

**Conservation Commission Meeting  
August 16, 2022**

**Present:** Christopher Gerrior, Chairman  
Ben Bailey, Vice Chairman  
Matthew Bache  
William Clapp  
Mike Gifford  
William Milka  
Kevin Thompson

Conservation Agent, Merilee Kelly  
Dawn DeMaggio, Board Administrator  
Lori Walsh, Recording Clerk

The meeting convened via Zoom video conference ID #827 6627 5036. Chairman Chris Gerrior called the meeting to order at 7:00 p.m. and took attendance of Members, staff, applicants, and representatives. Chairman Chris Gerrior read a message about remote participation and ground rules for the meeting. He stated the meeting was being recorded. Each presentation was limited to 10 minutes and 3 minutes were allowed for public comment. Chairman Chris Gerrior stated that votes would be taken by roll call.

**Minutes** July 19, 2022 and August 2, 2022

Member Bailey made a motion to approve the minutes for July 19, 2022.

Member Gifford seconded the motion.

**Motion passes with a roll call vote of 7.**

Member Bailey made a motion to approve the minutes for August 2, 2022.

Member Gifford seconded the motion.

**Motion passes with a roll call vote of 7.**

**Vouchers**

File Guard voucher – \$18.00

W.B. Mason - \$66.88

Member Bailey made a motion to approve all the vouchers.

Member Bache seconded the motion.

**Motion passes with a roll call vote of 7.**

**Wolf Island Road**

Mike King introduced himself as Chairman of the Mattapoisett Conservation Commission, Mr. James Marsh is here via Zoom on behalf of Al Robichaud. Mr. King gave some background on Wolf Island Road and why they are here. He said on July 18, 2022, Mr. Robichaud came

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to their office and brought to their attention that there is a non-permitted chapter 91 structure that was diverting water off of Mattapoissett River. He said that he made a few phone calls about it and found out from Jonathan Hobill from Massachusetts DEP that there was not a chapter 91 license on the structure. He looked into it a little bit deeper and talked to a few other people and ended up getting stonewalled by some people he asked for help from and he said it was disappointing. He spoke to Mr. Dave Lawrence, Commissioner on the Mattapoissett Conservation Commission and also Mr. David Davignon who he found out was going to represent Mr. Gerry Morris. He said he asked Mr. Davignon to please have Mr. Morris call him so that they can meet with him. The purpose of that was to get water for Mr. Robichaud so he would not lose his bogs because he was in desperate straits. He went on to say that the unpermitted structure diverting water from a public resource for a private benefit, at the expense of someone else downstream, was not appropriate. This is why he got involved. He met with Mr. Morris with Mr. Lawrence and he was very gracious to give a tour of his facility. They had some discussion about the situation and he said, somewhere back in the 90's, when there was hurricane Bob, he replaced what was there with what is there now and that was done with no permits, no oversight and no license. He said that's where they are today.

Mr. King explained the nature of the situation and how desperate Mr. Robichaud was to get water and Gerry said, that was Al Robichaud's fault and he should have prepared better, and he should've done his own work to get his own water situated. Then, Mr. Lawrence made him aware that there used to be a dam out on Snipatuit pond and it probably would have held water and would have helped Mr. Robichaud but that is gone now. Mr. Lawrence corrected him and said not Snipatuit, its Tinkham. Mr. King said that the irony to him about all of this is they just went through hours and hours with the Buzzards Bay Coalition and a whole bunch of people on the Bogs restoration project which are Makepeace bogs. He said there is literally thousands of dollars out there to restore those bogs back to their normal state and he said here there are, they've got the Town of Fairhaven, the Town of Marion, the Town of Mattapoissett, and the Town of Rochester have a public resource and their drinking water wells are downstream. He said that there would be the argument that the river does not recharge those bogs he said who knows, he is not an Engineer. He said that he does think that it is a collective resource and needs to be managed better and that requires permits and oversight. Friday afternoon after he spoke to Chris at Town Hall in Mattapoissett, Mr. Robichaud had water and he was able to pump five hours this weekend and probably saved his bogs. Mr. King thinks that under the circumstances, it should not be this difficult, it is jurisdictional cooperation on a publicly managed resource where all communities are involved.

Chairman Gerrior asked Mr. Marsh if he has anything to say since he is representing Mr. Robichaud. Mr. Marsh said he is happy to hear that Mr. Robichaud got water but they are not at the end game. He thinks that more has to get done and he feels that the Commissions involvement is important. He asked what the expectation of the Board was and if they intend to do anything about this. He said that Mr. King made a good point that this is an unpermitted structure that is diverting water that will have an impact on his Clients' bogs. Member Bailey asked Mr. Robichaud if he gets his water from the sky. Mr. Robichaud said he gets his water from Mattapoissett River. He said Mattapoissett gets its water from

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where. Mr. Robichaud said Snipatuit Pond. He said that water was released from Wolf Island Road and then he had water. Member Bailey also asked him if it had anything to do with the heavy rain that they got.

Member Bailey said that there were emails back and forth that some of the Commission didn't see but he did and he said that there is a chapter 91 application. Mr. King said not according to Jonathan Hobill from Mass. DEP or Carlos Fragata from Mass. DEP. Member Bailey said that's not the communication that he saw. He said that Town Atty Blair Bailey was involved also with DEP. Mr. King said that communication would be an understatement. Member Bailey said that he thinks communication would be an understatement due to the fact that he insulted the Conservation Agent. Mr. King said that he did not and he will enter the communication message on record. Member Bailey told him to go ahead. Member Bailey went on to say that he also insulted the Town Attorney, he insulted Mr. Bailey while a lot of people were trying to help him to find out where the problem was and there was some communication going on. Member Bailey said that Mr. King also sent emails to the Mass. DEP and to the local press. The Chairman had to ask Mr. King not to talk because Member Bailey was talking. Member Bailey said he also did it in the emails and the text. He said that he is coming in to represent himself as a reasonable person and Mr. Morris is doing something wrong; he said we are talking about a water structure that's been in place for a long time whether it was rebuilt or reconstructed, for which he was instructed to get a chapter 91 permit. He did not act as quickly as DEP asked him to but DEP never followed up in any way. The jurisdiction over the river itself is with the DEP not with the Rochester Conservation Commission. He said while Mr. King was demanding immediate action, the Town Attorney was working very hard to give the Board the right guidance so they knew what to do. The Town Attorney was working to find out what the situation was, what permits were or were not applied for so that he could give guidance to the Agent and to the Conservation Commission and that was the last thing Member Bailey heard and now the Town Attorney is on vacation.

The Attorney for Mr. Robichaud, Jim Marsh, asked the Board what they are going to do about the situation. Member Bailey said that they are not going to do anything about it because they don't have guidance as to what they can and can't do.

Mr. King said that they should issue a cease and desist for non-permitted activity. Member Bailey said that's his opinion. Mr. King said no, it's according to State law. Mr. King told the Board how they handle these types of things in Mattapoissett. He went on to say that the river is a priority fish habitat and the structure is not designed to convey herring up stream when it should; he said it probably was a result of it not being done with a license back in the early 90's when it was originally replaced. Member Bailey said they would have to talk to the Herring Warden about that. Mr. King said MA Fish and Wildlife, DEP, US Army Corps of Engineers, and David Watling could also be involved to try and intervene because no one else was. Mr. King said for the record, he sent a text message on Tuesday, August 9, 2022 at 2:28 p.m. He read the text to the Board. He said he sent it as a result of the phone call he received.

Chairman Gerrior said that when this thing happened a couple of years before Atty Bailey was in touch with Mass. DEP and the result of that was that Mr. Morris was sent a letter by the MA DEP that he needed to get a permit. Mr. King is saying that they don't have to get the MA DEP involved because the Conservation Commission Board can do something about it. Mr. King said that what he is saying is that

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three Members of this Board that know Mr. Morris could've called up Mr. Morris and said "Mr. Morris, Al Robichaud needs some water, could you help him out". Mr. King said that no one got back to him. He said he did get two phone calls from Mr. Milka and Mr. Clapp letting him know that Al Robichaud needs water. Mr. Milka asked Mr. King how far upstream is Mr. Morris's dam. Mr. King said that Mr. Morris said he basically had created a long pond with his water and he was invited up to Churches Falls to see whether or not he was retaining water.

Chairman Gerrior said that they are talking about the bogs that used to be a reserve, now they provide water in different ways. He said that this is a real relevant thing that they are not talking about here. He said that the test message that Mr. King sent to say that Mr. Morris needs some help, he said that's not what he's got. Chairman Gerrior said that there is an unpermitted structure there and that's the issue, not the actions of Gerry Morris. He said if he puts in a permit application and gets a license, he's not holding back that water because it's 100 percent ok. Mr.

Marsh said that the license is going to help him manage that structure and the way DEP is going to help is to make sure that he manages it in a way that it doesn't affect or impact downstream bogs. He said that Mr. King had a good idea and that's to issue a cease and desist until this is resolved and his Client, Mr. Robichaud can get his water.

Chairman Gerrior said Mr. Morris would have no water if they filed a cease and desist with the Board so that is not going to resolve the problem. Mr. Lawrence said that Mr. Morris, in all actuality, is holding 200 ft. north of Wolf Island Road because it's deeper there up to his dam, that's all he is really holding. He said Church Falls is only about a foot deep. If you go on the other side of Mr. Morris's dam it's only about a foot deep. Chairman Gerrior said that he agrees with Mr. Marsh on Zoom that getting the license and having someone manage it and possibly getting a fish ladder put in there which is what Mr. Watley would like to do, and help all parties but we're not there yet. He said that they are not ordering a cease and desist and he believes that the Board doesn't want to order it. And he feels that they wouldn't be allowed to because DEP has written that letter and it's already on their radar.

Member Bailey went on to say that going back to Mr. King's email, he read it out loud. He said to Mr. King that the email is the kind of communication he chose to use on the Conservation Commission and on the Town Attorney; the fact that he wanted to work with people that way doesn't help anyone solve the problem. Chairman Gerrior asked the Board if they have anything to say about this. Mr. Gifford and Member Milka said that the fact is, we are in a drought now and there is no water. Member Thompson agreed about the drought and no water.

Member Bailey said that he inquired with Jeffrey Eldridge to please look at the water levels at Snipatuit Pond to see if they could release water at Snipatuit to get it down there. He went down there the next day and he said there was an inch and a half going over the boards; it was probably only three inches of the bottom board so, had they pulled the bottom board, they might have gotten four inches. Jeff and David Watling looked through all the downstream and it was their estimation that even if they had pulled those bottom boards, it wouldn't do anything but recharge. So, pulling those boards wouldn't have helped.

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Mr. Robichaud said that two years ago he spoke to the Board about Mr. Morris having planks out there. The bog that he's talking about is the Tinkham Bog, they always had water and it was never an issue. When Mr. Morris took over the bogs, that's when he started having issues. Mr. Morris has a narrow spot in the river where he has a flume and he boxed that flume right to the top with planks. Mr. Robichaud went to Mr. Morris and told him he needs water. Mr. Morris said to him that he's sorry and he couldn't help him out and walked away. He then went to see Dave Watling who used to work with him and told him what the situation was. Mr. Watling told him he helped Mr. Morris put his sprinklers out and he said he would go talk to Mr. Morris. Mr. Robichaud went on to say that Covid put a damper on that and the beavers were another situation. He said that they've come to a situation now where there is no water going over that flume. If you go out on Rounseville Road there is water flowing and it's going somewhere and Mr. Morris has that flume blocked off.

Mr. Robichaud also said that he has a water permit and he plays by the rules. He said that he's maintained his water withdrawal permit all along. He said that when he went to DEP and spoke to John MacLaughlin, he said that DEP makes the rules and he hopes that the local Conservation Commissions enforce the rules. Chairman Gerrior said it's DEP that has to license Mr. Morris. He said that they agree that Mr. Morris needs to permit his structure but he can't go any faster. Mr. Robichaud said that in 2000 he lost his crop because there was no water and he said that was the whole summer and then there was an early frost and whatever crop he had was lost because of the frost.

Chairman Gerrior said what we are talking about is making that a legal structure or taking it down. He said that hopefully if it's legal, then you'll be working with the MA DEP and the cranberry growers. Now we will have some recourse after going over this tonight. Mr. King said that the local Conservation Commissions under the wetlands protection act have the jurisdiction over all riverfront areas in the Commonwealth.

Mr. Lawrence said he would just like to apologize to the Rochester Commission if Mr. King stepped on their toes, this apology is coming from the Mattapoisett Conservation Commission. Chairman Gerrior said that they are going to keep an eye on this and that Mr. Morris is pursuing his chapter license. They will follow up on it.

**VILLAGE AT PLUMB CORNER**

Conservation Agent Kelly filled the Commission in and said the drainage pipe filled with sand again when we had the heavy rain. The Contractor had a camera that he stuck through the pipes to see what they could see and the pipe leading to that pipe is full of sand and water. Results were inconclusive because the camera kept going into the water. That pipe needs to be cleaned out. That's going to happen next week and then they are going to run the camera through again. Mike Gifford said that he went out there to see and there is sand in the pipe, an unlimited amount of sand. Mr. Gifford says there are two pipes involved and one dumps into the vernal pool and one that feeds the dry well that goes into it. Mr. Gifford's opinion is that until that upstream sand is removed, it's going to keep going into the pipe and

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the vernal pool. Until it's shut off from going there, it will keep coming. Conservation Agent Kelly said the one that fills up the pipe leading to the vernal pool is the one they are cleaning out.

Member Bailey said that they had pumped it and Kenny Motta observed the pipe. They had flushed it and the water was run completely clear. Kenny Motta said it looked like septic sand and he's convinced there is a breach somewhere. Now they are doing everything they can to find out where the sand is coming from.

Member Thompson asked where the pipe is and Member Gifford said it is directly in the middle.

**89 Box Turtle – Enforcement Order – Representative available at meeting.**

Attorney Timothy Angley said it is currently being Engineered. He said the plans are currently being worked on, and will be ready in mid-September.

**CONSERVATION AGENT UPDATE**

Two associate spots are open right now. Mr. Carl MacDermott was in the audience and is interested in becoming a member. He's been a police officer for 43 and a half years and is retiring this November and he talked about that and why he lives in Rochester. He bought property from Bruce Maksy to build a house. He's been in Rochester for three years. He is on the Agricultural Committee currently. He is very interested in becoming a member.

Member Bailey said sometimes they get some heat at these meetings. He asked the man why he is interested in becoming a member. He said he cares about the environment.

The Commission makes a motion and MacDermott will start his training to come on to the Board.

Member Bailey made a motion to accept Carl McDermott as an Associate member.

Member Bache seconded the motion.

**Motion passes with a roll call vote of 7.**

**NEW BUSINESS FROM MEMBER BAILEY**

**MOTION:**

Member Bailey made a motion that all correspondence received by the Conservation Agent and the Board Administrator from any member of the public on any matter not previously discussed by the Conservation Commission must immediately and simultaneously be transmitted to all Members of the Conservation Commission. The Conservation Agent is encouraged to use judgement regarding further correspondence written or oral for matters already under discussion. If conditional correspondence contains new or pertinent information it should be submitted to the Commission Members in written

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form or in oral with a written summary by the Conservation Agent. All Correspondence received by the Conservation Agent or the Board Administrator which is transmitted to any Member, must be immediately and simultaneously transmitted to all Members of the Conservation Commission. Sections to this rule are limited to correspondence the Town Counsel has instructed to be handled in a different manor. All correspondence received by any Member of the Conservation Commission must immediately and simultaneously be transmitted to the Conservation Agent, the Board Administrator and all other Members of the Commission; exceptions to this rule are limited to correspondence which the Town Counsel has instructed to be handled in a different manner.

Members of the Conservation Commission are encouraged to strictly limit individual correspondence with the public to information regarding published procedures. Individuals having business with the Conservation Commission should at all times be referred to the Conservation Agent or encouraged to give notice for attendance at a Public Meeting.

Member Bache seconded the motion.

**Motion passes with a roll call vote of 7.**

If the Attorney says that it's just private, is it? Member Bailey said yes. Anything that goes to a member has to go before the Board first. Member Gifford suggested to make a small change to talk about any correspondence that should go to the Agent and the Board. Member Bailey said if there is a discussion, then it is a violation of the Open Meeting Law.

Chairman Gerrior said that he had sent an email late at one time. Things have to go through right away and it goes through the Chairman. Member Thompson said he agrees with this motion. But, it might take a little longer to get to a solution but it is a lot better.

Member Bailey said it is perfectly ok to discuss Conservation procedures with the public. Merilee does a lot of communication in the office.

**Adjournment**


September 6<sup>th</sup> is the next meeting.

Member Bailey Made a motion to adjourn at 8:09.

Member Bache Seconded the motion.

**Motion passes with a roll call vote of 7.**

**Date:** \_\_\_\_\_

  
Christopher Gerrior, Chairman

  
Lori Walsh, Recording Secretary