

CITY OF BEVERLY  
PUBLIC MEETING MINUTES

BOARD OR COMMISSION: City of Beverly Conservation Commission  
DATE: September 26, 2023  
LOCATION: Virtual via Google Meet  
MEMBERS PRESENT: Chair Christine Bertoni, Vice Chair Robert Buchsbaum,  
Amber Redmond, Grace Charles, William Squibb (late)  
MEMBERS ABSENT: Tara Duffy, Chris Cloutman  
OTHERS PRESENT: Conservation Agent David Spidaliere, Conservation Field  
Inspector Scott White  
RECORDER: Naomi Moca

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1. Chair Bertoni calls the meeting to order at 7:03 p.m. and reads the public notice regarding holding meetings remotely due to COVID-19.

Redmond: Motion to recess for public hearings. Buchsbaum seconds. Bertoni takes a roll call vote. Motion carries (4-0).

## 2. Recess for Public Hearings

**7:06 p.m.** Squibb arrives

## 3. Notices of Intent/Abbreviated Notices of Intent/Requests for Amended Orders of Conditions

- a. **Cont.: 7 Cherry Street, DEP File #5-1399** – construct a garage, yard storage, mudroom, covered porch, driveway, second story dormers, and deck repairs – John and Vanesa Linkletter

Conservation Agent Spidaliere states that Bill Manuell of Wetlands and Land Management could not obtain the revised stamped plan by the surveyor in time for this meeting and thus is requesting a continuation.

Redmond: Motion to continue to the October 17, 2023 meeting. Buchsbaum seconds. Bertoni takes a roll call vote. Motion carries (5-0).

- b. **Cont.: New: 54 Pickman Road, DEP File #5-1400** – construct a retaining wall, make repairs to a stairway for shoreline access, and replace a fence – Gary Benton

Spidaliere states that the applicant has requested a continuation.

Buchsbaum: Motion to continue to the October 17, 2023 meeting. Redmond seconds.  
Bertoni takes a roll call vote. Motion carries (5-0).

- c. **Cont.: 29 Brackenbury Lane, DEP File #5-1401** – construct a driveway and a detached garage – Arlin Sebastian

Project Wetland Scientist Devon Morse of Hancock Associates and civil engineer Matthew Connors of Hancock Associates are present. Morse states that the plan was revised in response to the Commission's comments at the August 29, 2023 meeting. Morse states that the August 31, 2023 site plan now has an added callout for the area that will be re-graded and that it will be stabilized with loam and seed. The Commission had also requested that the applicant research the possibility of reducing the impervious impact of the bituminous concrete driveway. Connors states that because the applicant will have the driveway plowed in the snowy weather, a gravel surface is not optimal because the plow would churn it up and cause a maintenance issue. Furthermore, the applicant is concerned with pedestrian and vehicle traffic in the summer months, so the turnaround is important for visibility when exiting the site. For these reasons, the applicant is requesting to keep the driveway as planned.

The Commission discusses that pervious pavement is not an option for this site. Morse clarifies that the site is not in Bordering Land Subject to Flooding and is not in an AE flood zone.

Redmond: Motion to close the hearing. Buchsbaum seconds. Bertoni takes a roll call vote. Motion carries (5-0).

- d. **Cont.: 58 South Terrace, DEP File #5-1402** – extend deck and sun porch – Ralph Puopolo

Applicant Ralph Puopolo is present and states that he received an email from MassDEP a few hours before today's meeting with several questions and he is prepared to go over the answers with the Commission if desired. Puopolo states that there are certain items among the questions that are not pertinent to the application. Puopolo states that the delineation of the coastal bank was completed by a surveyor, not a wetlands scientist.

The Commission discusses items for Puopolo to prepare for the next meeting. Puopolo agrees to obtain a delineation of the coastal bank by a wetlands scientist and to provide a plan that addresses stormwater runoff, snow storage, and the plantings since the proposed *pennisetum* is a non-native invasive species. The Commission discusses that since the proposed deck extension cantilevers over the coastal bank, information about whether it is necessary to drill into the coastal bank is needed. Puopolo agrees to provide the Chapter 91 license, a detailed engineering plan, and the construction plan to the Commission.

Spidaliere advises Puopolo that the updated plans and narrative should be sent to MassDEP as well as to the Commission. Bertoni expresses a desire to visit the site independently as she was not able to attend the Commission site visit. The Commission advises Puopolo to consult the Commission's list of recommended native species.

Buchsbaum: Motion to continue to the October 17, 2023 meeting. Squibb seconds. Bertoni takes a roll call vote. Motion carries (5-0).

- e. **New: 140 Livingstone Avenue, DEP File #5-1388** – request to amend Order of Conditions – 140 Livingstone LLC c/o Edward Doherty

Spidaliere reads the legal notice. Bob Griffin of Griffin Engineering and applicant Edward Doherty, are present. Griffin presents the site plan and states that the OOC was issued in April 2023. Griffin states that as the construction has progressed, there was found to not be enough room in the crawl space as it is an inadequate height to install and regularly maintain mechanical and electrical equipment. Thus, Griffin has updated the plan to have the elevation of the approved house, pool area, and driveway raised up by 2.8 feet, bringing the elevation to 17.8 feet. The slab will be lowered by 0.9 feet and the building floor raised by 2.8 feet. Griffin clarifies that the crawl space is not a habitable space. The new plan has lowered contours in the vicinity of the driveway to allow for floodwaters to reach the flood vents. Griffin states there are no substantial changes to the landscaping plan.

The Commission discusses that 1,000 cubic yards of fill are required for this amendment, that no blasting is needed to lower the slab, that the new grading is not substantial, and that the pump chambers and forced main running along the left side of the building out to the street will be moved to the opposite side. Griffin states that because the crawl space falls below flood elevation, all mechanical equipment is required to be at least one foot off the slab at its lowest point to comply with FEMA regulations.

The Commission discusses the condition of ensuring the utilities are a minimum of one foot above the flood elevation. Griffin states that phragmites control has already begun.

Buchsbaum: Motion to approve the amended order of conditions for 140 Livingstone Avenue, DEP File #5-1388 per the September 12, 2023 plan, with the one condition as specified. Redmond seconds. Bertoni takes a roll call vote. Motion carries (5-0).

Squibb: Motion to reconvene the regular meeting. Redmond seconds. Bertoni takes a roll call vote. Motion carries (5-0).

#### **4. Reconvene Regular Meeting**

#### **5. Requests for Determination of Applicability**

- a. **New: 0 McKay Street/181 Elliott Street** – remove 12 dead trees and plant a native shrub/plant in the general vicinity of each removed tree – Cummings Properties, LLC

Spidaliere reads the public notice. Operations Counsel Damien Savoie of Cummings Properties is present and states that 12 dead trees on Cummings Center property all located within 10 to 100 feet of Lower and Upper Shoe Pond need to be removed as they are in danger of falling onto

McKay Street, with one tree at risk of falling onto 600 Cummings Center. Savoie presents the bird's eye view of the site, pointing out the locations of the trees.

Buchsbaum asks if a certified arborist determined that the trees are dead and should be removed. Savoie states that the head of groundskeeping assessed the trees and determined that they are obviously dead. Savoie states that a third-party subcontractor with a crane placed outside the buffer zone will be removing the trees and he is unsure whether the subcontractor will have a certified arborist on site when the trees are removed.

The Commission discusses replacing trees #1, #3, #4, and #7 from the site plan with new trees. The Commission discusses that a blend of trees and native shrubs would be acceptable for mitigation planting and that Spidaliere can provide a list of suggested species. Spidaliere states that he did not conduct a site visit. Redmond comments that the precedent of Cummings Properties not using a certified arborist should not necessarily be the expectation for future applications. The members agree that obtaining a certified arborist's report on the condition of the trees will satisfy this exception. Bertoni comments that standing dead trees that have been trimmed for safety can provide habitat for native species.

The Commission discusses the following conditions:

1. The applicant shall provide a certified arborist's report on the condition of the trees prior to their removal.
2. A replacement tree shall be planted in the vicinity of trees #1, 3, 4, and 7 as listed on "Proposed Tree Removal Plan" dated 9/5/2023. A native shrub/plant shall be planted in the general vicinity of each of the other removed trees. A planting plan shall be provided to the Conservation Agent prior to the removal of the trees.
3. Tree removal shall be conducted via hand tools and/or all heavy equipment shall be operated from paved surfaces only.
4. Trees shall be cut flush to grade.
5. Removal or grinding of the roots or stump is prohibited.
6. All cut materials shall be removed for appropriate off-site disposal.
7. A spill kit shall be located on site during the work.

Squibb comments that tree #9 is a habitat tree that may stay in place.

Redmond: Motion to issue negative three determination for 0 McKay Street/181 Elliott Street with the conditions as discussed. Buchsbaum seconds. Bertoni takes a roll call vote. Motion carries (5-0).

## **6. Requests for Certificates of Compliance**

- a. New: 238 Lothrop Street, DEP File #5-1270** – stabilize the loamed and seeded lawn  
– Darren Blyth

Evin Guvendiren of DeRosa Environmental is present on behalf of the applicant and states that the lawn has stabilized. Field Inspector White states that he conducted a site visit and observed that the lawn is established.

Redmond: Motion to issue a complete Certificate of Compliance for 238 Lothrop Street, DEP File #5-1270. Charles seconds. Bertoni takes a roll call vote. Motion carries (5-0).

- b. New: 5R Netherton Avenue, DEP File #5-254** – construct a single-family house – Continental Law Group c/o Michael Osborne

Spidaliere summarizes that as part of the property sale in 2020, the applicants (the previous owners of the property) were required to obtain the COC for this OOC. Since no work was ever started on this project, the applicant is requesting an Invalid Order of Conditions.

Squibb: Motion to issue an Invalid Order of Conditions for 5R Netherton Avenue, DEP File #5-254. Redmond seconds. Bertoni takes a roll call vote. Motion carries (5-0).

## 7. Old/New/Other Business

### a. Minor Modifications to Orders of Condition, If Any

- i. New: 2 Balch Street, DEP File #5-1365** – alternate dewatering method – City of Beverly c/o Eric Barber

Project Manager Mike Nelson of Fuss and O’Neill is present on behalf of the City of Beverly Department of Engineering. Nelson summarizes that the tides were working against the dewatering process necessary to clean the water main. Nelson states that City rejected the change order for the water-filled bladder that the Commission had approved due to expense, so the new plan is to move the control point to the existing dam at the outlet of the pond where Lower Shoe Pond goes over the concrete rear dam and then flows out to the Bass River. There is an operable sluice gate in place that is used to control the tides. Nelson states that effect will be the same as the cofferdam method, just at a different location.

Nelson explains that during most high tides, ocean water comes up and over the dam and into the culvert. By placing sandbags on the dam, the level of the dam will rise two to three feet to slow most high tides. The premise of building up the dam is the same concept as the approved cofferdam, but in a different location: it avoids purchasing a \$60k bladder, utilizes sandbags already owned by the contractor, and avoids the need to place anything in the pond.

Nelson states that he will monitor the site daily and that the timely removal of sandbags if there is an impending storm is the responsibility of the contractor. There is a foreman overseeing each shift of the 24-hour work cycle, and the foremen communicate directly with Nelson and with Assistant Commissioner Eric Barber of the City Engineering Department. Nelson observes that the project was originally estimated to take three months, and is now at its one-year anniversary.

The members agree that this qualifies as a Minor Modification as it is staying within the original intent of the project.

Redmond: Motion to approve the Minor Modification for 2 Balch Street, DEP File #5-1365 for the sandbags on top of the weir as described in the September 18, 2023 plan. Buchsbaum seconds. Bertoni takes a roll call vote. Motion carries (5-0).

**b. Extension to Orders of Condition, if any**

**c. Tree Removal Requests, If Any**

**i. New: 269 Dodge Street – Arthur & Pamela Boardway**

Arthur and Pamela Boardway, property owners, are present and state that a tree in their backyard fell into Norwood Pond a month or so ago. Certified arborist Rich Grant of Mayer Tree visited the site and pointed out four red oak trees that need to be removed. One tree is 30 feet from the wetland and leans toward the house, one is 50 feet from the wetland and leans toward the house and also has hollow ground near the base, one is 60 feet from the wetland and has a rotted base, and one is uprooted and is currently in the water at Norwood Pond.

Boardway asks if property owners are typically responsible for removing trees that fell into the water. The Commission agrees that the tree remaining in the water will provide a habitat for native species such as turtles. Boardway shares photos of the tree and proposes having Mayer Tree cut the branches that are above the surface of the water using a crane. Whatever is cut off will be removed off-site. Boardway points out that one of the other three trees is in danger of falling on power lines.

The Commission discusses the following conditions:

1. Tree removal shall be conducted via hand tools and/or all heavy equipment shall be operated from paved surfaces only;
2. Trees shall be cut flush to grade;
3. Removal or grinding of the roots or stumps is prohibited;
4. All cut materials shall be removed for appropriate off-site disposal;
5. A spill kit shall be located on site during the work;
6. For the fallen red oak, the stump shall be cut and only branches above the water line removed. All debris from the removed branches shall be removed from the water;
7. For the red oak near the driveway, the tree shall be cut down to roughly 15' tall and left in place as a habitat tree.

The Commission asks if it is possible to leave a 15-foot stump for habitat and the Boardways agree to leave one located at the end of the driveway.

Redmond: Motion to approve the removal of four trees at 269 Dodge Street as discussed, leaving one as a habitat tree and one in the pond, with the conditions as discussed. Squibb seconds. Bertoni takes a roll call vote. Motion carries (5-0).

**d. Enforcement Matters**

**i. Cont.: 16 Branch Lane – 16 Branch Lane LLC**

Alex Patterson of EA Engineering is present on behalf of the property owner and summarizes the update. The Commission requested they provide a plan showing where the plantings have been completed, and it was provided to the Commission. Patterson shares the site map with color-coded demarcation of the plantings. Charles, Buchsbaum, and Redmond state that the plantings appeared to be well-established at their site visit. The members agree that the spacing and density of the plantings were appropriate and no additional plantings are needed.

The Commission agrees that until the survivorship condition has been met, the Enforcement Order will remain on file. Patterson states that his firm plans to visit the site in one year's time and provide an updated report to the Commission.

Redmond: Motion to amend the original Enforcement Order for 16 Branch Lane to reflect the Commission's acceptance of the planting plan and that the density as noted on the September 21, 2023 plan is also acceptable. Buchsbaum seconds. Bertoni takes a roll call vote. Motion carries (5-0).

**ii. Cont.: 43 Wood Lane – Eric Ewer**

Spidaliere reports that Eric Ewer, property owner, stated that the wetlands delineation will take place on Thursday, September 28, 2023.

Buchsbaum: Motion to amend the Enforcement Order for 43 Wood Lane with the date of delineation and the start of the restoration plan in time for discussion at the October 17, 2023 meeting. Redmond seconds. Bertoni takes a roll call vote. Motion carries (4-0). Charles abstains.

**iii. Cont. 116 West Street – Alex Glovsky**

Spidaliere states that the previous owner submitted a COC request in 2022, at which time the Commission noticed that there was a Buffer Zone restoration area on the as-built plan that was removed and converted to grass. An Enforcement Order was issued to restore it to the original Buffer Zone restoration area. Spidaliere states that the two-growing season monitoring period is over. Spidaliere conducted a site visit with the property owner on September 8, 2023, and observed the restoration plantings are well-established.

Redmond: Motion to lift the Enforcement Order for 116 West Street. Squibb seconds. Bertoni takes a roll call vote. Motion carries (5-0).

The Commission discusses the Potential Violation at 10 Palmer Road. Spidaliere states that the applicant is in the process of submitting an after-the-fact minor project permit as was directed by the Commission.

**e. Potential Violations**

**i. New: 342 Old Essex Road – Klaudio Boka**

Klaudio Boka, property owner, and the general contractor that Boka consulted for the project, Adimir Toska, are present. Spidaliere states that the Commission conducted a site visit on Saturday, September 23, 2023. Buchsbaum states that the owner should have gone through the NOI process. Buchsbaum observed at the site visit that the stream's erosion was creeping toward the house. Redmond states she observed a lot of Japanese Knotweed on the property and suggests that removing or managing it with mitigation plantings would be appropriate.

Toska agrees to provide the plans for the wall to the Commission. Boka states that the wall base is four feet under the ground and built using five-inch rebar.

The Commission advises Boka to consult with Spidaliere for guidance on the NOI process, which will include certification by a qualified engineer and potential removal of Japanese Knotweed. The Commission clarifies with Boka that there will need to be a restoration plan in the future, but the focus right now is to get the wall work permitted.

Buchsbaum: Motion to issue an Enforcement Order for 342 Old Essex Road with directives to file an after-the-fact Notice of Intent for the wall in time for the Wednesday, November 28, 2023 meeting (submittal deadline November 14, 2023). Redmond seconds. Bertoni takes a roll call vote. Motion carries (5-0).

**ii. Cont.: 531R Hale Street – Loring Trust, Caleb Loring III**

Caleb Loring III, Trustee of 531R Hale Street Trust and property owner, is present and states that he will contract with Hancock Associates to conduct the wetlands delineation. At that time the Trust plans to submit a restoration plan to the Commission.

**iii. Cont.: 569-573 Hale Street – Peter & Babette Loring**

Peter and Babette Loring, trust beneficiaries and property owners, are present and state that they are coordinating with Loring III to delineate the wetlands. They state that they did partial restoration planting one year ago.

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



The members agree that it is appropriate to exchange their phone numbers for site visit purposes.

**96 Preston Place:** Bertoni states that the Manchester-by-the-Sea Conservation Commission is working with the property owner due to the pond's water level rising significantly.

**g. Expenditure Approvals**

**i. Conservation Agent August Mileage**

Redmond: Motion to approve the August 2023 mileage reimbursement totaling \$16.79. Buchsbaum seconds. Bertoni takes a roll call vote. Motion carries (5-0).

**ii. Conservation Field Inspector July Mileage**

Redmond: Motion to approve the July 2023 mileage reimbursement totaling \$24.22. Buchsbaum seconds. Bertoni takes a roll call vote. Motion carries (5-0).

**i. Conservation Field Inspector August Mileage**

Redmond: Motion to approve the August 2023 mileage reimbursement totaling \$33.52. Buchsbaum seconds. Bertoni takes a roll call vote. Motion carries (5-0).

The Commission discusses the MACC note requesting delineations that the communities might have.

**8. Orders of Conditions**

- a. Cont.: 29 Brackenbury Lane, DEP File #5-1401** – construct a driveway and a detached garage – Arlin Sebastian

The Commission discusses the following conditions:

1. Any excavated materials/debris shall be removed and properly disposed of offsite.
2. Storage of construction materials shall be located on existing paved areas or outside the resource areas.
3. Erosion controls shall be installed between the work area and the wetland resource, prior to the start of construction.
4. During construction, disturbed soils are to be re-stabilized and re-vegetated as soon as possible.

Buchsbaum: Motion to issue an OOC for 29 Brackenbury Lane, DEP File #5-1401 with the conditions as discussed including special, general, and perpetual conditions under both the Wetlands Protection Act and the Local Wetlands Ordinance. Squibb seconds. Bertoni takes a roll call vote. Motion carries (5-0).

**9. Approval of minutes**

**a. August 29, 2023 Adjournment**

The members review and offer edits to the August 29, 2023 draft meeting minutes.

Buchsbaum: Motion to accept the August 29, 2023 meeting minutes as amended.  
Redmond seconds. Bertoni takes a roll call vote. Motion carries (5-0).

**10. Adjournment**

Buchsbaum: Motion to adjourn. Redmond seconds. Bertoni takes a roll call vote. Motion carries (5-0).

**Meeting adjourns at 10:05 p.m.**

**The next regular meeting of the Conservation Commission is scheduled for Tuesday, October 17, 2023.**