

## 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  
Diane Francis  
Matthew Hobin  
Daniel J. McMorrow, Jr.  
Gail Poliner-Feldman  
Alan Weinberg

Staff Kelly Phelan

## CONSERVATION COMMISSION MEETING MINUTES THURSDAY, JULY 12, 2012

# APPROVED

Present: Members: Gail Feldman, Diane Francis, Alan Weinberg, Matthew Hobin, Daniel J. McMorrow Staff: Kelly Phelan

Absent: Members: Patrick Flynn, Gus Murphy

Mr. Weinberg, Acting Chair, called the meeting to order.

### Public Hearings

#### **8-616 79 Shepard Rd./Connolly**

Staff said the Connolly's are still in the process of revising their plan to comply with Zoning Bylaw requirements for floodplain. She spoke to their wetland scientist who agreed that continuing to the August 9<sup>th</sup> meeting made the most sense.

Motion by Mr. Hobin, second by Mr. McMorrow, to continue the hearing to the August 9<sup>th</sup> meeting.  
Vote: 5-0.

### Other Business

#### **17 Smith St. – Violation**

Mr. Weinberg noted the July 12, 2012 staff report and June 20, 2012 report from Decelle-Burke Associates.

Jim Burke from Decelle-Burke Associates was present with Evelyn Maltz, owner of 17 Smith St.

Mr. Burke said he received a call in April from Ms. Maltz regarding the violation issue and the need to determine the extent of alteration. Decelle-Burke hired EcoTec, Inc. to delineate the wetland and extent of alteration.

Mr. Burke said there is a shed located over the property line. They propose to move the shed onto the property. They will also remove the fill placed in the area. EcoTec prepared a restoration protocol which calls for removing the fill down to the native soil and planting native shrubs.

Mr. Burke said the wetland delineation includes a 1700 sq. ft. area maintained wetlands (an area of high groundwater but maintained by mowing). He said this is common on golf courses and does not appear to have impact on the wetland. He also said that the 1992 negative Determination of Applicability was based on a rudimentary sketch and didn't clearly indicate the wetland line. He said that Ms. Maltz misunderstood and thought there were no wetlands at all.

Ms. Maltz said that when the shed came before the board in 1992, Joseph McParland (the chair at the time) said that there were only there because somebody dropped a dime. She said that she planted trees and flowers and removed debris such as bottles, batteries and tires and only tried to take care of the area. She said she did not mean to put the shed on somebody else's property and that was wrong.

Ms. Feldman asked for clarification on the lawn area within the delineation. Mr. Burke said that it is mushy in the spring but that it is lawn.

Mr. Weinberg asked for staff comments. Staff went through the violations. A negative Determination was issued in 1992 for a shed. The shed became a pool house. Another shed was put over the property line and within wetlands and fill. Staff said her main concern is that the shed and fill are removed from the wetland and the wetland restored. She said she is satisfied with the restoration protocol from EcoTec.

Mr. Weinberg said he was on staff at the time of the Request for Determination on the shed. He said there was a letter of understanding which included conditions that there be no filling. Mr. Weinberg said to Ms. Maltz that at that time she knew there was no filling allowed.

Mr. Weinberg asked for public comment.

Maureen McRae said she is daughter of Dorothy McRae who is the owner of 21 Smith St. Maureen McRae said she grew up at 21 Smith St. and that her mother is in her 80s now and concerned about her property. She said the original shed permitted in the 90s is still there and it is a second shed built on her mother's property. She also said there was piping put in and water goes on her mother's property. She said survey markers were dug up and trees cut down and that it has been happening over the years.

Ms. Maltz said she is not aware of any piping and that Ms. McRae's brother cut down the trees.

Mr. Weinberg said the Commission would not get into a neighborhood dispute. He said the Commission has a number of options including issuing a fine. He said the shed would have to be moved out of the wetland; he would not approve its remaining in the wetland.

Mr. McMorrow said the Commission does not have purview on border disputes. He said they will have to move the shed out of the wetland. He said if the lawn has been there for a length of time it gets murky but the shed and the fill should definitely be removed.

Mr. Burke said they will find a new location for the shed out of the wetland.

Ms. Francis asked if they will remove the pipes. Mr. Burke said if they find any pipes they will remove them.

Ms. McRae said that recent flooding has been higher in elevation because the trees were removed. Staff said the restoration plan includes planting shrubs.

Motion by Mr. Hobin, second by Mr. McMorrow, to accept EcoTec's remedy for the violation and have the shed removed and area restored per the enforcement letter (except for #6 lawn restoration).

Mr. Weinberg said it is important to acknowledge the violation and asked Mr. Hobin to table his motion.

Motion by Mr. Hobin, second by Mr. McMorrow, to table the motion until the violation issue is rectified. Vote: 5-0.

The possibility of issuing a fine was discussed. Staff said she was looking at the fact that they have had to hire an engineer and wetland scientist as a penalty.

Discussion ensued on the enforcement letter drafted by staff. Mr. Weinberg had not received a copy. The letter states the violations and includes conditions to address them, primarily by following the restoration protocol provided by EcoTec within a defined time frame.

Mr. Weinberg asked Mr. Burke and Ms. Maltz if they had read the letter. They both said yes.

In addition to eliminating #6 from the enforcement letter, Ms. Feldman requested #5 be revised to say that the plan will be revised to reflect that the shed will be removed from the wetland.

Mr. Hobin restated his previous motion to accept EcoTec's remedy for the violation, remove the shed from the wetland and restore per the enforcement letter as amended. Mr. McMorrow seconded. Vote: 5-0.

**Request for Certificate of Compliance**  
**8-518 971, 979, 987 Liberty St.**

Chi Man was present on behalf of the three homeowners. He said the Order of Conditions was issued in 2002. The builder built the three houses under it but the wetland replication was not completed in accordance with the plan and the Order of Conditions not closed out. Last year, during permitting for a driveway expansion, the Commission required that this work be completed.

Mr. Man said the contractor completed the replication area this spring and had doubled up the plantings as discussed with the Commission. This was done to ensure the 75% survival rate and avoid the two-years of monitoring.

Staff said she had been out there several times during the construction of the replication area and recommended issuing the Certificate.

Motion by Ms. Feldman, second by Mr. McMorrow, to issue the Certificate of Compliance for 8-518 with surviving condition #55 for drainage system maintenance. Vote: 5-0.

### **Approval of Minutes**

Motion by Ms. Francis, second by Ms. Feldman, to approve the June 21, 2012 minutes. Vote: 5-0.

### **Adjourn**

Motion by Ms. Francis, second by Mr. McMorrow, to adjourn the meeting at 8:00 pm. Vote: 5-0.