

**APPROVED**

**Department of Planning and Community Development**

90 Pond Street  
Braintree, MA 02184  
781 794-8230



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, MARCH 4, 2010**

Members Present: Patrick Flynn, Chair  
Gail Feldman  
Matthew Hobin  
Daniel McMorrow Jr  
Alan Weinberg

Note: Diane Francis was present as a potential new member of the Commission.  
Ms. Francis did not vote or deliberate in Commission proceedings.

Staff: Kelly Phelan

**Public Hearings**

**Notice of Intent 8-599 51 Liberty Park Drive**

Stephanie Kaiser from Coler and Colantonio was present representing Paul Cleary. Ms. Kaiser reviewed the project presented at the last meeting. Mr. Cleary proposes installation of an in-ground pool, an apron around the pool, grading and a landscape retaining wall with heights ranging from 2-4 feet.

Mr. Flynn asked what the area is now. Ms. Kaiser said some disturbance had occurred in the buffer zone and the rest was lawn.

Staff said the draft conditions included a condition to see the 25 foot buffer with a native seed mix. Staff also noted that the applicant had requested a change to the condition on chlorinated pool water and that the Commission had copies on their suggested language on that condition. The proposed change read, "Chlorinated backwash water and chlorinated waste water resulting from draining of the swimming pool shall not be discharged either directly or through overland flow to the adjacent

wetland, nor shall be it be discharged such that it would result in overland flow causing impact to the adjacent wetland.”

Mr. Flynn asked how the water would be drained. Ms. Kaiser said the owner intended to use a pool company but that the condition was to allow for flexibility about discharge.

Ms. Feldman asked about dewatering. Staff explained that is pumping out groundwater encountered during excavation.

Motion by Ms. Feldman, second by Mr. McMorrow, to accept the draft conditions as amended. Vote: 5-0.

Motion by Mr. Weinberg to find the project significant to the state Wetland Protection Act and Braintree Wetland Bylaw, second by Ms. Feldman. Vote: 5-0.

Motion by Mr. Weinberg, second by Mr. McMorrow, to close the public hearing.

#### **Notice of Intent 8-598 250 Granite Street- Dave & Buster’s**

Brian Dundon from RJ O’Connell was present representing Dave & Buster’s and the South Shore Plaza (Braintree Property Associates). Mr. Dundon reviewed the project as presented at the last meeting. Dave & Buster’s is intending to occupy the former Circuit City building at the South Shore Plaza and they propose site renovations- including demo and relocation of an existing loading dock, grease trap installation, utility work, etc. Mr. Dundon explained that there is no new encroachment into resource areas or buffer zone. The work all takes place within the existing parking lot area. Mr. Dundon said they reviewed the draft conditions and in agreement with the conditions and would comply with them.

Ms. Feldman asked about the Stormwater Operation and Maintenance Plan. Staff said she had originally included a condition about the Plan but had revised the conditions to exclude it. The reason for this is because the Plaza is responsible for the O&M Plan as part of their permit for the Nordstrom’s expansion.

Ms. Feldman asked about the grease trap maintenance. Mr. Dundon said Dave & Buster’s is responsible for pumping out the grease traps. Staff said the grease traps filter grease from the sanitary sewer line, over which the Commission does not have jurisdiction.

Ms. Feldman asked about flooding and if disturbing the land could cause problems with flooding along the Braintree Dam or Town Brook. Mr. Dundon said it would not because there is no increase in impervious surface and, in fact, a reduction in impervious of 2000 square feet.

Mr. Flynn asked for public comment.

John Wells from Regis Road asked for clarification about the stormwater management plan discussed at the last meeting. Mr. Dundon said that the Notice of Intent for the Nordstrom’s expansion required

an updated Operation and Maintenance Plan for the entire Plaza site. Mr. Dundon said he was working with staff to address concerns about snow storage and salt use and revise the plan.

Motion by Mr. Weinberg, second by Ms. Feldman, to find the project significant to the state Wetland Protection Act and Braintree Wetland Bylaw. Vote: 5-0.

Motion by Mr. Weinberg, second by Ms. Feldman, to close the public hearing for 8-598. Vote: 5-0.

Motion by Mr. McMorrow, second by Mr. Hobin, to issue an Order of Conditions with conditions as drafted. Vote: 5-0.

### **Notice of Intent 8-600 75 Granite St. – Herb Chambers**

Note: The applicants were not in attendance at the time this hearing was called. It was continued to April 1<sup>st</sup>. The applicants appeared shortly afterward and the hearing was opened after the “Other Business” section of the agenda.

Frank Marinelli, attorney for Herb Chambers, was present with David Mackwell of Kelly Engineering to present the plans. Attorney Marinelli said the building was purchased in 2000. The site is 2.3 acres in the highway business zone. The site had a swale through it with drainage from Granite St. Herb Chambers filed with the Commission to fill the swale and replace it with a box culvert. The project did not get built right away and when it was built, the box culvert was not used. Instead, two 24” pipes were used. Staff sent a letter requesting this be addressed and the Notice of Intent was filed in response. There is a question as to whether or not MA Highway approved the change to 24” pipes instead of the box culvert and they need to check with MA Highway on this.

David Mackwell presented the site plans. The fill placed in the floodplain by filling the swale was not compensated for by the box culvert. They analyzed the volume of flood storage available in the pipes and proposed concrete chambers for flood storage and stormceptors for water quality. The previous plan had deep sump catch basins which he believes were not put in but he will take a second look at that.

Mr. Mackwell went through the items raised in the staff report.

No information on groundwater was included. Mr. Mackwell said that the elevation of the adjacent stream was the estimated elevation of groundwater. He also said the recharge chambers were for flood storage, not for infiltration and that they are at the elevation of the drainage swale.

Deep sump catch basins with hoods were required. Mr. Mackwell said he would take a look at this and address it.

No rip rap is provided at the pipe outlet. Mr. Mackwell said they will ask MA Highway for permission to put rip rap at the outlet (which is on the property line with MA Highway).

Snow and deicer storage. They will revise plan to include a snow storage area and will find out where the deicer is stored, if it is stored on site.

Encroachment issue. Mr. Mackwell said the cars have been removed from the buffer zone on the adjacent MA Highway property and that a fence will be added to the plan to prevent it future access to that area.

Ms. Francis asked when the work would begin. Attorney Marinelli said it would depend on when they get through the multiple jurisdictions- MA Highway, Planning Board and Conservation Commission. Attorney Marinelli asked that the hearing be continued for sixty days.

Motion by Mr. Weinberg, second by Ms. Feldman, to continue the hearing to May 6, 2010. Vote: 5-0.

## **Other Business**

### **Resident Request**

John Wells from Regis Road said he has three concerns; water quality, threat of flooding and liability to the town. He requested that the Town appoint a stormwater committee and the DPW responded in writing that they would complete the reporting required by the town's stormwater permit. He said he understood that Mr. Flynn and Ms. Phelan met with Mayor Sullivan to discuss a stormwater committee and he asked for a public report on that meeting. Mr. Flynn said having a committee was discussed with Mayor Sullivan. The Mayor felt that getting the reporting done was urgent and superceded forming a committee. Staff said that the Town Engineer had filed the reports with the EPA that week and gave a copy of them to Mr. Wells and the Commission. Mr. Flynn thanked Mr. Wells for raising the issue of the stormwater reporting and welcomed him back for any further comments.

Mr. Wells said he had two other points. The Council is converting the bylaws to ordinances. The preservation committee was voted and staffed but not a stormwater committee. Mr. Weinberg said the preservation committee is funded through a tax and state match. Because they have a source of funding, it is easier to move forward.

Mr. Wells also said he had done more digging about the dredging project and the water treatment plant. The Army Corps of Engineers turned down his request for a hearing because of the town's response that they need more water. He said it was in the paper that Holbrook is now bowing out of the Tri Town agreement to share the water supply and costs of building a new treatment plant. Mr. Weinberg said that legally, Holbrook might need an act of the legislature to change the Tri Town water agreement. He also said that there is an MWRA pipe connection in case of emergency. The town doesn't use MWRA water because it is expensive and they have tried to keep a regional approach.

Mr. Wells said that the price of water will go up as usage goes down but the fixed costs remain the same. He said that across the state that 35% of reservoirs are dormant because it is cheaper to get water somewhere else than to build new treatment plants.

Roger Aiello said that he was a water commissioner for eighteen years. He said the town could have bought water from MWRA but people didn't trust MWRA not raise the rates and the town didn't want fluoride in their water. He said that years ago it was cheaper to buy from the MWRA but he didn't know about now.

Staff said that it seemed that these are questions for the Tri Town Board.

### **8-368 531 Pond Street - Discussion on Surviving Conditions**

Staff said that the Aiellos raised concerns about a surviving condition on the 531 Pond St. property a few months ago. McCourt Construction received Planning Board approval last year for amendments to a Special Permit for the property. McCourt had requested the amendments to allow vehicle repair in a specific portion of the building, outdoor storage of equipment and designated parking spaces, including spaces of "oversized wheeled and tracked equipment". Three of these spaces are within the 50 foot buffer zone. A surviving condition from a 1994 Order of Conditions on the property states that "no vehicles shall be stored overnight at the rear of the property within 50' of the resource area". Staff said that the Planning Board had required that inserts be placed in the catch basins on the site to filter out oil and sediments and the Board had required a berm at the rear of the pavement to direct flow to the catch basins. Staff said she felt that because the paved areas (regardless of whether or not they are in the buffer zone) will drain to the same filtered catch basin system, it makes the condition obsolete.

Roger Aiello said that he had appealed the Planning Board's decision in land court and that the Planning Board had no right to take the Commission's surviving conditions away.

David Kellem, attorney for Mr. Aiello, said that the site had been operated in violation of the 1994 condition. Equipment is stored in the buffer zone. Attorney Kellem also said that the Commission didn't weigh in on the berm and catch basin inserts and that it was up to the Commission to decide if the berm protects the resource areas. He said the McCourt operation was not permitted under the old Order of Conditions, the site has changed, the pollutant load has changed and it should have been analyzed for current stormwater practices.

Jeff Tocchio, attorney for McCourt Construction, was present with Tom French of Cubellis Engineering. Attorney Tocchio said they went to the Planning Board to modify a Special Permit having to do with interior use of the building and parking lot striping and equipment storage. The issue was that the previous owner of the building (Ainslie Corp.) had language restricting permanent outdoor storage. They went to the Planning Board to change that and developed a protocol for what activities can occur on the site.

Tom French handed out plans, a drainage study and an Operation and Maintenance Plan (O&M Plan) for the site. Mr. French said Ainslie Corp. had stored materials in truck bodies at the back of the site. Ainslie received Planning Board approval for an addition to the building in 1994. The addition was for storage of the materials which were being kept in the truck bodies. That is why there are conditions prohibiting overnight parking, etc.

He said they looked at stormwater management for the site. It is very flat and they remedy that with a 4 inch high berm which is sized to control the flow from a 100 year storm. The berm will retain the runoff on the pavement and direct it to the catch basin. Drain guards are to be used in the catch basins. The drain guards catch sediment and have a wicking material to absorb oil and grease. Also protocols for sweeping and servicing the catch basins are included in the O&M Plan.

Mr. Flynn asked the Aiellos why they appealed the Planning Board's decision. Attorney Kellem said the adjacent Aiello property is residentially zoned. The Zoning Bylaw requires a 100 foot buffer between the commercial zone and the residential zone and prohibits anything but buffering, landscaping etc. in the buffer zone. The building was built before that provision of the bylaw was adopted. He said Ainslie's use of the site was passive; there were no diesel fumes, noise etc. There have been a series of disputes since McCourt started using the site. He said the Building Inspector had issued fines to McCourt for their use of the site. The fines were abated. McCourt filed with the Planning Board to store trucks and equipment on the site and the Planning Board approved that. The Aiellos appealed it because it is against the buffer zone bylaw.

Mr. Flynn wondered if the Commission should wait for the appeal process to be over to discuss the condition.

Staff said the Commission could look at it that way. Staff also said that there are sites all over town which were built and paved before the current regulations and have equipment and vehicles right up on the edge of resource areas. Until those sites do redevelopment construction, there is no authority to tell them to put in current stormwater management practices.

Mr. Aiello said they power wash equipment and busses on the site and it goes into the storm drains.

Attorney Tocchio said they don't have busses. He said the property has been subject to a number of disputes and they have prevailed at DEP and Superior Court.

Mr. Flynn said it is enforcement matter for right now.

Ms. Feldman said she doesn't like that they are delayed from putting in stormwater protection because of the appeal and asked what the business is. Attorney Tocchio said they repair equipment inside of the building.

Staff said the Commission could ask McCourt Construction to put the catch basin inserts and berm in now.

Mr. Flynn suggested a site visit.

Attorney Kellem asked the Commission to see if the other tenants of the building are in violation of the surviving conditions.

Mr. Weinberg thanked Mr. French for the drainage information.

### **Minutes of February 18, 2010**

Motion by Mr. Weinberg, second by Mr. Hobin, to approve the minutes of February 18, 2010. Vote: 5-0.

### **Adjourn**

Motion by Mr. Hobin, second by Mr. McMorrow, to adjourn the meeting at 9:00 PM. Vote: 5-0.