

**Department of Planning and Community Development**

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Mayor Joseph C. Sullivan

**Braintree Conservation Commission**

Patrick Flynn, Chair  
Donald Murphy, Vice-Chair  
Kevin Bears  
Heather Charles Lis  
Diane Francis  
Gail Poliner-Feldman  
Alan Weinberg

Staff: Kelly Phelan

**CONSERVATION COMMISSION MINUTES  
THURSDAY, DECEMBER 3, 2015 7PM  
TOWN HALL- JOHNSON CHAMBERS**

**Present:** Patrick Flynn, Chair; Kevin Bears, Heather Charles Lis, Diane Francis, Gail Feldman, Alan Weinberg & Kelly Phelan, Staff

**Absent:** Donald (Gus) Murphy; Vice Chair

**APPROVED**

**Public Hearings**

**Notice of Intent**

**8-633 19-37 Commercial St./Landing Apartments, LLC**

David Kelly, PE from Kelly Engineering was present. He said he believed they had addressed all of the Commission's comments. They made the requested changes to the landscape plan to diversify the plantings. He reviewed the draft Order of Conditions and had no issue with the conditions.

Staff noted the condition requiring a detailed plan of the connection to the Smelt Brook culvert.

Motion by Mr. Weinberg, second by Mr. Bears, to find the project significant to the Wetland Protection Act and Braintree Wetland Bylaw. Vote: 6-0.

Motion by Mr. Weinberg, second by Ms. Feldman, to close the public hearing for 8-633 and issue the conditions as drafted including the condition for the performance bond and surviving conditions. Vote: 6-0.

**Notice of Intent**  
**8-635 205 Elm St./RiverWalk Development, LLC**

Shawn Hardy, project engineer, was present with George Clements, the applicant and Mike Walsh from Horticultural Concepts . Mr. Clements said they had been to the planning board hearing and based on their comments on TSS removal they revised the plan to significantly improve water quality.

Mr. Hardy said the plans were revised to widen the driveway for fire truck access. They are using grass pavers to widen the driveway. They also added two 450i stormceptor units for water quality treatment of 80% TSS removal. Ms. Charles Lis asked where they came up with the 80% figure for TSS removal. Mr. Hardy said they sent drainage calculations to the manufacturer who advised them that one 900 or two 450 stormceptors would provide 80% removal. They went with the two 450 units because it is less expensive than one 900.

Ms. Charles Lis said MA DEP has commented on several projects that the 450i only provides 25% TSS removal. She said MA STEP has not done a verification of the manufacturer's claims. Mr. Clements said they have to rely on their engineer. Ms. Charles Lis said the Commission has to rely on DEP. Mr. Clements said they are making significant improvements to the site and they are not getting enough credit for that.

Mr. Weinberg asked if the revised plans had been sent to DEP. Staff said revisions are not sent to DEP. Mr. Weinberg suggested the revised plans be sent to DEP for comment on the revisions. He said better for DEP to weigh in now as they have the right to appeal.

Mr. Clements said he does not have the luxury of that much time. He will go ahead with the 900. Mr. Hardy said he would replace the two 450i units with deep sump catch basins and add the 900 before the discharge point.

Mike Walsh from Horticultural Concepts discussed the knotweed treatment plan. He said 80% of the slope is invasive species including Japanese knotweed (*fallopia japonica*) and Norway maple (*acer plantanoides*). Both need to be treated with herbicide to eradicate them. They plan to treat with glyphosate which is a relatively low impact herbicide. They plan to use brand name Rodeo which is a glyphosate formulation which may be used near water. They will treat next summer and follow up the second year with a biologic control such as goats to graze on the vegetation for a week or two. He said if they leave the landscape open the invasives are more likely to come back so they will integrate into the condo documents that the area be retreated as necessary and 12 trees be planted along the river and the rest of the area seeded with a native seed mix to start succession of native plants. Ms. Charles Lis asked for clarification that the goats will be used in year 2. Mr. Walsh said herbicide treatment would be done in 2016, goats in 2017 and seeding in 2018 and they will report on the effectiveness of the treatment.

Ms. Charles said there is knotweed right on the bank of the river and care should be taken near the water. She has doubts about the use of herbicide near the water. Mr. Walsh said the real danger is a spill of the concentrated product. They will use a licensed applicator and keep the supply back from the river.

Ms. Charles Lis said that she appreciates the work being done to restore the riverfront and noted that riverfront projects require improvements separate from stormwater.

Ms. Feldman asked about the status of the public access. Mr. Clements said they have a request from the Mayor's office to provide public access to the river and they haven't determined yet if they can do so.

Mr. Weinberg suggested a conservation easement would be an appropriate tool to provide public access. Mr. Clements said that if they provide public access that would be done. Ms. Charles Lis said it could be conditioned and that is often a condition of projects and could also provide a tax benefit. Mr. Clements said they are willing to work with the Town but they are two separate issues.

Ms. Charles Lis asked about infiltration. Mr. Hardy said the soil borings indicate fill including glass and brick. Ms. Charles Lis asked why that would preclude infiltration; noting that infiltration into fill is commonly done. Mr. Clements said it was not worth the risk. Ms. Charles Lis asked if there is known contamination. Mr. Clements said not that he knows of but why take the risk. Ms. Charles Lis asked about the potential for Low Impact Development previously suggested. Mr. Hardy said they proposed directing roof leaders to stone beds but the planning board staff said it was an outdated method. Staff said it was her understanding that the objection was due to their location right at the doorways out of the units. Staff suggested they direct the roof leaders to the landscape beds with a stone splash pad.

Ms. Charles Lis asked for clarification of the landscape plan. Mr. Walsh said he specified the larger plants but the smaller plants depend on availability as to which species will be planted.

Mr. Flynn asked if there was any public comment. There was none.

Mr. Clements asked if he could begin removal of the retaining wall located in the parking lot if he installs the erosion control. Mr. Weinberg said it would be at his own risk.

Motion by Mr. Weinberg, second by Mr. Bears, to continue the hearing for 8-635 to the January 7<sup>th</sup> meeting for draft conditions. Vote: 6-0.

### **Notice of Intent**

#### **8-636 1091 Liberty St./Mento Homes**

Sean Hardy, engineer, was present with John Mento from Mento Homes. Nicole Hayes, wetland scientist from Goddard Consulting was also present.

Mr. Hardy said he would be revising the plan to address the Town Engineer's comments. He said they counted 30 trees to be removed as part of the project and are required to replace with 60 trees in accordance with the tree policy. They will plant white pines along the bottom of the wall to provide screening and split the rest with species found on site. They propose to plant within the 50-100 foot buffer and fill in gaps and plant by hand. Mr. Hardy noted the comment from the Town Engineer that the project would delay and detain runoff and there should be no detriment to the downstream abutters.

Mr. Bears noted the Town Engineer's comment regarding the design of the retaining wall. He asked if that had been done. Mr. Hardy said he is working with a structural engineer on that.

Mr. Flynn said he had made a site visit but not on the day the other members went.

Mr. Bears said it raised a question regarding the jurisdiction of the intermittent stream. Staff said the definition of stream in the state Wetland Protection Act does not include that portion which is upgradient of a wetland and not surrounded by wetland vegetation. The local bylaw lacks that specificity and is subject to interpretation.

Ms. Hayes said that she did not flag the channel upgradient of the wetland because it would not be jurisdictional under the state Act. She said the USGS map does not show a stream channel mapped on the site and the orthophoto does not show a stream channel.

Ms. Charles Lis asked what the wetland was bordering. Ms. Hayes said it is hydrologically connected to a larger wetland off site. Ms. Charles Lis said it was worth discussion whether the upgradient portion of the channel should be considered jurisdictional under the local bylaw. Mr. Flynn asked staff to weigh in. Staff said she has typically not considered channels lacking wetland vegetation to be jurisdictional.

Mr. Hardy mentioned that people have dumped car batteries and lawn waste around the channel and they will clean it up as part of this project.

Mr. Weinberg said he has concerns about the amount of fill and drainage. Mr. Flynn asked if the Town Engineer's comment eased these concerns and Mr. Weinberg indicated that it did.

Mr. Bears noted the comment from the Town Engineer. Ms. Feldman said the Town Engineer said there would not be a detriment to the abutters and noted the applicant will need to address the rest of the Town Engineer's comments.

Ms. Charles Lis said that test pits are needed; they don't know the substrate, it could be hardpan. Mr. Hardy said they agreed to do test pits but want to have it conditioned. He said they can resize the system as necessary. Staff noted that they just encountered a problem on another site where the drainage system cannot be built as designed because they waited to do a test pit and encountered groundwater higher than expected. Staff suggested the test pit be done now.

Ms. Charles Lis said that in reference to the tree policy the site is a mature woodland and there is not room to plant all of those trees in openings. She said some will have to go in the area being altered. Mr. Hardy said there was limited space due the geogrid which extends 14 feet back from the wall.

Ms. Feldman said the number of trees is correct but the placement is not.

Mr. Flynn asked if there was public comment.

Santina Giannino said she was confused why the Commission was discussing this as though they were trying to solve a problem instead they are creating a problem by allowing building on the

property. She also said she didn't understand the terminology being discussed about the stream and the confusion over the bylaw. She said she hoped the Commission read her emails. Their job is to protect land and not create problems. Trainor Drive is a wetland and people already have sump pumps and water problems. She said three Councilors do not support the project.

Ms. Feldman said people have property rights and the right to build on their property.

Mr. Flynn said the Commission has a narrow jurisdiction over the wetlands and need to stick to their charter.

Ms. Giannino said the wetland bylaw falls under the Commission and the project is likely to have an effect of the values protected in the bylaw including aesthetics.

Ms. Feldman said aesthetics pertained to rivers and scenic area and not the aesthetics of a wall. Mr. Flynn said that aesthetics is a magnifier of wetland values.

Mr. Flynn asked Ms. Giannino what the significant impact to the wetland would be from the project. Ms. Giannino said eradication of 10,177 square feet of trees is a significant impact. Ms. Feldman said that is why the tree policy requires 2:1 replacement. Mr. Flynn said the impact is to the buffer zone. Ms. Feldman said they have to ensure the project won't pollute or change the nature of the wetland.

Ms. Charles Lis said the project is in the buffer zone to the wetland; they are changing contours but not within the wetland itself. Also, the wildlife they are charged with protecting are wetland dependent wildlife such as species which use vernal pools. She has not seen evidence of that. She stated that the Commission's jurisdiction is narrow.

Mr. Baggett asked if the Commission could get more detail from the Town Engineer. He said it is tough to rely on his assessment without knowing the data behind it. He also asked who is accountable if there is a problem with the project. Mr. Hardy said he was accountable and he is designing the project to infiltrate into the ground and the wall will have a lip at the top to prevent runoff.

Ms. Giannino said the Town Engineer's comment said "should not have a detrimental impact". She said decisions are not made on the basis of "should". She said if the wall falls apart in 10-15 years who will be accountable. Mr. Hardy said the homeowners of the property would be accountable. Ms. Giannino said Mento should be required to set up a reserve account with \$500,000 in case of failure. Mr. Baggett asked if the Town Engineer would be accountable if there is an increase in water problems next spring due to the project. Mr. Flynn said he couldn't speak for the Town Engineer. Mr. Hardy said it would be a civil matter.

Mr. Baggett read from a prepared statement noting the right to build, buy and sell property but that it is not always the right thing to do, if so, no boards or review would be needed. He continued that they are not just abutters but these are their homes and what affects one them, affects them all. Their finances are tied to their homes. Please consider as a whole and do what is correct for all.

Ms. Giannino said that slope movement and stress from fill could affect the wall and affect the wetlands. Mr. Baggett said the buffer zone is presumed important to the wetland and this has a high likelihood to impact the wetland. Eason Chau asked for clarification of the buffer zone distance. Staff explained the Commission has jurisdiction over the 100 foot buffer zone but may approve work within that area if they find it is not likely to impact the wetland.

Mr. Weinberg said there are levels of protection including recording of the conditions at the registry and as-built plans, surviving conditions, etc. Mr. Chau asked what protection the abutters have after approval when there are no more public hearings. Mr. Weinberg said any abutter can go to the homeowner. Mr. Flynn said they can go to the conservation agent.

Ms. Giannino said if the hill is removed and replaced by the wall the flow of water will change the wetland.

Mr. Baggett asked for more transparency into the Town Engineer's findings. Staff will ask the Town Engineer to provide more comment.

Mary Battista asked how the house will sit on the site. Mr. Hardy said it will be at the same elevation as the house on either side.

Ms. Giannino asked about the discrepancy about stream mentioned earlier. Staff said the definition in the state Act is different than the definition in the local wetland bylaw. Ms. Charles Lis said the Commission administers both the state act and the local wetland bylaw.

Mr. Chau asked when the soil tests would be done. Ms. Charles Lis said before construction starts; if they show that the design won't work they will have to come back to the Commission.

Paul Giannino said the new trees won't absorb water like the old trees.

Herbert Greathead said members should walk in the backyards of the people on Trainor Dr. to see how wet it is.

Kevin Kirkland said all the roads slope in that direction so that is where the water goes.

Ms. Giannino said 11,000 sf of trees are being removed and each tree removes 40-50 gallons of water. All of that water will flow down.

Mr. Flynn said the Town Engineer could be asked to weigh in on the tree removal. Mr. Hardy said they are putting in lawn and landscaping and new trees and will capture runoff and infiltrate it so as not cause a problem.

Mr. Chau asked what would happen if they do the soil test after approval and it fails. Staff said they would have to come back and amend their application. She suggested it would be better to have the test done now.

Ms. Giannino said other towns have open space groups and wondered why Braintree doesn't. She said a group like that would give recourse. Mr. Flynn said the Commission's decisions may be appealed to the DEP.

Motion by Mr. Weinberg, second by Ms. Feldman, to continue the hearing to January 7. Vote: 6-0.

### **Notice of Intent**

#### **8-637 39 Hayward St./McGourty Realty Series, LLC**

The applicant, Brian McGourty, was present with Nicole Hayes, wetland scientist from Goddard Consulting. Ms. Hayes discussed the replication plan which includes removing fill soil to existing soil and planting back with native species. Staff suggested there may be a better location for the replication instead of right next to the buildings. Mr. McGourty said they choose to put it back where it was and leave it as originally approved.

Ms. Charles Lis said it was an unusual circumstance but that it is not an ideal location for the replication. She said she looked at the site and felt the back of the site would be better. She noted that this was not a permitted filling and generally there is a penalty for filling in a wetland. She suggested replication be at a 2:1 ratio. She also requested a narrative to accompany the plan to address hydrology and function of the wetland.

Mr. Bears asked about invasive species. Ms. Goddard noted the wetland included several invasives such as buckthorn and rose.

Mr. McGourty asked if the revised replication area plan could be a condition as he would like to start the foundations. Staff recommended this not be allowed to start until the Order of Conditions is issued and as-built guarantee and a replication guarantee is obtained.

Ms. Charles Lis asked the applicant to have his engineer address the stormwater standards as previously requested.

Motion by Mr. Weinberg, second by Mr. Bears, to continue the hearing for 8-637 to January 7<sup>th</sup>. Vote: 6-0.

### **Other Business**

#### **Tree Removal (Bower Rd.)**

Staff received a request from a resident of Bower Rd. who requested the Commission cut trees on adjacent conservation land (near Eaton's Pond Area) which are shading her yard and pool. Staff said they are small caliper white birch and white pine. She suggested allowing the resident to conduct limited tree removal at her own expense.

Mr. Bears made a site visit with staff and recommended the owner be allowed to cut the two clumps of birch within 10 feet of the fence line.

Motion by Mr. Bears, second Ms. Charles Lis, to allow the owner to cut two clumps of birch within 10 feet of the fence line. Vote: 6-0.

**Other**

None

**Approval of Minutes – November 3, 2015**

Motion by Ms. Francis, second by Ms. Charles Lis, to accept the October 1 minutes. Vote: 6-0.

**Adjourn**

Motion by Mr. Weinberg, second by Mr. Bears, to adjourn the meeting at 9:45 pm. Vote: 6-0.