

CITY OF BEVERLY
PUBLIC MEETING MINUTES

BOARD OR COMMISSION: Beverly Conservation Commission
SUBCOMMITTEE:
DATE: May 24, 2022
LOCATION: Virtual Meeting Access Only via Google Meet
MEMBERS PRESENT: Chair Christine Bertoni, Vice Chair Robert Buchsbaum,
William Squibb, Meghan Jones, Amber Redmond
MEMBERS ABSENT:
OTHERS PRESENT: Environmental Planner Jenna Pirrotta
RECORDER: Stacia Chamberlain

1. Chair Bertoni **calls the meeting to order** at 7:02 p.m. and reads the public notice regarding holding meetings remotely due to Covid-19.
2. **Recess for Public Hearings**
Squibb moves to recess for public hearings. Seconded by Buchsbaum. Bertoni takes a roll call vote. Motion passes 5-0.
3. **Notice of Intent/Abbreviated Notices of Intent/Requests for Amended Orders of Conditions**
 - a. **Cont.: 181 Elliott Street, DEP File #5-1353** – request to amend Order of Conditions – Beverly Commerce Park, LLP

Documents Reviewed: Request to Amend the Order of Conditions and site plan by Beverly Commerce Park LLP, dated February 14, 2022

Pirrotta updates the Commission that an email was received from the applicant requesting to continue this hearing without discussion to the June 14, 2022 meeting. Jones moves to continue the hearing to the June 14, 2022 meeting. Seconded by Redmond. Bertoni takes a roll call vote. Motion passes 5-0.

- b. **Cont.: Norwood Pond, DEP File #5-1602** – initiate an aquatic management program at Norwood Pond – Henry Haight

Documents Reviewed: Notice of Intent application and project plans by DeRosa Environmental and Water & Wetland, dated March 29, 2022; supplemental information by DeRosa Environmental dated April 26, 2022 and May 17, 2022; comment letters from Ipswich River Watershed Association dated April 28, 2022 and May 3, 2022

Evin Guvendiren of DeRosa Environmental Consulting, representing the applicant, recaps the proposed project and describes the supplemental information that was submitted. Guvendiren describes the project timeline and detailed treatment plan, and invites questions from the Commissioners. Bertoni asks for clarification on the merits of a 3-year versus a 5-year permit for the restoration project. Guvendiren replies that they would prefer a 5-year plan, as they would

have more time to complete monitoring and additional treatments as needed. Buchsbaum asks for the rationale and expected outcomes of the project and asks how the work meets the performance standards. Guvendiren explains how the performance standards are met and notes that they have greater flexibility on this through the filing of the NOI as a limited project for restoration purposed. Buchsbaum asks what their target acreage is for vegetative clearing. Guvendiren describes how they will thin the vegetation and while they do not have a specific acreage amount, the focus is on reducing vegetative density and less about specific acreage. Buchsbaum confirms that only portions of the pond would be treated at a given time and highlights that they should be careful to preserve tapegrass (*Vallisneria Americana*), as it is a valuable forage source for certain migratory duck species. Redmond expresses concerns with unspecific definition of “problematic density” and how the threshold is for recommending herbicide application is determined; she would like more specificity on the vegetation density. Bertoni asks about long term monitoring and whether volunteers would be involved with sampling. Squibb asks about work on the spillway and potential impact of the dam on the proposed project. Bertoni confirms that work on the dam is not part of this project, but that conditions in the pond would continue to be monitored and the treatment adjusted accordingly. Buchsbaum asked whether the habitat assessment included review of the JC Phillips Preserve inventory.

Bertoni invites comments and questions from the public. Simon Haight, son of the applicant, inquires about pictures of the dam that he sent to the City. He confirms that the portions of the pond that are too shallow would not be treated, and that the shallow portions provide a lot of wildlife habitat. Haight and Buchsbaum discuss the birds and ducks that use the pond. Buchsbaum clarifies that the applicant is a private property owner, applying to conduct work on City property. There being no further questions or comments, Buchsbaum moves to close the hearing. Seconded by Bertoni. Bertoni takes a roll call vote. Motion passes 5-0.

- c. **Cont.: 127 Standley Street, DEP File #5-1363** – construct an addition with two car garage and associated grading & driveway improvements – David & Jacqueline Genest

Documents Reviewed: Notice of Intent application and plans by Eaglebrook Survey and Engineering, dated April 19, 2022

Ben Minnix of Eaglebrook Engineering representing the applicant, recaps the proposed project and the Commission’s site visit. Buchsbaum and Bertoni agree that the site visit was helpful to understand the project. Bertoni mentions that hand removal of Phragmites would be welcome to control the invasive vegetation at the pond. There being no further comments or questions from Commissioners and no comments from members of the public, Squibb moves to close the hearing. Seconded by Redmond. Bertoni takes a roll call vote. Motion passes 5-0.

- d. **New: 2 Balch Street, 181 Elliot Street, 448 Cabot Street, Cabot Street and MBTA right-of-way, DEP File #5-1365** – sediment and debris removal from existing culvert system associated with North Beverly Brook – City of Beverly, Engineering Department c/o Eric Barber

Documents Reviewed: Notice of Intent Application and plans by Fuss & O’Neill, dated May 9, 2022

Pirrotta reads the legal notice. Mike Nelson and April Doroski of Fuss and O’Neill representing the applicant, are present to provide an overview of the proposed project. Nelson describes the previous culvert cleaning work about 12 years ago and notes that water capacity has now decreased and the culverts are in need of cleaning again. Squibb asks about how the box culvert would be cleaned, versus a round culvert. Nelson describes the process of setting up the bypass and working in one section at a time, using temporary cofferdams and other best management practices. Bertoni asks about stability of upstream banks and consideration of where the sediments are coming from and whether this can be resolved. Nelson notes there likely will be future project phases to improve drainage in this general area and provide a long-term solution to reduce chronic sedimentation. Bertoni asks about work in the stream near the head wall on Cabot Street and how the stream would be protected from work and equipment. Doroski confirms that access would be through manholes and not through the stream. She gives a summary of best management practices that would be used and the state and federal permits that would be required. In response to Bertoni’s question, Nelson confirms that they will be applying for a 401 Water Quality Certification from the state, after receipt of an Order of Conditions. Squibb asks whether sedimentation could be coming into lower Shoe Pond from upper Shoe Pond, rather than just the outfall of the culvert system. Buchsbaum asks how the resource areas were delineated on the plan. Pirrotta adds that the plan presented at this hearing no longer depicts buffers from the culverted portions of the stream, as was shown on the original NOI plans. Doroski will submit a hard copy of the plan presented at the meeting to the Commission for its files. There being no further questions or comments and no comments from members of the public, Buchsbaum moves to close the hearing. Seconded by Redmond. Bertoni takes a roll call vote. Motion passes 5-0.

- e. **New: 100 West Street, DEP File #5-1368** – construction of building addition and deck – Jacquelyn Paulino

Documents Reviewed: Notice of Intent application by John Dick dated May 9, 2022 and plans by Eastern Land Survey Associates dated May 8, 2022

Pirrotta reads the legal notice. John Dick, representing the applicant provides an overview of the proposed project. He describes the resource areas noting that the wetland is offsite and mainly disturbed, mowed lawn. The work is also located within the floodplain and Dick presents the information on the flood storage that would be gained through the removal of the existing patio. Bertoni asks where the construction access would be and confirms that the addition would be on footings. Redmond asks about the addition of plantings around the deck. Buchsbaum recommends installing pollinator shrubs. Commissioners agree that a site visit is not necessary for this project. There being no further questions or comments from Commissioners or comments from members of the public, Redmond moves to close the hearing. Seconded by Buchsbaum. Bertoni takes a roll call vote. Motion passes 5-0.

- f. **New: 90 Preston Place, No DEP File # as of posting** – construction of a pool, spa, landscaping, and associated appurtenances – Jordan Regan

Documents Reviewed: Notice of Intent application by DeRosa Environmental Consultants, dated May 10, 2022 and plans by Morin-Cameron Group and DeRosa Environmental Consulting, dated May 5, 2022

Pirrotta reads the legal notice. Evin Guvendiren of DeRosa Environmental Consulting and John Morin of the Morin Cameron Group representing the applicant, are present to discuss the proposed project. Guvendiren gives a detailed overview of the pool and patio construction and planting of the portion of the wetland that is currently mowed lawn. Buchsbaum asks about the wetlands mitigation planting plan. Bertoni notes there is a previous Order of Conditions for the property and asks about any perpetual conditions there might be for this property. Pirrotta confirms that the Order was closed out with a Certificate of Compliance, but that she will review the files to check for compliance with any ongoing conditions. Bertoni asks about alternatives considered, including reducing the size of the pool in order to reduce the impact to the resource. Squibb asks whether pervious patio pavers could be used instead, to minimize overall impervious surface area in the 50-Foot No Build Zone. Commissioners schedule a site visit for June 11, 2022, at 8 a.m. There being no further questions or comments from Commissioners or from members of the public, Buchsbaum moves to continue the hearing to the June 14, 2022 meeting. Seconded by Squibb. Bertoni takes a roll call vote. Motion passes 5-0.

4. **Reconvene Regular Meeting**

Squibb moves to reconvene the regular meeting. Seconded by Redmond. Bertoni takes a roll call vote. Motion passes 5-0.

5. **Requests for Determination of Applicability**

- a. **New: 6 Thackery Way** – deck replacement and expansion – David Hagen

Documents Reviewed: Request for Determination of Applicability and plans, dated May 9, 2022

Owner David Hagen describes his proposed project to replace and expand his deck within the 100-Foot Buffer. Buchsbaum asks whether he is staying within the existing footprint of the deck. Hagen describes the increased size of the deck, but that it will not extend past the house closest to the wetland. Squibb asks about the number of pilings to be added. The Commission discusses proposed conditions for the project. There being no further questions or concerns, Jones moves to issue a Negative 3 Determination with the conditions as discussed. Seconded by Redmond. Bertoni takes a roll call vote. Motion passes 5-0.

6. **Requests for Certificates of Compliance**

- a. **New: 34 Paine Avenue, DEP File #5-1223** – construct garage and sunroom addition, in-ground pool, cabana and other site improvements – Rock Edge Irrevocable Trust c/o Charles Benevento

Documents Reviewed: Request for Certificate of Compliance and as built plan by Dana F. Perkins, Inc, dated May 17, 2022

Ethan Davis of Dana F. Perkins, Inc on behalf of the applicant, is present to discuss the request. He describes the expired Order of Conditions and the portions of the work that were and were

not completed. In particular, the pool was never constructed and the applicant has plans to file a new NOI as they would still like to install the pool, but the permit is no longer valid. Bertoni asks about the stone retaining wall, noting that it adds impervious surface, and requests clarification on other minor changes to the property. Commissioners and Davis discuss the increased area of impervious surface. Pirrotta reports findings from her site visit and confirms that yard waste dumping appears to have ceased, as it was not observed in the area described in the special conditions. She notes the site is grassed and stabilized. Buchsbaum moves to issue a complete Certificate of Compliance for the project DEP file #5-1223, with the perpetual conditions as described. Seconded by Squibb. Bertoni takes a roll call vote. Motion passes 5-0.

b. New: Various Streets - North Beverly Brook Drainage Project, DEP File #5-968 – City of Beverly

Documents Reviewed: Request for Certificate of Compliance from Fuss & O’Neill, dated May 17, 2022

Mike Nelson of Fuss and O’Neill, representing the applicant provides a summary of the request for a partial Certificate of Compliance for portions of the overall project completed in 2010. Squibb suggests the applicant wait and request a complete Certificate of Compliance for all portions of the work at once. Pirrotta says that the Order included drainage improvements at several different locations, and that the Order is expired. More work is needed at the other locations in order to obtain compliance, but the City needs more information to implement a solution. She explains that the partial Certificate is meant to close those overlapping portions of the work with the newly filed Notice of Intent for the culvert cleaning only. Bertoni says she wants to know if DEP will be issuing a partial Certificate of Compliance on the Superseding Order of Conditions before closing this out under the local Ordinance. Squibb would like to wait. Buchsbaum agrees and suggests they continue this hearing until after the DEP makes a determination. Buchsbaum moves to continue the discussion to the June 14, 2022, meeting. Seconded by Squibb. Bertoni takes a roll call vote. Motion passes 5-0.

7. Old/New/Other Business

a. Minor Modification to Order of Conditions

i. New: 6 Cavendish Square, DEP File #5-1340

Owner Jeffrey Williams provides an overview of his request. Buchsbaum is unsure that the repaving work qualifies as a minor modification to the Order and that it may be more appropriately reviewed under an RDA. Bertoni believes that there is no increase in impact as the work footprint will stay the same with no increase in impervious surface area. Members discuss the landscaping and removal of some of the trees on site, and also agree to modify the special condition regarding the installation of a stone infiltration trench. Buchsbaum moves to approve the minor modification with the conditions as discussed. Seconded by Jones. Bertoni takes a roll call vote. Motion passes 5-0.

b. Enforcement Orders

i. Cont.: Netherton Avenue follow up

Pirrotta updates the Commission that the owner is on track to complete the work by the date specified in the latest Enforcement Order. She will follow up with the owner to schedule a site visit.

c. Tree Removals, If Any

i. 19 Whitehall Circle

Jones is experiencing technical difficulty and leaves the meeting.

Pirrotta provides an overview on the proposed hazard tree removal. There are no wetland resource areas on the property, however there is a “No-Cut Zone” on a portion of the property, per the subdivision approval. There is a special condition in the Order of Conditions for the subdivision that the Commission approve the removal of any hazard trees located within the “No Cut Zone.” The Commission had previously approved removal of some of these hazard trees in 2017, but the owner never initiated the work. The new scope of removal has changed slightly and the approval was granted more than 3 years ago. Pirrotta checked with the City arborist as well, and he agreed that the trees appeared to be a hazard. The area was otherwise well-vegetated with a number of pine, beech, and oak trees. Buchsbaum moves to approve the tree removal at 19 Whitehall Circle. Seconded by Bertoni. Motion passes 4-0.

Jones returns to the meeting.

d. Cont.: West Beach Corporation, beach raking response letter

Pirrotta briefs the Commission on the response from West Beach Corporation attorney Tom Fallon, after discussion with West Beach Corporation representatives at the previous meeting. In an email on May 19, 2022, Fallon describes that West Beach Corporation has not authorized beach access for machinery by the neighbors, but there could have been past unauthorized access. He explained that adjacent property owners have put up a barrier to prevent access from West Beach onto their beach. Fallon is present to discuss the response and answer the Commission’s questions. Bertoni says that the Commission is looking for a beach management plan for the ongoing maintenance activities that would allow the work and avoid impacts to the designated Priority Habitat on the beach. The Commission sent the same letter to abutters at the same time as the letter was sent to West Beach Corporation on December 17, 2021, regarding the need for approval of the beach raking activities on their properties. Fallon mentions costs of a management plan being prohibitive for the Corporation. Fallon says that West Beach Corporation only owns and manages a small section of the beach, on which, he claims, there are no piping plovers nesting. Buchsbaum adds that there are other components to habitat aside from nesting and that beach management plans are needed regardless of presence of the plovers. It is Fallon’s opinion that if West Beach must have a management plan, then other Beverly beaches need to have one as well. He also wishes for a specialist to come and confirm that there are no piping plovers on the section of the beach that is under the management of the Corporation. Buchsbaum offers that no other beaches in Beverly are located within mapped Priority Habitat like West Beach is, and that this is a designation provided by the state Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program. Bertoni clarifies that the work in Priority Habitat would be reviewed by the state in connection with a wetlands filing.

The Commission asks Fallon whether the Corporation followed up with the state Coastal Zone Management, who provide guidance on beach management plans, as directed in the December 17, 2021 letter. Fallon says that he left a message. Bertoni confirms that the Town of Manchester has a plan, but the work area is not located within Priority Habitat. The Commission confirms that a beach management plan is needed as well as review by the state for work in Priority Habitat. Fallon suggests that all beaches would need a management plan. Fallon does not believe that beach raking is subject to review under the Wetlands Protection Act and asserts that this work has been done for hundreds of years and that developing a plan would be costly to the Corporation.

Fallon raises the question of what happens if the work is considered jurisdictional and the raking does not get approved or is only approved with the use of hand raking, noting that this would not be acceptable for the current uses of the beach. Bertoni notes the concern of doing some raking and perhaps allowing some wrack to remain, but that the Commission cannot speculate on future decisions. Fallon confirms that West Beach Corporation does not provide beach access for mechanical raking for other properties.

Squibb asks about the Priority Habitat designation and Buchsbaum confirms that this is by qualified biologists. Fallon says that the Priority Habitat was designated broadly and that West Beach is a small flat beach and that further down there are dunes and grasses. Buchsbaum clarifies that if work is proposed in designated Priority Habitat then it requires state review, noting that he recently attended a workshop led by the state that explained this requirement. Squibb suggested West Beach Corporation contact the state regarding the designation if they disagree. Bertoni offers that the beach could provide feeding or foraging habitat and not necessarily nesting. Fallon argues that the December 17, 2021 letter is incorrect in that the raking is not a jurisdictional activity and that the City performs raking on public beaches. The Commission confirms that they are looking into permitting of those activities as well.

Pirrotta provides some information from a Natural Heritage biologist describing the mapped habitat and the rare species provisions of the Wetlands Protection Act. Squibb states that the Commission should submit a revised letter about the need to coordinate with the state. Jones recommends they add the contact information for the Natural Heritage and Endangered Species for Fallon to contact. Pirrotta confirms that this was already included in the December 17, 2021 letter. Fallon says he would agree to seeking approval for working in Priority Habitat but disagrees that the work is under the Commission's jurisdiction. Squibb suggests West Beach Corporation discuss this with the Natural Heritage and Endangered Species program staff. Buchsbaum reiterates that birds could use the beach for other reasons than nesting. Bertoni asserts that the Commission has jurisdiction over the activity which is within the resource and that the area is mapped as Priority Habitat.

8. Orders of Conditions

i. Norwood Pond, DEP File #5-1362

The Commission recaps the proposal and discusses the issuance of an Order of Conditions for the project. Redmond moves to issue an Order of Conditions under the MA Wetlands Protection Act and Beverly Wetlands Protection Ordinance with the special conditions as discussed and the

standard general and perpetual conditions. Seconded by Jones. Bertoni takes a roll call vote. Motion passes 3-2, with Squibb and Buchsbaum voting no.

ii. 127 Standley Street, DEP File #5-1363

The Commission recaps the proposal and discusses the issuance of an Order of Conditions for the project. Buchsbaum moves to issue an Order of Conditions under the MA Wetlands Protection Act and Beverly Wetlands Protection Ordinance with the special conditions as discussed and the standard general and perpetual conditions. Seconded by Bertoni. Bertoni takes a roll call vote. Motion passes 5-0.

iii. 2 Balch Street, 181 Elliot Street, 448 Cabot Street, Cabot Street and MBTA right-of-way, DEP File #5-1365

The Commission recaps the proposal and discusses the issuance of an Order of Conditions for the project. Buchsbaum moves to issue an Order of Conditions under the MA Wetlands Protection Act and Beverly Wetlands Protection Ordinance with the special conditions as discussed and the standard general and perpetual conditions. Seconded by Jones. Bertoni takes a roll call vote. Motion passes 5-0.

iv. 100 West Street, DEP File #5-1368

The Commission recaps the proposal and discusses the issuance of an Order of Conditions for the project. Buchsbaum moves to issue an Order of Conditions under the MA Wetlands Protection Act and Beverly Wetlands Protection Ordinance with the special conditions as discussed and the standard general and perpetual conditions. Seconded by Jones. Bertoni takes a roll call vote. Motion passes 5-0.

9. Other: Discussion or Action Items Related to Commission Business, Correspondence, etc. Received/Issued After Publication of Agenda, If Any

Bertoni thanks members of the Commission for their hard work considering all the material on the agenda this evening. Members return back to the discussion on the West Beach Corporation beach management plan and the conversation they had with Fallon. Buchsbaum states the need for the Commission to have guidance on beach management activities and recalls there is existing barrier beach management guidance that could be referenced. Buchsbaum understands Fallon's perspective but states it is up to West Beach Corporation to contact the state regarding concerns with the area of Priority Habitat designation. Bertoni also confirms that Beverly Planning Department staff have already reached out to the Town of Manchester regarding their Town-wide Order of Conditions for the beach management activities performed by Manchester Department of Public Works on town beaches. Buchsbaum and Squibb agree that it would be a good idea for Beverly to have such a plan in place.

10. Adjournment

Buchsbaum moves to adjourn at 11:20 p.m. Seconded by Redmond. The motion carries 5-0.

The next regular meeting of the Conservation Commission is scheduled for Tuesday, June 14, 2022.