

CITY OF BEVERLY
PUBLIC MEETING MINUTES

BOARD OR COMMISSION: Beverly Conservation Commission
SUBCOMMITTEE:
DATE: August 2, 2022
LOCATION: Virtual Meeting Access Only via Google Meet
MEMBERS PRESENT: Chair Christine Bertoni, Vice Chair Robert Buchsbaum,
Amber Redmond, William Squibb (arrives at 7:09pm),
Meghan Jones (arrives at 8:24pm)
MEMBERS ABSENT:
OTHERS PRESENT: Environmental Planner Jenna Pirrotta
RECORDER: Jenna Pirrotta

1. Chair Bertoni **calls the meeting to order** at 7:06 p.m. and reads the public notice regarding holding meetings remotely due to Covid-19. Squibb is experiencing technical difficulties and has not yet joined the meeting. Jones is expecting to join the meeting later in the evening
2. **New: Review of Draft Conservation Restriction, 779, 735, and 695 Cabot Street (Moraine Farm) – The Trustees of Reservations**

Documents Reviewed: Draft Conservation Restriction and Memorandum of Agreement, dated July 22, 2022

David Santomenna and Olivia Lukacic of the Trustees of Reservations and Darlene Wynne, Beverly Director of Planning and Community Development are present for the discussion. Santomenna provides an overview of the Trustees' recent acquisition of the Moraine Farm property and that a Conservation Restriction (CR) would be placed on the property. Essentially the City has purchased the development rights and is working with the Trustees on the Memorandum of Understanding and a draft CR for the property. Wynne confirms that they are looking for any questions or comments that the Commission may have and that a vote is not needed tonight.

Squibb arrives at 7:09pm.

Buchsbaum notes that he did not see any language regarding protection of wildlife in the document. He raises the issue of allowing new structures for renewable energy and suggests that solar panels could be installed on the existing buildings to avoid new structures. If wind turbines are appropriate under the CR, Buchsbaum suggests including this specifically. Buchsbaum asks about forest management and where agricultural area and natural areas would be located or if it is specified. Santomenna explains that the CR applies to the three separate subparcels of the Moraine Farm landscape and that they were selected because they are not already protected. He confirms that wildlife protection can be added and that structures are not allowed under the CR. Solar power can be difficult for CRs in that there needs to be a balance for the scenic value and also can conflict with public access and also the nearby airport. Buchsbaum asks about the makeup of the landscape within the three parcels and Santomenna confirms that it varies between

forest and agricultural land. Buchsbaum asks about the width of the carriage road shown on the plan, as 12 feet seems wider than necessary. Santomenna confirms that 12 feet is the current width and that they intend to preserve the current width to respect the historic layout.

Bertoni asks about purchasing of a CR versus placing a CR on a property, and Santomenna explains that in this case, the City is purchasing the CR as a means of investing City funds into the parcel; however it is more common that CRs are donated. Bertoni asks about including areas for community gardens. Santomenna explains that this was part of the Community Preservation Committee discussions and it was agreed to accommodate this, with a preliminary location on the right side of the farm road and that the Trustees would manage this. Bertoni also asks about Beverly High School cross country running usage and public parking for cross country running use and also in general. Santomenna confirms that they are in discussion with Beverly High School regarding their desire to use the area for cross country running.

Bertoni questions some of the CR language, particularly where “will” is used and suggests this be changed to “shall.” Santomenna confirms that the City Solicitor has also reviewed the documents and that this is standard language that comes from IRS regulations. Bertoni also confirms that any future work near wetlands would still be reviewed by the Conservation Commission, as applicable. Redmond asks about access for Beverly residents year round and whether an admission fee would be charged. Santomenna notes that the Trustees may consider admission fees in the future, but this has not been decided yet. Squibb asks about the green energy language and believes installation should be subject to Conservation Commission approval.

Bertoni asks for public comment; there is none. Bertoni confirms that the Commission has already agreed to accept the CR pending a mutually agreeable management strategy and thanks the Trustees and Wynne for the information.

3. **Recess for Public Hearings**

Buchsbaum moves to recess for public hearings. Seconded by Redmond. Motion passes 4-0.

4. **Notice of Intent/Abbreviated Notices of Intent/Requests for Amended Orders of Conditions**

- a. **Cont.: 973 Hale Street, DEP File #5-1370** – construct single family home with associated appurtenances and construct garage addition to existing carriage house – Joan Mullen

Documents Reviewed: Notice of Intent application by Rimmer Environmental Consulting, dated May 31, 2022 and plans by D.C. MacRitchie, LLC revised dated July 25, 2022

Mary Rimmer of Rimmer Environmental Consulting and engineer Dan MacRitchie are present to discuss the proposed project. Rimmer recaps the project and describes the plan changes since the last meeting including adding the 200-Foot Riverfront Area line, shifting the angle of the main house, moving the garage closer to Hale Street, adding a portion of asphalt, and bringing utilities up the street. Buchsbaum asks how much of the house is in or outside of the 100-Foot Buffer.

MacRitchie provides the information from the impact tables. Bertoni confirms that there is new impervious surface area and also asks about the river. Rimmer confirms that it is Chubb Brook and that it is tidal in this location. Bertoni asks about how runoff from the new house will be handled. MacRitchie explains that a drywell could be added but there is ledge on the site and gutters and downspouts are proposed. Bertoni notes that work on the decking has been removed from the plan and will be addressed in a restoration plan, per the Commission's enforcement order. Rimmer confirms they are working on the restoration plan to submit in time for review at the Commission's next meeting.

Bertoni asks for comments or questions from members of the public. There being no public comments and no further questions or comments from the Commission, Redmond moves to close the hearing. Seconded by Buchsbaum. Bertoni takes a roll call vote. Motion passes 4-0.

5. **Reconvene Regular Meeting**

Squibb moves to reconvene the regular meeting. Seconded by Redmond. Bertoni takes a roll call vote. Motion passes 4-0.

6. **Requests for Determination of Applicability**

- a. **New: 5R Netherton Avenue** – fence installation – Anthony Gaglione

Documents Reviewed: Request for Determination of Applicability with associated attachments, dated July 19, 2022

Pirrota reads the legal notice. Owner Anthony Gaglione is present to discuss the proposed project. Gaglione describes the proposed construction of two separate sections of fencing to be installed primarily to keep the family puppy within the yard. He explains there will be a section of vinyl fencing and a section of cedar fencing and both are planned to be picket-style and that the holes for the posts would be dug by hand. Buchsbaum asks about spacing in the fence for wildlife movement. Bertoni notes that the pickets provide gaps for critters. The Commission discusses potential conditions for the project. There being no further questions, Squibb moves to issue a Negative 3 Determination under the Act and Ordinance, with conditions as described. Seconded by Redmond. Bertoni takes a roll call vote. Motion passes 4-0.

7. **Requests for Certificates of Compliance**

- a. **Cont.: 14 Bay View Avenue, DEP File #5-1183** – remove trees, replant, and install stone rip rap coastal bank stabilization – Kevin Puopolo

Documents Reviewed: Request for Certificate of Compliance with associated attachments by Hancock Associates, dated July 7, 2022; supplemental letter by Hancock Associates, dated July 29, 2022

Devon Morse of Hancock Associates representing the applicant, recaps the continued request, the findings from the site visit with Pirrota and Beverly Engineering Department staff, and the work that was completed. She is requesting the Commission issue a complete Certificate of Compliance as the landscaping work on the bank is complete. Morse describes the deviation

from the approved plan including that the rip rap placement on the toe of the bank was never completed. Morse reports that the owner has no intention to undertake this work and was not aware that this was part of his project approval. She raises issues from the file including that Mass Coastal Zone Management staff raised concerns with the addition of coastal engineering structures such as rip rap on a bank that serves as a sediment source. Bertoni confirms that the rip rap was proposed as a solution to the erosion issue, and was not imposed by the Commission. Buchsbaum agrees that it is not the role of the Commission to promote riprap and that it is okay if the owner does not want to install it. Bertoni agrees with Buchsbaum and refers back to the May 24, 2016 minutes where the Commission suggested to “let nature takes its course” and suggests that the Certificate of Compliance should note the portions of work completed or not. Squibb recalls from the original permitting and the Commission’s site visit at the time that the entire bank appeared to be undermined and raised issues with stability of the bank. Bertoni confirms that the Order is expired, that the riprap work was not undertaken, that the area is within the velocity zone, and that the Commission would not ask the owners to stabilize their own bank.

Squibb confirms whether the Commission can issue a complete Certificate of Compliance in this case. Bertoni notes that a waiver from an as-built plan was requested, but that the information submitted with the request does not indicate that the rip rap work was not completed. Morse explains that Hancock Associates was not the engineer of record for the Order and that they have not been able to receive permission from the original engineer to annotate the plan. Bertoni expresses concern about the lack of a final plan depicting the rip rap area and requests better information with a closer look to the original plan if it is not feasible to annotate the original. Morse agrees to provide a plan that the Commission would see fit. Bertoni describes concern with the request to allow ongoing invasives management on the bank. Pirrotta reads the perpetual conditions included in the Order.

There being no further questions, Buchsbaum moves to continue the request to the August 23, 2022 meeting. Seconded by Squibb. Bertoni takes a roll call vote. Motion passes 4-0.

- a. **New: 13 Pond View Lane, DEP File #5-1341** – create a terraced area with retaining wall and landscaping – Erin Beauregard

Documents Reviewed: Request for Certificate of Compliance with associated attachments, dated July 8, 2022; as-built plan by GA Consultants, Inc. dated June 29, 2022

Owner Erin Beauregard is present to discuss the request. She recaps the completed work for the installation of the retaining wall and fencing. Pirrotta confirms she held a site visit with Beauregard and Beverly Engineering Department staff and that the site was stable and in compliance with the approved plan and special conditions. The Commission reviews the perpetual conditions for the project. Redmond moves to issue a complete Certificate of Compliance under the Act and Ordinance with the perpetual conditions as described. Seconded by Buchsbaum. Bertoni takes a roll call vote. Motion passes 4-0.

8. Old/New/Other Business

- a. **Requests for Minor Modification to Order of Conditions**

New: 16 Fosters Point, DEP File #5-1304 – Julie Tsakirgis

Documents Reviewed: Request for Minor Modification, dated July 27, 2022

Owner Julie Tsakirgis is present to describe the request for the addition of a pervious patio in the backyard next to the deck. Bertoni reviews the proposal with Tsakirgis and reviews the existing special conditions for the project. She asks whether a Certificate of Compliance was filed for the older Order of Conditions at the property as required by Special Condition #1. Pirrotta confirms that the Commission issued a partial Certificate of Compliance for the project under DEP File #5-819, but that there is ongoing monitoring of the salt marsh plugs that were planted, before a complete Certificate of Compliance would be issued. Bertoni asks about the materials that would be used for the patio and Tsakirgis confirms that they would be the same pavers used elsewhere on the property. Buchsbaum asks about the purpose of the pavers and whether this is an aesthetic improvement. Tsakirgis says the area is dirt and rocks and the Commission questions why it is in that state since the record plan indicates that is an area of grass. Bertoni is concerned with the proposal including pavers across the entire width of the property and asks about the area of the pavers. Tsakirgis says that the pavers extend from the 6 foot 10 inch mark on the plan to the 22.5 foot mark on the plan, and says that the stakes and wrap (silt fencing) is still in place. Bertoni confirms the pavers are proposed entirely within the 50-Foot No Build Zone.

Jones joins the meeting at 8:24pm.

Bertoni states that even though the proposal is for the pavers to be pervious, it is still extensive as it is proposed from lot to lot. Bertoni asks about any required lot line setbacks and whether Tsakirgis considered adding any plantings or other mitigation, as the proposal includes more work in the No Build Zone and into the No Disturbance Zone. Buchsbaum agrees that the patio seems extensive and that Tsakirgis should consider creative landscaping in the area, instead of structures. He would rather see the lawn restored or shrubs added. The Commission reviews photos of the current condition of the property as compared to the pre-construction condition. Bertoni suggests that the size of the patio should be reduced and the disturbed areas have native plantings added to enhance the area. Squibb notes that the proposed plan included work in the 25-Foot No Disturbance Zone. Bertoni requests a revised plan that also removes the pavers from the No Disturbance Zone, in addition to the native plantings as she is not comfortable with the full scope of the proposal. Tsakirgis asks if the Commission would be willing to compromise and Bertoni explains that what she is asking for is a compromise to allow some patio, but to scale it back and add plantings. Tsakirgis confirms she was going to add shrubbery between the pavers and the grass and Bertoni explains that should be shown on the plan.

There being no further questions or comments, Redmond moves to continue the discussion to the August 23, 2022 meeting. Seconded by Bertoni. Bertoni takes a roll call vote. Motion passes 5-0.

b. Enforcement Orders

- i. Cont.: 5/7/9 Netherton Avenue, follow up

Pirrotta reports that the owner Anthony Gaglione emailed her with confirmation that the “no disturbance markers” have been installed, per the restoration plan.

c. Potential Violations, If Any

i. New: 17R Webber Avenue, DEP File #5-1350

Pirrotta reports that she conducted a follow up site inspection at the property with Beverly Engineering Department staff and the property owner Jozef DeVries. The owner described at the site visit that there were deviations from the approved plan. Pirrotta recaps the approved project for invasives removal and construction of hardscape features. DeVries is present at the meeting and describes the changes in his project including the installation of the French drain and the change in the patio materials. He cites issues with materials supply and that his contractor urged him that the approved pavers would not be effective in that location and that patio would become deformed very quickly after installation. DeVries explains that the pavers have beveled joints and semi-permeable polymeric sand is located between the pavers. The polymeric sand is reported to degrade over time, creating natural gaps for water. Bertoni explains that there is a process for the Commission to approve plan changes and that this appears to be a substantial change. DeVries agrees and says that he met all the pre-construction requirements, but that he had to make changes in order to complete the work in a timely fashion, including being able to complete the restoration planting work, as delaying the hardscape work would delay the planting work. DeVries asserts he took a risk-based assessment to complete the work when his landscaper was available. Bertoni asks about the change from a grassy swale to a French drain with pipe discharging into the no disturbance zone. DeVries explains this was done to get the water away from his foundation, but that he doesn't know if this approach will work yet as there has been very little rain. He suggests that as an alternative, a hole can be dug and filled with gravel where the pipe exits the landscape wall.

Redmond suggests that DeVries consider implementing a rain garden with rocks and plants as a solution. DeVries says that this was considered by filling the area with rocks and plants but that water flowed around it and a swale is not practical to dig here so close to his foundation. Redmond explains that a properly constructed rain garden would make it so that water doesn't escape. Bertoni agrees and confirms that rain gardens are a solution to allow water to infiltrate and could work in a compromised tight spot. DeVries asks for more information on where to put such a rain garden and is not convinced it would work on his property. Redmond explains a possible location for DeVries to consider and describes how they work and that an experienced landscape professional should install them. Bertoni confirms with DeVries that the deviation is a violation of the Order of Conditions and that it is up to him as the applicant to present the design and not the Commission. DeVries will consider Redmond's advice and will observe the area once it rains. He is concerned about what he can construct within the private right of way. Bertoni confirms that DeVries needs to get the work back into compliance with his Order of Conditions. DeVries raises concerns with work completed by the original home builder and the suitability of the back filled materials around the foundation. The Commission continues to discuss measures for infiltration including gravel trenches around the patio and ways to minimize concentrated flow but DeVries again explains he needs to see what happens during the next rain event. Redmond raises concern with such a trial and error approach, noting that this can lead to more disturbance, and that a plan should be provided. DeVries does not believe that the plan developed by his engineer was the correct solution. Buchsbaum suggests there was a past project that had a condition regarding an experimental approach based on rainfall and asks about holding a site visit. Jones agrees about holding a site visit and the Commission schedules a site visit for

8am on Saturday, August 6, 2022. DeVries confirms the public may attend. Buchsbaum moves to continue the discussion to the August 23, 2022 meeting. Seconded by Redmond. Bertoni takes a roll call vote. Motion carries 5-0.

d. Enforcement Orders (cont.)

ii. Cont.: 62 South Terrace, follow up

Owners Michael Burta and Maria Loguidice are present to recap the restoration work. Pirrotta recaps for the Commission that an enforcement order governed completion of the restoration plan by June 30, 2022. The owners contacted Pirrotta noting their delays with their masonry contractor and inability to complete the work on time. Loguidice outlines the proposed revised schedule of completion. Bertoni believes it is a reasonable request and confirms that the site is currently stable. Burta claims that the work completion is at the mercy of the contractor but appreciates the Commission's extension of time. Buchsbaum moves to amend the enforcement order with a new completion date of September 15, 2022 and to keep the Commission informed of the work status. Seconded by Bertoni. Bertoni takes a roll call vote. Motion carries 5-0.

iii. Cont.: 6 Morningside Drive, follow up

Pirrotta recaps the unpermitted work and the Commission's Enforcement Order. She notes that an engineer has been hired by the owner to complete a Notice of Intent, but that he encountered delays. They intend to submit the Notice of Intent in time for review at the next meeting. The Commission decides to amend the EO to document this. Squibb moves to amend the EO for receipt of the NOI in time for review at the August 23, 2022 meeting. Seconded by Buchsbaum. Bertoni takes a roll call vote. Motion carries 5-0.

e. Tree Removal Requests, If Any

3 Longham Road/248 Dodge Street

Pirrotta describes the tree removal request for the removal of three cherry trees and one red maple tree that are reported by the arborist to pose a threat to the property due to rot and/or other damage. The trees are located within Land Subject to Coastal Storm Flowage, 200-Foot Riverfront Area, and 100-Foot Buffer to Bank and Bordering Vegetated Wetland. The trees are in areas of lawn and are proposed to be removed via lift/climbing. Pirrotta describes that the red maple tree is located at the edge of the resource area and there are already portions of the multi-leader tree that have fallen into the water. The Commission discusses removing the hazardous parts of the maple tree and leaving portions of it in tact, to serve as habitat. Jones moves to approve the request with the implementation of the standard tree removal conditions and that the maple tree be left at a 5-10 foot height. Seconded by Buchsbaum. Bertoni takes a roll call vote. Motion passes 5-0.

f. Cont.: West Beach Corporation & other owners along West Beach, Priority Habitat beach raking

Pirrotta updates the Commission that Attorney Fallon, representing West Beach Corporation, sent a response letter to the Commission the day before the meeting. The Commission nor Pirrotta have not yet had a chance to review the letter in detail. Pirrotta confirms that the Mass Coastal Zone Management and Mass Natural Heritage and Endangered Species Program have not responded to the Commission's letter yet. Squibb notes that he was recently on the beach and it was very crowded with little room for birds. He believes the next three abutters are also

conducting beach raking at their properties. Bertoni believes based on her observations that mechanical raking is occurring at abutting properties, but it not sure how mechanical equipment is accessing the beach. Bertoni suggests more time is needed to review the response letter. Buchsbaum reports that he heard the piping plover nest in this area had failed. Bertoni and Buchsbaum discuss a recent study that suggested piping plover populations in Massachusetts are doing well overall. Buchsbaum asserts that there is only a small population in the Beverly area and that it should be kept up. The Commission agrees to discuss the topic at the next meeting, after having time to review the new letter.

9. **Orders of Conditions**

i. **973 Hale Street, DEP File #5-1370**

Commissioners recap the project and discuss the issuance of the Order of Conditions. Buchsbaum moves to issue an Order of Conditions under the MA Wetlands Protection Act and Beverly Wetland Protection Ordinance with the special conditions and standard general and perpetual conditions, as discussed. Seconded by Squibb. Bertoni takes a roll call vote. Motion passes 5-0.

10. **Approval of Minutes**

a. **July 12, 2022 executive session**

Members review and offer edits to the draft meeting minutes. Redmond moves to approve the minutes of the July 12, 2022 executive session, as amended. Seconded by Jones. Bertoni takes a roll call vote. The motion carries 5-0.

b. **July 12, 2022**

Members review and offer edits to the draft meeting minutes. Redmond moves to approve the minutes of the July 12, 2022 meeting, as amended. Seconded by Jones. Bertoni takes a roll call vote. The motion carries 5-0.

c. **June 14, 2022**

Members review and offer edits to the draft meeting minutes. Buchsbaum moves to approve the minutes of the June 14, 2022 meeting, as amended. Seconded by Squibb. Bertoni takes a roll call vote. The motion carries 5-0.

11. **Old/New/Other Business (cont.)**

a. **New: Discussion on Continuing Remote Meetings or Holding In-Person Meetings**

Pirrota updates the Commission that remote meetings can continue to be held until March 31, 2023, per Chapter 107 of the Acts of 2022, Section 3. The Commission discusses ongoing concerns with the pandemic and the convenience of meeting remotely rather than in person. The Commission agrees to meet remotely as long as they are able to.

12. **Adjournment**

Squibb moves to adjourn the meeting at 10:05 p.m. Seconded by Jones. Bertoni takes a roll call vote. The motion carries 5-0.

The next regular meeting of the Conservation Commission is scheduled for Tuesday, August 23, 2022.