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# TOWN OF BURLINGTON

## Meeting Minutes

Email minutes to [meetings@burlington.org](mailto:meetings@burlington.org) or Bring to the Clerk's Office. Thank you

Minutes need to be posted within 30 days or 2 meetings of the board – Draft minutes can be posted and revised at a later date

BOARD: Conservation Commission

DATE: April 28th, 2022

TIME: 7:00 PM

PLACE: Burlington Town Hall, WebEx Remote Meeting

MEMBERS IN ATTENDANCE: Chairman Larry Cohen, Vice Chair William Boivin, Indra Deb, Donald Bernstein.

MEMBER(S) MISSING: Ed LoTurco, Jennifer O'Riorden, and Kent Moffatt.

Conservation Administrator John Keeley and Assistant Conservation Administrator Eileen Coleman were also in attendance.

*Approved at the May 26, 2022 Conservation Commission meeting*

### 1. Call to Order

Mr. Cohen stated that this meeting is being held in person, with the option of joining virtually through WebEx. A reminder that persons who would like to listen to or view this meeting while in progress may do so by tuning into the BCAT Government Cable Access Channel, the BCAT Government Meetings Facebook Live feed, or you can join the meeting over the phone @ +1-408-418-9388 Meeting #2339 548 3469, the password if needed is uPpyy3p5uA7. To join the WebEx live video conference, click on the link on the Conservation Commission's meetings page or on the Town of Burlington Town calendar or go to Webex.com, join a meeting.

Mr. Cohen called the meeting to order at 7:00 PM. Roll call was to be taken later in the meeting. New public hearings opened tonight will not be closed, so as to allow comments from those who are unable to access or are uncomfortable with the technology. Comments or concerns regarding public hearings should be emailed to [conservation@burlington.org](mailto:conservation@burlington.org) before the next meeting on May 12th, 2022.

The meeting is being recorded on BCAT as well as WebEx.

#### a. Roll Call

- Mr. Bernstein joined the meeting remotely so it was decided roll call would be taken at this time.
- Mr. Bernstein, Mr. Deb, Mr. Boivin, and Mr. Cohen were present.
- Jennifer O'Riorden, Ed LoTurco, and Kent Moffatt were absent.
- Conservation Administrator John Keeley and Assistant Conservation Administrator Eileen Coleman were also present.

### 2. Citizens' Time

There were no citizens coming forward.





TOWN OF BURLINGTON  
CONSERVATION COMMISSION MINUTES  
April 28, 2022

**3. Approval of Minutes** April 14<sup>th</sup> 2022.

- Mr. Boivin stated he had some editorial comments that had been applied by Mrs. Coleman.

**MOTION-** Mr. Cohen made a motion to approve the minutes from April 14<sup>th</sup>. The motion was unanimously voted 4-0-0. On a roll call vote Mr. Bernstein voted Yes, Mr. Deb voted Yes, Mr. Boivin voted Yes and Mr. Cohen voted Yes.

**4. Request for Certificate of Compliance**

- a. 98-108 Middlesex Turnpike – Yard House USA – Burlington Stormwater Permit

This item was continued to the next meeting.

b. 3 McIntire Drive – Sanjaykumar & Falguni Patel – DEP #122-599. Ms. Coleman presented a narrative describing changes made subsequent to the plan being approved. A retaining wall, and a front walk and entrance were added adding 850ft<sup>2</sup> of impervious surface to the property. Also another tree was added to the planting plan bringing the total to three, up from two. Mr. Cohen asked each of the commissioners if they had questions or comments and none of them did. He asked Ms. Coleman about an issue with water in the backyard in which she replied a stonewall has been built that is helping the situation. After being asked by Mr. Cohen if she thinks anything else needs to be amended in the plan, Ms. Coleman responded that she did not.

**MOTION-** To issue a compliance for 3 McIntire Drive – DEP #122-599. The motion was unanimously voted 4-0-0. On a roll call vote Mr. Bernstein voted Yes, Mr. Deb voted Yes, Mr. Boivin voted Yes and Mr. Cohen voted Yes.

**MOTION-** To issue full release of \$5,000 for DEP #122-599 under Burlington Bylaw article 14 and the state Wetlands Protection Act. The motion was issued unanimously, in a roll call vote of 4-4-0. Mr. Bernstein voted Yes, Mr. Deb voted Yes, Mr. Boivin voted Yes and Mr. Cohen voted Yes.

c. 49 Middlesex Turnpike – 49 Middlesex Turnpike Realty Corp. – DEP #122-370. Ned's towing got an order of condition to add an addition to a property on Middlesex Turnpike and never did the work. This is a certificate of compliance to invalidate the order of conditions saying no work was ever done.

**MOTION-** To issue a Certificate of Compliance invalidating the order for DEP #122-370 because no work was ever done for 49 Middlesex Turnpike. The motion was unanimously voted 4-0-0. On a roll call vote Mr. Bernstein voted Yes, Mr. Deb voted Yes, Mr. Boivin voted Yes and Mr. Cohen voted Yes.

**5. Request for Determination of Applicability**

- a. 3 September Lane – Sunrun Installation Services – Install ground-mounted solar system.

Mr. Steve Kelly from Sunrun explained the scope of the project. A ground-mounted solar system with 6 helical piles that have a two inch pipe driven into the ground with a skid steer. A trench will be dug and backfilled with no extra material required. Ms. Coleman explained that the project is in a flood zone but that it would not pose a problem to the flood plain. Mr. Deb asked how deep the piles will be in which Mr. Kelly responded with an answer of about six feet. There were no comments or questions from the audience.





TOWN OF BURLINGTON  
CONSERVATION COMMISSION MINUTES  
April 28, 2022

**MOTION-** To issue a negative conditional determination for the project as described at 3 September Lane under Burlington bylaw Article 14 and the state Wetlands Protection Act. The motion was unanimously voted 4-0-0. On a roll call vote Mr. Bernstein voted Yes, Mr. Deb voted Yes, Mr. Boivin voted Yes and Mr. Cohen voted Yes.

**b. 5 Bruce Street – Susan Minghella – Request for Determination of Applicability for removal of trees within 100 foot buffer zone to bordering vegetated wetlands.**

When Mr. Cohen asked for comments from commission members, Mr. Bernstein did not have a problem with the amount of trees requested to be removed if plantings are added to the property. Mr. Deb echoed this sentiment, Mr. Boivin expressed concern over the proposal to remove a large, mature maple that if removed would likely cause some extra flooding and would remove shade cover from the wetland. He also expressed concern in regard to a large pine in the wetland that was requested to be removed and disposed of on site, in the wetland. Mr. Keeley mentioned that White Pines have shallow roots and in wetlands are more likely to have weaker roots and topple at some point in the future. He believes the tree is less stable than it appears on the outside. Mr. Cohen agreed that majority of the trees are in degraded condition, but is curious if an elm tree on site could be salvaged, as well as a maple tree with a branch in degraded shape.

Ms. Minghella was asked for comments and she expressed concern about several trees in proximity to her property and cited an example of a tree that fell onto her fence and shed the previous winter. There were no comments from the audience.

**MOTION-** To issue a negative conditional determination under the state Wetlands Protection Act and Burlington Bylaw article 14 for the removal of trees and replanting of trees at 5 and 7 Bruce Street. The motion was unanimously voted 4-0-0. On a roll call vote Mr. Bernstein voted Yes, Mr. Deb voted Yes, Mr. Boivin voted Yes and Mr. Cohen voted Yes.

**6. Request for Extension** – 36 Mill Street - Beverly Van Nostrand – Burlington Wetland Bylaw permit.

Beverly Van Nostrand attended the meeting in person and spoke on behalf of the project and explained to the committee that no work has been done on the project and she and her lawyer are working with Eversource but negotiations are taking a long time.

**MOTION-** To grant three year extension for the project at 36 Mill Street under the Burlington Wetland Bylaw. The motion was unanimously voted 4-0-0. On a roll call vote Mr. Bernstein voted Yes, Mr. Deb voted Yes, Mr. Boivin voted Yes and Mr. Cohen voted Yes.

**7. Continued Public Hearing** – Notice of Intent – 10 Scott Avenue (lot 2) – 10 Scott Avenue, LLC (Robert W. Murray, Manager) – Demolish dwelling & construct new dwelling – DEP #122-671.

Phyllis Etsell representing 10 Scott Avenue, LLC (Robert W. Murray, Manager). Ms. Etsell explained that an updated plan has been submitted to the commission regarding the extent of lawn on the property and the location for two trees to be planted. She asked if the commission members had any remaining questions, in





TOWN OF BURLINGTON  
CONSERVATION COMMISSION MINUTES  
April 28, 2022

which Mr. Cohen turned to Ms. Coleman and Mr. Keely for comment, who mentioned a prior exchange about a swale on the property, as to whether it would be jurisdictional as it is upstream from a wetland. Ms. Trudeau stated that she does not think the swale is jurisdictional because she thinks it is an upland swale and has an indirect hydrological connection to the down gradient wetland system, therefore she would not consider it a wetland. Mr. Keeley responded by stating that the area in question is not debated as a wetland, but as a stream, because Town of Burlington protects streams upgradient to resources area. Ms. Trudeau does not believe the channel should be classified as a stream as there is no direct surface flow on site to the down gradient wetland. She believes the water seeps into the ground and proceeds as groundwater flow. Mr. Keeley expressed his main concern being that the area not get filled, in which Ms. Trudeau agreed.

Mr. Cohen asked each member of the commission for final comments.

Mr. Bernstein asked if in the order of conditions if there will be a stipulation that recommends or requires something to protect runoff during the construction process from reaching the wetland. Ms. Coleman answered that according to the plan there are mechanisms set to be in place to prevent runoff to the wetland.

Mr. Deb asked if all of the runoff would be infiltrated into the ground in which the response from Mr. David Romero was that yes, all of the runoff from the proposed dwelling would be infiltrated into the ground, not the adjacent wetland.

Mr. Boivin did not have any final questions nor comments.

There were no additional comments or concerns from anyone in the audience nor the commission. Ms. Coleman read the draft permits containing findings about the project and stating that no further changes can be implemented without the approval of the Conservation Commission.

**MOTION-** To close the hearing for 10 Scott Avenue (lot 2), DEP #122-671. The motion was unanimously voted 4-0-0. On a roll call vote Mr. Bernstein voted Yes, Mr. Deb voted Yes, Mr. Boivin voted Yes and Mr. Cohen voted Yes.

**MOTION-** To adopt the findings under Burlington Bylaw article 14 for DEP #122-671. The motion was unanimously voted 4-0-0. On a roll call vote Mr. Bernstein voted Yes, Mr. Deb voted Yes, Mr. Boivin voted Yes and Mr. Cohen voted Yes.

**MOTION-** To adopt order of conditions under Burlington Bylaw article 14 and the state Wetlands Protection Act for DEP #122-671. The motion was unanimously voted 4-0-0. On a roll call vote Mr. Bernstein voted Yes, Mr. Deb voted Yes, Mr. Boivin voted Yes and Mr. Cohen voted Yes.

**MOTION-** To request surety be posted under Burlington Bylaw article 14 in the amount of \$3500 for DEP #122-671. The motion was unanimously voted 4-0-0. On a roll call vote Mr. Bernstein voted Yes, Mr. Deb voted Yes, Mr. Boivin voted Yes and Mr. Cohen voted Yes.





TOWN OF BURLINGTON  
CONSERVATION COMMISSION MINUTES  
April 28, 2022

**8. Continued Public Hearing – Notice of Intent 102R Winn Street, replace culvert and restore wetland stream bank DEP# 122-666.**

**MOTION-** Request to continue public hearing for 102R Winn Street to continue hearing until May 12<sup>th</sup> 2022. The motion was voted unanimously 4-0-0. On a roll call vote, Mr. Bernstein voted Yes, Mr. Deb voted Yes, Mr. Boivin voted Yes, and Mr. Cohen voted Yes.

**9. Continued Public Hearing – Proposed revisions to Stormwater Management Bylaw (General Bylaws, Article XIV, section 6).**

Mr. Cohen summarized the discussion to date with respect to changes being proposed to this bylaw. Among the proposed changes are a requirement for engineered plans for stormwater management, which is still under discussion in regards to thresholds for said plans. The commission wants to update rainfall data against which plans are designed to more stringent criteria. Mr. Cohen summarized the need for an engineering plan in case there is a problem with excess water on properties as a result of changes made. If there an engineered stamped plan was not used, then there is no engineer to review the issue. The intent is to capture more projects for the benefits of neighbors and homeowners, so they have assurance that drainage designs are built according to latest engineering standards. Ms. Coleman added that a bond would be a good addition to the plan.

Under the current wording, tree removal should be limited to the maximum extent feasible and practicable, no trees can be removed within the zoning setbacks without a waiver from the commission. The Commission reserves the right to require replacement of trees removed. Mr. Cohen went on to express how the Abbreviated Permit with larger projects needs to have certain features typical of a standard permit.

There was an exhaustive conversation about when the Standard and Abbreviated Permits are required, and tree requirements in which Mr. Cohen proposed tabling some language and it being reviewed so that specific wording can be properly addressed. There will be a general draft about a provision for trees in the law to be reviewed by the commission and will be discussed at a later time. The tree issue might be better contained in a Tree Bylaw. Ms. Coleman expressed her plan to tighten the language the draft for the commission review that can be agreed to and approved by the filing deadline for the September 2022 Town Meeting.

**MOTION-** To continue the hearing for amending proposed revisions to Stormwater Management Bylaw (General Bylaws, Article XIV, section 6) until May 12<sup>th</sup>. The motion was unanimously voted 4-0-0. On a roll call vote Mr. Bernstein voted Yes, Mr. Deb voted Yes, Mr. Boivin voted Yes and Mr. Cohen voted Yes.

**10. Administration**

**a. Planning Board Comments**

There were no comments to the Planning Board.

**b. Subcommittee & Staff Reports and Updates**





TOWN OF BURLINGTON  
CONSERVATION COMMISSION MINUTES  
April 28, 2022

There were no subcommittee or staff reports.

**c. Other Business**

- Mr. Boivin asked if other members would be in favor of changing meeting start time from 7:00pm to 6:00pm or 6:30pm. He proposed a discussion and is in favor of a unanimous vote instead of a simple majority.
- Upon Mr. Bernstein's joining of the meeting online the discussion was continued and Mr. Bernstein stated he would not be able to be on time if the start of meetings was moved to 6:30 due to a scheduling conflict. In light of this, Mr. Boivin withdrew his request.
- In regards to Town Meeting, the warrant article to ask Town Meeting if they would agree to allow a vote for the Community Preservation Act (CPA) on the November 2022 ballot to join the other 188 communities that have opted into the program.
- Mr. Boivin explained the requirements to be a CPA town. The initiative must be passed by a vote of the people, and a small surcharge on real estate tax (1.5%, \$75/household) in the state will match a percentage of the total. The surcharge and the match becomes the local Community Preservation Fund that will be managed by a local community preservation committee which can fund programs in the following areas; open space preservation, recreation, affordable housing and historic preservation. The fact that there is a relatively small increase in the Town real estate tax, there will be exemptions for low income families and seniors with moderate incomes described by the Federal Housing and Urban Development department that are adjusted annually. The first \$100,000 of property value is exempted from this surcharge for residential and commercial properties.
- All questions can be answered by viewing the community website:  
<https://www.communitypreservation.org/>

**11. Upcoming Meetings –May 12th 2022 and May 26<sup>th</sup> 2022**

**12. Adjournment**

**MOTION** - To adjourn the meeting of the Burlington Conservation Commission. The motion was unanimously voted 4-0-0. On a roll call vote Mr. Bernstein voted Yes, Mr. Deb voted Yes, Mr. Boivin voted Yes and Mr. Cohen voted Yes.

*Respectfully Submitted by Tom Prior, Recording Clerk*

