

## Department of Planning and Community Development

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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, NOVEMBER 19, 2009 7PM

### FLETCHER HALL – TOWN HALL

#### Public Hearings

None

#### Other Business

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

Staff: Kelly Phelan

#### Expired Order of Conditions 8-552B Sunrise Senior Living

Staff explained that the Order of Conditions for this project expired in September of 2009. Staff contacted the applicant in July to remind them to address the outstanding conditions and request the Certificate of Compliance. One of the conditions included the recording of a conservation easement on approximately 1.5 acres of land. Carl Johnson, attorney for the applicant, drafted the easement and provided it to the Commission in 2006. Kopelman and Paige (counsel for the Town at the time) reviewed the draft easement and requested several changes. To date, those changes have not been provided by the applicant. Attorney Johnson was present to address the issue of the easement as well as the remaining conditions.

Attorney Johnson said the applicant had received As-Built approval from the Planning Board in 2007 but had not requested it from the Conservation Commission.

Regarding the easement issue, Attorney Johnson said that Kopelman and Paige proposed indemnification language which was not acceptable to the applicant and the situation had reached an impasse. Attorney Johnson had met with the Town Solicitor to discuss this and they have agreed on language. The Town Solicitor, Carolyn Murray, provided that language in an email dated November 16, 2009. Attorney Johnson said that the Town Solicitor said that the Town Council would need to approve the easement, then the Mayor and then the Commission could accept it. He estimated that it would take another month for these approvals.

Regarding the other outstanding conditions, as noted in a July 16, 2009 letter to Sunrise from staff, Attorney Johnson responded as follows. The stormwater system Operation and Maintenance Plan would be provided to comply with condition #12. Condition #19 on the tree fee, Attorney Johnson said he that because the site was a parking lot and house site prior to construction, there was not much tree clearing done, also they planted many trees as part of the replication and landscaping work. He believed that they planted more trees on the site than were removed. Staff asked for an accounting of this. Condition #35 on "no salt" signs, Attorney Johnson said he observed one "no salt" sign and that there may be others. Regarding conditions 36 & 37 requiring engineer's certification on drainage, a copy of the letter stating that had been provided that day

Mr. Weinberg said the "no salt" signs should be shown on the as-built plan. Staff asked Attorney Johnson to clarify that he is intending to have the as-built revised to include the "no salt" signs and snow storage areas. Attorney Johnson said he would ask the consultant to add those two items.

Mr. Flynn said these conditions are exactly the kinds of surviving conditions which the Commission intends to monitor in the future for compliance.

Attorney Johnson requested the Commission continue the matter to December 17<sup>th</sup> meeting to allow time for the easement to be approved and signed by the appropriate parties and time for the remaining conditions to be addressed.

Mr. Weinberg said that an extension permit should be issued for the expired Order of Conditions. Staff said that the regulations state that expired Orders of Conditions can not be extended.

Motion by Mr. Weinberg, second by Mr. Hobin, to extend the Order of Conditions for six months.  
Vote: 4-0.

Motion by Mr. Weinberg, second by Mr. Hobin, to continue to the December 17<sup>th</sup> meeting. Vote: 4-0.

**Request for Certificate of Compliance  
8-538 Thayer Academy Athletic Fields -1515 Washington Street**

Staff explained the background on this. Staff received the as-built plans for the project over a year ago, reviewed them and responded to the applicant with a detailed letter as to which conditions had not yet been satisfied and what additional information was needed. Over a period of several months, the applicant had at last addressed all of the conditions and provided the requested information. The only outstanding item was the tree fee condition. The applicant had requested a waiver from this condition back in 2004 based on various contributions they had made to the Town, including the use of the fields by some of the town's athletic teams. *[Staff had verified with the Recreation Director, Bill Hedlund that the arrangement for the town's use of the fields was still in place. Mr. Hedlund responded that soccer and lacrosse teams each have use of the fields and spoke very highly of the arrangement.]* Minutes of the Commission's July 8, 2009 meeting indicate that they did not grant a waiver but that they agreed to a cap on the fee (an amount was not specified).

Mr. Weinberg said that the Order of Conditions should not be expired.

Motion by Mr. Weinberg, second by Ms. Feldman, to extend the Order of Conditions for file number 8-538 for six months. Vote 4-0.

Mr. Weinberg said he would like to hear from the applicant regarding the tree fee.

Mr. Flynn read the letter in the file in which Thayer requested a waiver from the tree fee. Ms. Feldman said that it sounded as though a deal was in place with Thayer for the town to have use of the fields and that Thayer was honoring that deal. Mr. Weinberg said that a deal for use of the fields has nothing to do with the Conservation Commission. Mr. Hobin noted that the letter requesting the waiver from the tree policy was five years old. Mr. Weinberg said he wanted a representative from Thayer to address the tree policy.

Motion by Mr. Weinberg, second by Mr. Hobin, to request that representative from Thayer Academy come to the next meeting to address the tree policy condition and come to closure on it. Vote: 4-0,

**Sunset Lake Stormwater Filing**

At the discussion during the last meeting regarding filing a Notice of Intent for the herbicide treatment of the lake, questions arose on rare species habitat and the need to file with the Natural Heritage and Endangered Species Program (NHESP). Staff provided the additional information requested at the last meeting, specifically the section of the wetland regulations which discusses review and filing with Natural Heritage (310 CMR 10.59) and email from NHESP staff.

Mr. Weinberg asked if the filing fee to NHESP would need to be paid every time we treat the lake. Staff said no, it was only because we are filing a new Notice of Intent.

Motion by Mr. Weinberg, second by Ms. Feldman, to file for Sunset Lake weed treatment with the Natural Heritage and Endangered Species Program and pay the \$300 filing fee. Vote: 4-0.

## **Sunset Lake Stormwater Project**

Staff received a letter from DEP stating that the Town's application to 319 stormwater grant program had not been funded. The grant application was to fund construction of the stormwater retrofits in and around Sunset Lake which were designed by the consultant hired by the Commission last spring. Staff contacted Jane Peirce, the grant program administrator to ask why the application was not successful. Ms. Peirce informed staff that it was a strong project but that they ran out of money and strongly encouraged the town to apply again next year. Staff recommended applying to the program again next year.

Motion by Mr. Weinberg, second by Mr. Hobin, to apply for 319 grant funds again next year. Vote: 4-0.

Discussion ensued on the importance of the lake to the town and the need to manage it. Mr. Weinberg said that in the 1980s and early 1990s there was an active Lakes and Ponds subcommittee which investigated options for dealing with the aquatic plant growth.

Mr. Flynn asked staff to discuss setting up a committee with the Planning and Community Development Department Director and the Mayor's office.

Mr. Weinberg suggested having Jan Barris, a lakefront resident who was active on the Lakes & Ponds committee and a member of the Conservation Commission for many years, attend the next meeting to talk about the work of the committee. The Commission agreed that they were interested in hearing from Ms. Barris. Staff will contact her.

The Commission also short-term solutions to the aquatic weed problem (such as herbicide treatment) versus long-term solutions (such as dredging to increase depth of the lake). Noting the very large expense involved in dredging, Mr. Flynn asked staff to look into federal grant programs for dredging.

## **Wetlands Protection Act – Education and Outreach**

As requested at the last meeting, staff prepared outreach materials designed to increase awareness of the Wetland Protection Act and the Commission's jurisdiction.

Options include a press release, a letter to local landscape and tree companies and sending a flyer with the Braintree electric bill (cost of printing and folding approximately \$700).

Motion by Mr. Weinberg, second by Mr. Hobin, to spend up to \$700 for the costs of sending a flyer with the Braintree Electric Light Dept bills. Vote: 4-0.

Mr. Flynn suggested also sending the landscape companies the draft letter and sending the draft press release.

The Commission also discussed the draft cover letter for Order of Condition issuance. Staff revised it to include language stating that non compliance with the conditions may result in fines and included the fine schedule.

Motion by Mr. Weinberg, second by Mr. Hobin, to adopt the draft cover letter, amended to reference the Braintree Wetland Bylaw. Vote 4-0.

**Minutes of November 5, 2009**

Motion by Mr. Weinberg, second by Mr. Hobin, to approve the November 5, 2009 minutes. Vote: 4-0.

**Adjourn**

Motion by Mr. Weinberg, second by Mr. Hobin, to adjourn the meeting at 8:50 PM. Vote: 4-0.