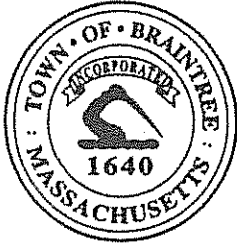


## Department of Planning and Community Development

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Braintree, MA 02184  
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Mayor Joseph C. Sullivan

### Braintree Conservation Commission

Patrick Flynn, Chair  
Donald Murphy, Vice-Chair  
Matthew Hobin  
Daniel J. McMorrow, Jr.  
Gail Poliner-Feldman  
Alan Weinberg

Staff Kelly Phelan

## CONSERVATION COMMISSION MEETING MINUTES THURSDAY, APRIL 1, 2010

Members Present: Patrick Flynn, Chair  
Gus Murphy, Vice Chair  
Gail Feldman  
Diane Francis  
Matthew Hobin  
Daniel McMorrow Jr

Staff: Kelly Phelan

### Public Hearings

#### **8-596 Sunset Lake Aquatic Weed Treatment**

Staff prepared draft conditions for the aquatic weed treatment for the Commission's review. She said the conditions incorporated the Natural Heritage review.

Ms. Francis said there are many geese on the high school athletic fields and suggested that is part of the problem. Staff agreed that the geese are major problem with the lake. Mr. Murphy said people can be fined for feeding the geese.

Motion by Mr. Murphy to accept the draft conditions for 8-596. Second by Mr. McMorrow. Vote: 6-0.

#### **8-597 Pond Meadow Aquatic Weed Treatment**

Staff prepared draft conditions for Pond Meadow aquatic weed treatment.

Motion by Mr. Murphy to accept the draft conditions for 8-597. Second by Mr. Hobin. Vote: 6-0.

## **Other Business**

### **531 Pond Street Discussion**

Attorney Jeff Tocchio and Engineer Tom French were present representing McCourt Construction, owner of 531 Pond St.

Abutters to 531 Pond St., Roger and Darleen Aiello were present with their attorney, David Kellem.

Mr. Flynn asked the Commission members for their thoughts regarding their recent site visit to 531 Pond St.

Ms. Feldman said she saw the brook and understood that there would be no automobiles in the corner near the brook. Ms. Feldman said she also saw a large pile of dirt and manure on the adjacent property.

Staff said the issue was the surviving condition from the 1994 Order which stated that vehicles may not be parked in the 50 foot buffer overnight. She said the purpose of the site visit was to look at the drainage of the site and evaluate if the 1994 condition made sense.

Tom French displayed a copy of the site plan for reference. Mr. French pointed out the corner designated for equipment storage and the three parking spaces within the 50 foot buffer zone.

Ms. Feldman said the concern was the three parking spaces and that with further drainage and further protection the town would be getting more protection for the drinking water.

Mr. French said there are inserts in the catch basins which filter sediment and oil and grease.

Ms. Francis stated a concern about metal being stored in the equipment area because of corrosion. Mr. French said they were metal plates used at construction sites and jersey barriers.

Attorney Tocchio said that area of the site was not covered by the 1994 Order but the Planning Board requirement was to wrap a berm around the back of the site and put inserts in the catch basins to provide runoff protection. He said all of the runoff goes into the catch basins which have filtration.

Ms. Feldman asked Mr. French if, as an engineer, he was certain it would work. Mr. French said he was and that the inserts are documented to provide 80% TSS removal.

Mr. Hobin said there was heavy rain the day he visited the site so he could see where the water would run with the addition of the berm and that the inserts are an upgrade.

Mr. Flynn asked if vehicles are currently parked in those spaces. Attorney Tocchio said he hasn't seen vehicles in those spaces and they are not stripped yet. He added that the catch basin inserts were in place.

Attorney Tocchio said they had given the Commission copies of the drainage study the last time which included a maintenance plan. He said that Jim Eng from the Planning Board was an engineer and had requested the maintenance plan. He also said there was a designated place for snow storage and Planning Board conditions against power washing and outside repair which are under appeal.

Mr. Flynn said he did not see vehicles parked in those spaces and questioned if there were grounds for enforcement now. He said he would like to hear from members of the Planning Board.

Staff said she felt that with the inserts and the proposed berm to direct runoff to the catch basins, all paved areas would be drained through the catch basin system. Therefore whether or not something was parked in the buffer zone became irrelevant, since runoff from that area would drain to the same catch basin system as parking spaces out of the buffer zone.

Attorney Kellem, representing the Aiellos, said these are conservation issues and that construction of the berm requires a Notice of Intent. He said there is a change in what happens on the site. Laying asphalt on the edge of a resource area needs to be reviewed in a formal legal process. It's the board's charge to implement the stormwater management standards and the activities on the site put it in the Land Use with Higher Potential Pollutant Load category. He said the work falls within redevelopment provisions.

Ms. Feldman asked staff if it was redevelopment. Staff said it was not, since redevelopment is new construction and this is only pavement striping and a clarification of where things are stored on the site. The Commission is not notified when a business changes hands, construction is the trigger for Commission jurisdiction.

Mr. Flynn said he would entertain this again should the appeal of the Planning Board decision fail. If that decision is overturned or altered they would consider enforcement of that condition at that time.

Attorney Kellem said it was currently an enforcement issue because there is a condition that there shall be no discharge of pollutants and there is still power washing of equipment, and that Mr. Aiello had pictures of this. He also said there was a condition regarding dumpsters and that McCourt's tenant, Stanley Steamer, had overflowing dumpsters, which is also in the photos.

Staff said she had not received any calls or complaints about power washing.

Ms. Feldman said the site was not in bad condition when she visited.

A set of photos were given to the Commission and staff by Mr. Aiello.

Mr. Flynn asked why they had not called staff about these issues. Attorney Kellem said that his clients felt that they are not taken seriously. Mr. Flynn asked if he was saying that staff would not go out to the site. Attorney Kellem said he thought that staff would go out. He said the conflict has been adversarial and difficult for town officials and town boards but that there are real enforcement issues.

Mr. Flynn said that the conservation agent should be called if violations are observed.

Ms. Feldman said she is very interested in the protection of drinking water and there is no question about enforcement; they will fine.

Councilor Dan Clifford said he believes in "trust but verify". Have an independent expert see if the filters are effective.

Councilor Charles Kokoros said he has been educated on this and is concerned about water quality. The company that used to occupy the site had less impact than this company and McCourt poses a threat to the water supply. He said it is a District 1 resident issue.

John Wells from Regis Road said there was a recent 100 year storm and asked how the system performed. Staff said there was ponding in the back corner; the haybales are functioning like the berm.

Mr. Wells said they were told that there would be no power washing on the site and asked if any had occurred. The Commission said they did not know. Attorney Tocchio said they have told their employees not to do any power washing outside.

Roger Aiello, 515 Pond St., said the 531 Pond property was sold in 2003. McCourt moved in with busses, backhoes, noise pollution and did wetland filling. He said McCourt never took the fill up and they all get flooded. He said staff recommended no headwall on the culvert.

M. Barbuti, resident of Braintree, said he had been involved in the Holbrook transfer station issue and learned about conservation commissions and suggested the commission pay close attention to what's going on at the site and questioned how much the inserts can hold.

Ms. Feldman said maybe they should have a second engineer to do studies on the inserts.

Joe Vanelli, resident, asked if Mr. French was the same engineer who built the headwall. Mr. French said he was not. Mr. Vanelli said every house has water because of the headwall.

Staff said the Commission had reviewed the Notice of Intent on the culver and headwall (along the cart path) and had not had issue with it. Staff added that the Commission's decision had been appealed to DEP and they upheld the decision.

Attorney Tocchio said the issues being raised had been considered and decided in their favor at DEP Adjudicatory hearings and Superior Court.

Councilor Clifford said he is troubled by the photos taken by the Aiellos on 2/28/10 which look like powerwashing.

Mr. Flynn asked staff if there was a condition prohibiting power washing. Staff said there was not.

Mr. Tocchio said it was a condition in the Planning Board permit which was under appeal.

Mr. Kellem said there is a condition against discharge of pollutants and there are substantial problems with McCourt's operation and enforcement of that operation.

Mr. Flynn asked the Commission members if they felt there was an enforcement issue at this time. He said that there had been two different trips out there and he didn't see anything alarming when he visited. Ms. Feldman said she did not see anything either.

Mr. McMorrow said he was concerned about Attorney Tocchio saying the renter's were not under McCourt's control. He also said he is not sure that the Commission can get involved in a change of use and that it was not clear from the pictures that powerwashing was occurring.

Mr. Aiello said that staff had said there were no outstanding violations but that the stream was supposed to be kept open. Staff said the Commission had issued an Emergency Certification to clear the stream but no debris was visible when they went out to do the work. There were two tires in the stream which were only accessible from property on Roc Sam Drive.

Mr. Wells said the Town of Burlington had created a stormwater committee and that a committee could work with the whole industrial park. Mr. Wells questioned why the Planning Board requested the 100 year storm for the berm design.

Mr. Murphy asked if the power washing restriction was in writing. Attorney Murray said that it is in the Planning Board decision. Mr. Flynn said he would like to hear from the Planning Board.

Attorney Tocchio said they commit to policing for any powerwashing and work with their tenants.

Motion by Mr. Murphy to continue the matter until the Commission hears from the Planning Board. Discussion ensued. Mr. Flynn asked about the process for the appeal of the Planning Board decision. Carolyn Murray, Town Solicitor, said the trial date was not set but that it wouldn't be before Labor Day.

Staff said if the Commission felt that it was going to require a NOI for the berm, why wait to make that decision.

Motion by Mr. Murphy, second by Mr. Hobin, to require a Notice of Intent for the construction of the berm. Discussion ensued. Mr. Murphy said there is a lot of concern in the room and a good faith effort would be to have the NOI hearing.

Attorney Tocchio said the NOI and expected appeal process would cost about \$80,000.

Mr. Flynn said to expect the NOI if the berm passes through the appeal process.

Mr. Murphy withdrew his motion for a NOI until the appeal process is over.

### **8-595 BELD Substation - Discussion**

Sean Murphy from Braintree Electric Light Department was present. Mr. Murphy said that after they received approval from the Commission for the substation addition, they discovered that there was not enough distance for the new equipment. Mr. Murphy presented plans to the Commission which

showed the new transformer pad adjacent to the existing equipment, rather than partially overlaid on it. Mr. Murphy said the change requires the equipment to be 16" closer to the wetlands, from 8'7" away to 7'27" away.

Staff said the Commission had discussed this project's encroachment into the 25' buffer during permitting and decided that, as a public utility, the project did not have to adhere to the 25' no disturb buffer.

Ms. Feldman said she feels that it is too close to the water.

Mr. (Gus) Murphy asked if they had started the work. Mr. (Sean) Murphy said that they had not started site work but that they had ordered the equipment and it was being manufactured. Mr. (Gus) Murphy said he did not see much of a difference between 8.7 and 7.2 feet.

Mr. (Sean) Murphy explained that the transformer is contained within a concrete slab. It is built to contain 110% of the transformer oil and has a secondary containment in a 1000 gallon oil & water separator.

Ms. Francis asked how the existing building did during the rain. Mr. Murphy said it is not a building, it is equipment within a concrete pad and that there were no problems.

Motion by Mr. McMorrow, second by Mr. Murphy, to accept the amended plans for file 8-595. Vote: 5-1 (Ms. Feldman opposed).

### **Eaton's Pond Clean Up**

Staff said that Ranger Bill had found serious trash, dump sites and abandoned camps at Eaton's Pond. Covanta (Semass) is looking for an opportunity to do something for earth day and is sponsoring a clean up of Eaton's Pond on April 19<sup>th</sup>.

### **Minutes of March 4, 2010**

Motion by Mr. McMorrow, second by Mr. Murphy, to approve the minutes of March 4, 2010. Vote: 6-0.

### **Adjourn**

Motion by Mr. Murphy, second by Mr. Hobin, to adjourn the meeting at 9:00 PM. Vote: 6-0.