 2016

June 21, 2016

BD. OF SELECTMEN

Boxford Conservation Commission
7A Spofford Road
Boxford, MA 01921

RE: Boxford Conservation Commission Failure to Follow Bylaws Concerning the Second Wrongful Drawdown of Four Mile Pond

Pursuant to G.L.c. 30A § 23, we are writing to the Conservation Commission requesting that the Commission take a corrective action to address the Commission's nonfeasance and violation of the Massachusetts Open Meeting Laws G.L.c. 30A § 20 relative to the Commission's acts and omissions concerning the second wrongful draw down of Four Mile Pond, occurring on June 20, 2016. (The first wrongful draw down occurred in August 2015). This correspondence shall further place the Town of Boxford on notice that to the extent that we experience any property damage (e.g. loss of my well) we will hold the Town, as well as the dam owner responsible for such damages arising from any unlawful draw down of Four Mile Pond.

It appears that the Commission has violated the Massachusetts Open Meeting law by approving and sanctioning the draw down of Four Mile Pond despite the fact that no permit application has been filed, no required notice has been provided to the abutters and no public meeting on this matter has been posted. The Commission is aware that without any required permitting the owner of the Four Mile Dam has commenced a second unlawful draw down Four Mile Pond for the alleged purpose of conducting maintenance of the dam. As no permit has been filed, there is no reported purpose for this draw down on record.

The Town's Bylaw is clear. § 375-2B(1) states "Any Activity proposed or undertaken which will remove, fill, dredge, build upon, or alter a resource area is subject to regulation under the Bylaw and requires filing of a permit application." It is beyond dispute that the draining of a great pond is an "alteration" of a wet land. Clearly, the dam owner's current actions fall within the jurisdiction of the Commission. What remains unclear is why the Commission is allowing this unlawful activity to occur without taking any action to prevent or stop the damage.

Four Mile Pond is a great pond and is therefore property of the Commonwealth of Massachusetts. The Town through the Commission is the trustee of this property. It is unclear why the Commission is refusing to enforce the Town's Bylaws to prevent this unlawful activity.

Notwithstanding the absence of any application, it has been represented by the Town's Conservation Agent, that the Commission is aware of the owner's intention to draw down Four Mile Pond and has discussed the issue with the owner and has approved of this action. Given that no permit has been filed, it is unclear how the Commission has legally approved of this action. The Commission should not be considering and approving the drawing down of a great pond in the absence of any permit application. Where there has been no filing, no notice and no

public meeting, the Commission should not be making any determinations or approving of the draw down of Four Mile Pond.

The Conservation Agent advised that the Commission could not take any action concerning the draw down because no permit had been filed. We were informed that given the absence of a permit, the only way the Commission could consider the issue was by filing a Request for Determination of Applicability ("RDA"), which would involve obtaining a list of abutters, service of the abutters with notice of the RDA, publication of the RDA in the newspaper and that the earliest the RDA could be placed on the Commission meeting scheduled was on July 7, 2016 and that the process would only cost me approximately \$450.00. In other words, we were instructed that the only way to could get the Commission to take any action was to file an application concerning the then threatened draw down. This position is absurd, given that the Commission has not demanded the same from the dam owner. Instructing abutters to file an RDA, when the Commission had already apparently decided the issue without an application or appropriate open meeting could be construed as a further attempt to deny the abutters due process concerning the draw down.

Additionally, it was represented that the dam owner is "in compliance" with the "Dam Management Plan" instituted in the fall of 2015 in response the wrongful draw down last year. It is highly questionable whether the "Dam Management Plan" is legal as the "Plan" radically alters the notice requirements to the abutters. The Commission is not at liberty to change the existing Bylaws and certainly has no authority to alter the State statutory requirements. The attempt to exempt the dam owner from the permitting process by altering the notice requirements further denies the abutters due process. Furthermore, it appears that the Commission is not adhering to the "Plan". Given that Paragraph 4 of the "Dam Management Plan" clearly states that the owner is required to obtain all necessary permits and has not done so, it is again unclear how the owner could possibly be in compliance with the "Plan." Again, where no process has been instituted, it is unclear how the Commission could be of the opinion that the owner is in compliance with the "Plan" as the Commission should not be considering or approving any non-approved activity absent an application. No current permit application has been filed. In fact, the only permit on file is an application, after the fact, for work performed in 2010. As such, it is clear that the dam owner has failed to comply with the Dam Management Plan. The Commission's approval of this failure is unacceptable and a dereliction of the Commission's obligation of neutrality and duty to protect the Town's wetland resources.

It was misrepresented at the Commission's June 2, 2016 meeting that a "permit" was in place. To the extent that was a reference to the 2010 after the fact permit, such permit clearly cannot reasonably be interpreted to prospectively sanction an alteration of a wet land six years in the future. As such, the representation that a permit is in place is unsupported by the facts as no permit has been filed for this second draw down of Four Mile Pond. The "Dam Management Plan" is not a permit and does not grant the dam owner any right to unilaterally alter this wet land at any time he deems convenient. To represent that a permit for this activity is in place is

not true. The Commission owes an obligation to all affected parties to ensure that no decisions are made based on inaccurate or incomplete information. To do otherwise denies the interested parties the right to due process.

Furthermore, on June 2, 2016, Commission member, Mark Mitsch, stated on the record that he is working as a consultant for the dam owner. If Mr. Mitsch has received any payment for this consulting work, this clearly creates an unacceptable conflict of interest. To the extent that he is providing voluntary services, and continues to act in an official capacity and has taken any active participation in the Commission's consideration of the actions of the dam owner, this too constitutes an unacceptable conflict of interest as he is vested in the outcome of any Commission determination concerning the dam. If Mr. Mitsch voted and/or deliberated on any matter affecting the "approval" for this current draw down, any such activity may likely have violated the Open Meeting law if he made up part of the quorum considering the action.

We request that the Commission preserve any and all meeting minutes and notes concerning the Commission's actions with regard to the dam because we are highly concerned with the fact that the web streaming video from the Commission's meeting of June 2, 2016 has been taken off line. That recording is part of the public record and must be maintained. There can be significant sanctions imposed if relevant evidence is destroyed. Accordingly, the Commission should take no action to jeopardize or compromise any recording of the Commission's consideration of the issue with the dam.

Additionally, this current unlawful conduct presents a potential threat to public safety. It is our understanding and belief that the Four Mile Pond aquifer supplies water for the Town's fire pond on Batchelder Road as well as the fire pond supporting Four Mile Village. Given that it is the height of summer, and no rain is forecast for the near future, it is unlikely the aquifer will recharge any time soon. We can only hope that those fire ponds are not needed this summer. Had the permitting process been followed public safety considerations concerning the draw down could have been addressed. Unfortunately, this did not occur. It is not hard to envision that the Town could be exposed to liability in the event those fire ponds are needed and are unavailable.

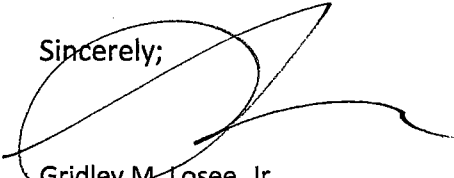
Additionally, the Massachusetts Department of Environmental Protection has informed me that no report concerning the draw down from last year was reported. Why did this not occur? Is not the Commission and/or the Commission Agent obligated to report an improper alteration of a wet land? Given the Commission has consistently monitored the status of the Town's wet lands and has historically been active in protecting these resources, the Commission's current approval of what appears to be an unpermitted alteration of a wet land and State owned property is, at best, inconsistent.

In principal, we do not object to the dam owner performing maintenance on the dam. The owner has obligations to ensure the structure is safe and functional. We strongly object to the fact that the Commission has apparently approved and sanctioned this second draw down of

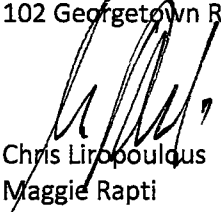
Four Mile Pond during the summer, without notice to any of the abutters. Had an application for a permit been filed and a public meeting held, we would have voiced the request that any draw down occur either in the spring or late in the fall, so that the aquifer could be recharged by either the spring or fall rains. It remains unclear to why the proposed work was not completed in August or September 2015 when the pond was previously drained, allowing for access to the dam structure. However, given that no public meeting has been held, we have been denied due process concerning the alleged purpose current unlawful draw down.

We request that the Commission take immediate action to order the dam owner to cease draining Four Mile Pond and to re-install the sluice boards immediately and install a locking mechanism on the sluice boards to prevent any draw down of Four Mile Pond, absent official permit. I further request that the Commission inform me with what steps it will be taken to ensure that it is in compliance with the G.L.c. 30A.

Sincerely;



Gridley M. Losee, Jr.
102 Georgetown Road



Chris Liropoulos
Maggie Rapti
105 Georgetown Road

Cc: Charles E. Killam;
Lakes, Ponds & Streams Committee;
Alan Benson; ✓
Board of Selectmen;
Boxford Fire Chief, Brian Geiger
High Ridge Property Owner's Association;
Four Mile Village Owner's Association.

Ross Povenmire

From: Ross Povenmire
Sent: Tuesday, June 21, 2016 9:10 AM
To: 'Provencal, Jill (DEP)'
Cc: Rigby100@verizon.net; Alan Benson
Subject: RE: Four Mile Pond, Boxford
Attachments: Signed Dam Management Plan.pdf; 201606210849.pdf; 201606210850.pdf

Hello Jill,

The owner of the dam is preparing to make repairs as recommended in a Phase 1 Inspection/Evaluation Report prepared by Weston and Sampson and dated December 23, 2015 (see attached #...50). The work involves temporarily lowering the water level of the pond to gain access to the low-level outlet so that repairs to that outlet can be made. The owner also plans to clear vegetation from the earthen berm and debris racked up in the spillway below the dam. The owner has been in close communication with this office.

The Commission held several public meetings last fall with the owner and lake abutters to arrive at a Dam Management Plan, including notification provisions (see attached). The owner provided notification as required under the plan. The Commission discussed the matter on June 2 and there were no objections raised by Commission members to the owner proceeding with the work as noticed. Abutters were present at the June 2 meeting and public comments were taken.

There is an Order of Conditions 114-1109 issued May 20, 2010 for lake drawdown to facilitate dam repairs, and removal of vegetation (see attached # ...49). This Order has not expired, due to the operation of the Permit Extension Act. The current work by the owner may reasonably be considered a continuation of the same effort as permitted by Order 114-1109.

The dam owner is an elderly man who does not live on the pond. He has made clear his eagerness to be rid of the liability, expense and responsibility of owning the dam, and has appealed to the pond abutters to buy the dam.

Ross

From: Provencal, Jill (DEP) [mailto:jill.provencal@state.ma.us]
Sent: Tuesday, June 21, 2016 8:16 AM
To: Ross Povenmire <dircons@town.boxford.ma.us>
Subject: Four Mile Pond, Boxford

Morning Ross,

MassDEP received a complaint regarding Four Mile Pond in Boxford. The complainant alleges that the pond is being lowered without proper permitting. Could you please let me know if you have any knowledge of this activity? Thanks.

Jill

Jill Provencal
MassDEP - NERO
BRP
978-694-3250 (w)

Ross Povenmire

From: dalyp@yahoo.com
Sent: Tuesday, June 21, 2016 3:00 PM
To: Ross Povenmire
Subject: Four Mile Pond

Good afternoon,

I am writing to express my continued concern about the recent events at 4 Mile Pond and the actions of the dam owner. There are many emails circulating once again capturing the wanton actions that are devastating the area at the absolute wrong time of year. There is a consensus among those who invested time and effort last year into the process of creating a dam management plan that the actions are in violation of that plan. We are very concerned and hope that the dam owner can be ordered to immediately stop, restore the boards, and that the process for selling the dam can be expedited.

Sincerely,

Patrick Daly
96 High Ridge Rd.

Ross Povenmire

From: Alison Chase <alliechase@webtv.net>
Sent: Tuesday, June 21, 2016 2:47 PM
To: Ross Povenmire
Subject: Four Mile Pond

Hello--FYI I am very concerned that yet again Charlie Killiam has lowered the water level in Four Mile Pond. The weeds and invasives are now going to grow like crazy. On top of that, here we are in a drought. Can you do something to stop this?

Alison

Alison Chase 41 High Ridge Rd. Boxford, MA 01921 (978) 887-3489 Fax: (978) 887-0928 e-mail: alliechase@webtv.net

Ross Povenmire

From: Gridley M. Losee, Jr. <Gridlosee@live.com>
Sent: Monday, June 20, 2016 8:00 PM
To: Ross Povenmire
Cc: Gridlosee@live.com; Alan Benson
Subject: Draining of Four Mile Pond

The sluice boards have been removed from the Four Mile Pond Dam, draining Four Mile Pond. This activity is unpermitted and in my opinion is therefore, unlawful and must be stopped. I request that you contact the Conservation Commission and inform them of this situation and request an emergency executive session to obtain a cease and desist order with instruction to the dam owner to replace the sluice boards immediately to prevent any further draining of the aquifer. It is not too late to prevent the pond from being drained completely.

-Gridley M. Losee, Jr.
102 Georgetown Road

Ross Povenmire

From: Dave Walls <dave@davewalls.com>
Sent: Monday, June 20, 2016 2:05 PM
To: Ross Povenmire
Subject: Re: Draining Four Mile

Well, can you help me to understand why this is happening? I guess I don't understand the taxpayer's role, if any, in the management plan.

> On Jun 20, 2016, at 1:59 PM, Ross Povenmire <dircons@town.boxford.ma.us> wrote:

>

> Received, thank you

>

> -----Original Message-----

> From: Dave Walls [mailto:dave@davewalls.com]

> Sent: Monday, June 20, 2016 1:58 PM

> To: Ross Povenmire <dircons@town.boxford.ma.us>

> Subject: Re: Draining Four Mile

>

> But, all the abutters requested the work be done in the fall? Don't understand.

>

>> On Jun 20, 2016, at 1:49 PM, Ross Povenmire <dircons@town.boxford.ma.us> wrote:

>>

>> Hello Mr. Walls,

>>

>> Mr. Killam is acting pursuant to the Dam Management Plan approved by the Conservation Commission last fall and the recommendations of the Phase 1 Dam Safety Report.

>>

>> Ross

>>

>> -----Original Message-----

>> From: Dave Walls [mailto:dave@davewalls.com]

>> Sent: Monday, June 20, 2016 1:45 PM

>> To: Ross Povenmire <dircons@town.boxford.ma.us>

>> Subject: Re: Draining Four Mile

>>

>> Hi Ross,

>>

>> I just got word that Charlie is there now, draining the great pond.

>>

>> Did cons com give him approval to do this?

>>

>> Kind of confused at this point.. can Charlie as Dam Owner just do as he pleases?

>>

>> Dave

>>

>>> On Jun 14, 2016, at 8:36 AM, Ross Povenmire <dircons@town.boxford.ma.us> wrote:

>>>

>>> Received, thank you

>>>

>>> -----Original Message-----

>>> From: Dave Walls [mailto:dave@davewalls.com]

>>> Sent: Monday, June 13, 2016 3:53 PM

>>> To: Ross Povenmire <dircons@town.boxford.ma.us>

>>> Subject: Draining Four Mile

>>>

>>> I've been told four mile pond is to be drained once again.

>>>

>>> The original plans for the four mile area called for the dam not to be opened during summer months or in times of drought.

>>>

>>> I feel that the town should respect this original project plan that Mr. Dorman put much time and research into and not approve the opening the dam during summer months.

>>>

>>> Fall is the perfect time to consider opening the dam to do work on it.

>>>

>>> David Walls

>>> 66 High Ridge

>>>

>>

>>

>