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# TOWN OF BURLINGTON

## Meeting Minutes

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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: May 26, 2022

TIME: 7:00 PM

PLACE: This meeting is being held in person, with the option of joining virtually through Webex.

MEMBERS IN ATTENDANCE: Chairman Larry Cohen, Indra Deb, Ed LoTurco, Kent Moffatt, Jennifer O'Riorden.

MEMBER(S) MISSING: William Boivin, Don Bernstein

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

*These minutes were approved at the June 23, 2022 Conservation Commission meeting.*

### 1. Call to Order

Meeting link:

<https://townofburlington.webex.com/townofburlington/j.php?MTID=mf1ac9b32c318d6ccd73aff5dd04c993b>

Join by phone: +1-408-418-9388 United States Toll

Meeting number (access code): 2339 548 3469

Meeting password: uPpyy3p5uA7

THE MEETING WILL BE BROADCAST LIVE ON THE BCAT GOVERNMENT CHANNEL AND BCAT'S

FACEBOOK LIVE FEED.

LINK TO POSTED VIDEO:

[https://www.youtube.com/watch?v=o9FU\\_EBHOQ4&feature=emb\\_title](https://www.youtube.com/watch?v=o9FU_EBHOQ4&feature=emb_title)





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**Roll Call**

Indra Deb, Ed LoTurco, Kent Moffatt, and Larry Cohen were present.

Jennifer O’Riorden would join the meeting momentarily.

Conservation Administrator John Keeley and Assistant Administrator Eileen Coleman were present.

William Boivin and Don Bernstein were absent.

**4. Request for Certificate of Compliance**

- b. 98-108 Middlesex Turnpike – Yard House USA – Stormwater Permit. This will be continued until the June 9, 2022, meeting of the commission.

**11. Continued Public Hearing – Notice of Intent** – 102R Winn Street – Sung Ok & In Ho Lee – Replace culvert & restore wetlands/stream bank – DEP #122-666.

**MOTION-** To continue the public hearing until June 9, 2022. The motion was unanimously approved by a vote of 4-0-0. Mr. Deb voted Yes, Mr. LoTurco voted Yes, Mr. Moffatt voted Yes, and Mr. Cohen voted Yes.

**2. Citizens Time** Mr. Dan Raske of 3 Mildred Road, a Town Meeting Member of 25 years who expressed concern about the bylaw that was pulled from Town Meeting that mandates that all homes must be 2 feet above the level of seasonally high groundwater unless a variance is issued.

Mr. Keely explained that the reason for the removal of the discussion was to work on the appeal process, specifically to require that the planning board must be presented with an engineering plan to help guide decision making.

Ms. O’Riorden joined the meeting remotely.

**3. Approval of Minutes**

**MOTION –** To approve Minutes for April 28<sup>th</sup>, 2022, Commission Meeting. Mr. Deb voted Yes, Mr. LoTurco voted Yes, Mr. Moffatt abstained, and Ms. O’Riorden abstained, and Mr. Cohen voted Yes. The Motion was passed with a vote of 3-0-2.

**4. Request for Certificate of Compliance**

- a. 18 Lisa Street – Roger Bell – DEP #122-154

Mr. Keeley stated that the 32-year-old Order of Conditions was for an addition. He believes the project does not have a direct intrusion into the wetland and he recommended the issuance of a Certificate of Compliance.





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**MOTION** – To issue Certificate of Compliance for the project at 18 Lisa Street. Mr. Deb voted Yes, Mr. LoTurco voted Yes, Mr. Moffatt voted Yes, Ms. O’Riorden voted Yes, and Mr. Cohen voted Yes. The Motion was passed with a vote of 5-0-0.

**MOTION** – To release full amount of the bond of \$250 for the project at 18 Lisa Street. Mr. Deb voted Yes, Mr. LoTurco voted Yes, Mr. Moffatt voted Yes, Ms. O’Riorden voted Yes, and Mr. Cohen voted Yes. The Motion was passed with a vote of 5-0-0.

**5. Request for Determination of Applicability**

- a. 21 Gedick Road – Michael & Emily Sacca – Installation of above-ground pool.

Michael & Emily Sacca of 21 Gedick Road attended the meeting in person. Ms. Coleman explained the general scope of the project and that the location appears to be 70 feet away from the existing channel. She noted that she did not have any concerns about the project’s proximity to the wetland/bank.

None of the commission members had questions or comments about the project.

Ms. Coleman read the draft Negative Determination, which includes the dimensions of the project being is a 15’ x 30’ aboveground pool on existing lawn behind the house and patio. She explained the general requirements for building in the area including installation of erosion control, no filling or grading under the current agreement, and no discharge of chlorinated pool water into the wetland.

**MOTION** – To issue Negative Conditional Determination for the project at 21 Gedick Road. Mr. Deb voted Yes, Mr. LoTurco voted Yes, Mr. Moffatt voted Yes, Ms. O’Riorden voted Yes, and Mr. Cohen voted Yes. The Motion was passed with a vote of 5-0-0.

- b. 15 Susan Avenue – Lawrence M. Chiodi – Construct detached garage.

Mr. Lawrence Chiodi of 15 Susan Avenue attended the meeting. Ms. Coleman explained the scope of the project and did not have any concerns but did ask if the homeowner planned on widening the already existing driveway. In response, Mr. Chiodi said he would not widen the driveway until within 10 feet of the garage.

None of the commission members had questions or comments about the project.

There was no one in the audience for the project.

Ms. Coleman read the draft Negative Determination. The project will be 23’ x 34’ garage in the 200’ river front area to Saw Mill Brook and the 100’ buffer zone to bank. All construction materials and excavated soils shall be disposed of off site in a legal manner and there shall be no stockpiling of soils and materials within 50’ of the wetland. There is no filling nor significant grading under the current decision, and all existing drainage patterns shall be maintained as they currently are.





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**MOTION-** To issue Negative Conditional Determination for the project at 15 Susan Avenue. Mr. Deb voted Yes, Mr. LoTurco voted Yes, Mr. Moffatt voted Yes, Ms. O’Riorden voted Yes, and Mr. Cohen voted Yes. The Motion was passed with a vote of 5-0-0.

c. Request for Determination of Applicability. 8 Paula Street – Erica Dymont – Installation of in-ground pool.

Erica Dymont of 8 Paula Street stated her proposal is the installation of a 14’ x 30’ fiberglass in-ground pool.

Mr. Keeley stated the pool location is not problematic, but regarding a recently installed sport court, the commission should require restoration plantings to be placed in the largely-bare area of the yard adjacent to the sport court. To which Ms. Dymont agreed.

Mr. LoTurco expressed concern about the dumping of grass into the wetland area and a large amount of crushed asphalt that should be removed from the property when construction begins.

None of the other commissioners had comments or questions about the project.

Ms. Coleman explained the scope of the project. It is a 14’ x 30’ inground pool within 200’ of a riverfront and tributary to the Ipswich River within existing lawn. A significant area of work has been done recently including clearing of trees and construction of a sport court without the permission of the Conservation Commission, nevertheless the Commission has voted to issue a Negative Conditional Determination for the outlined project. The general requirements for building in the area including installation of erosion control, no filling nor grading under the current agreement, and no discharge of chlorinated pool water into the wetland. If any sediments are tracked onto public roadways, it is the homeowner’s responsibility to remove it. There will also be a requirement to plant 4 native trees, and 4 native bushes on site behind the sport court.

**MOTION-** To issue Negative Conditional Determination for the project at 8 Paula Street. Mr. Deb voted Yes, Mr. LoTurco voted Yes, Mr. Moffatt voted Yes, Ms. O’Riorden voted Yes, and Mr. Cohen voted Yes. The Motion was passed with a vote of 5-0-0.

d. 9 Edgemont Avenue – Rian Murray – Invasive plant removal.

Mr. Ryan Murray of 9 Edgemont Avenue expressed concern about an infestation of Japanese Knotweed *Fallopia japonica*, and he has hired Brian Colleran of Ecological Land Management in Newbury. Mr. Colleran suggests herbicide treatment for the fall and to weaken the plants during the summertime ahead of herbicide treatment. He asked whether the Commission preferred spray treatment as well as stem injection treatment. Mr. Keeley explained that the Draft Negative Determination of Applicability application states that there will be no spraying and the Commission generally is not in favor of herbicide within buffer zones, but this application was unique as it did not call for spraying, just stump injection. He asked Mr. Colleran to give more details on his spraying practices and mitigation of adverse impact, to which Mr. Colleran stated that given the location of the infestation is in a “green wasteland” that there would be very little risk to native vegetation.





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Mr. Deb asked how the injection process works, and which technique is more effective. In response Mr. Colleran said that each cane can be injected at a knee-height and the needle is filled with a 50% solution, and that each technique is important in fighting the infestation.

Mr. LoTurco did not have any questions.

Ms. O’Riorden requested more information on the specific herbicide used for this treatment. Mr. Colleran stated that the herbicide in question is Glyphosate that is among the safest for use near water, and that the herbicide becomes inert when in contact with soil. Since the injection would not have any additives such as a surfactant, there would be even less impact on the soil and water.

Mr. Cohen suggested, and Mr. Colleran agreed to use a tarp on the edge of the knotweed infestation to mitigate drift into other, unintended targeted vegetations.

There were no additional comments from audience members nor Commissioners.

Ms. Coleman read the draft Negative Determination. The Determination explained the applicant’s proposal to inject knotweed with a 50% glyphosate solution over two growing seasons. Treatment in the third season could involve an adjustment of the herbicide composition. The work would be done within the outer 200’ riverfront area to a tributary of Sandy Brook. Under the current plan, there is no approval of spraying but with proposed revisions there would be the approval of spraying one time in the current growing season followed by a re-evaluation after a commission site walk with the applicant next growing season. Any further changes must be approved by the Commission.

**MOTION-** To issue Negative Conditional Determination for the project at 9 Edgemont Avenue. Mr. Deb voted Yes, Mr. LoTurco voted Yes, Mr. Moffatt voted Yes, Ms. O’Riorden voted Yes, and Mr. Cohen voted Yes. The Motion was passed with a vote of 5-0-0.

e. 94 Drake Road – Colleen Bridget Sicari & Daniel Sicari – Installation of above-ground pool  
(continued from May 12)

Mr. P.J. DiBernardo was present and explained that a wetland scientist, Mary Trudeau had flagged the wetland and issued a report which was given to the Commission.

Mr. Keeley and Ms. Coleman measured the distance from the wetland and agreed with Ms. Trudeau’s delineation. They found the pool would be 27’ from the wetland, which would put it well within the 40’ no build zone and the wetlands have been disturbed by the cutting of vegetation.

Mr. Deb expressed concern with the location of the pool being within the buffer zone.

Mr. LoTurco expressed concern about the location and the cut vegetation in and around the wetland.





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Ms. O’Riorden asked about the possibility of either a relocation of the pool or different type of pool. Mr. DiBernardo explained that the type of pool would be the least impactful to the yard and work would be done in one day.

There were no comments from audience members.

Mr. Cohen proposed the Commission may want to vote in favor of a waiver to build in the 40’ no build zone. Mr. Keeley added that there should be a 1:1 replacement of cut down trees on site and a demarcation of wetlands to prevent future wetland cuttings, being either a fence or a series of granite posts and shrubs and trees implemented.

Ms. Coleman reviewed the Draft Determination. A 16’ x 24’ aboveground pool would be placed directly behind a 3’ retaining wall within the 100’ wetland buffer zone. The owner has recently cut vegetation and trees within the existing wetland without permission from the Commission, nonetheless the Commission is voting to issue a Negative Determination of Applicability and a waiver for the 40’ no build zone. There will be an addition to the plan to include monument posts at the edge of the wetland roughly 10’ from the wetlands. The wetland scientist must submit a restoration plan that must be approved by Commission staff and will begin during the fall of 2022.

**MOTION-** To issue a waiver of the 40’ No Build Regulation in the Town Wetland Bylaws in exchange for mitigation in the form of 1:1 tree and shrub replacement in the area where vegetation has been removed and the restoration of the 10’ buffer zone with a demarcation 10’ from the bordering vegetated wetland line. Mr. Deb voted Yes, Mr. LoTurco voted Yes, Mr. Moffatt voted Yes, Ms. O’Riorden voted No, and Mr. Cohen voted Yes. The Motion was passed with a vote of 4-1-0.

**MOTION-** To issue Negative Conditional Determination for the project at 94 Drake Road. Mr. Deb voted Yes, Mr. LoTurco voted Yes, Mr. Moffatt voted Yes, Ms. O’Riorden voted No, and Mr. Cohen voted Yes. The Motion was passed with a vote of 4-1-0.

**6. Public Hearing – Notice of Intent** – 13 Pathwoods Avenue – Patricia & Michael McLaughlin – Construct residential addition – DEP #122-pending.

Patricia McLaughlin stated the scope of the project, the plan is a small addition to the rear of the existing dwelling on the site of an existing shed with a deck.

Mr. Keeley explained that the project is within the flagged wetland buffer zone and the area where the addition will go is currently lawn and will be slightly closer to the wetland boundary. According to the plan any stormwater runoff would go onto lawn and would be in the same direction as runoff currently flows. In the plan there is some wetland buffer zone restoration including the removal of an existing fence.

There were no additional comments from the Commission.





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**MOTION-** To continue the hearing for 13 Pathwoods Avenue. Mr. Deb voted Yes, Mr. LoTurco voted Yes, Mr. Moffatt voted Yes, Ms. O’Riorden voted No, and Mr. Cohen voted Yes. The Motion was passed with a vote of 5-0-0.

**7. Public Hearing – Notice of Intent** – 4 Mildred Road – SJ Peacock Builders Inc. – Demolish dwelling & construct new dwelling – DEP #122-pending.

Steven Dresser a civil engineer representing SJ Peacock explained that the applicant would like to demolish an existing home and build a new home on the property, the wetlands have been flagged. The current dwelling is 26’ from the wetland and the current deck is 16’ from the wetlands and the proposed dwelling and deck will be no closer than the current structures. The applicant has proposed the construction of a post and rail fence in the backyard to prevent further encroachment on the wetlands and the roof runoff will percolate to an infiltration system in the backyard and the driveway is graded to a stone trench that flows into the infiltration system. The project was listed without a file number, but there is one for the project; DEP #102-0674.

Mr. Keeley highlighted the project’s restoration of the wetland and reduction in impervious surfaces.

There were no questions from the Commissioners.

Mr. Dan Raske of 3 Mildred Road asked several questions about the plan including about a proposed PVC pipe, surface draining methods and grading of the property. Mr. Dresser said that the pipe will be below the surface of the ground and that the pipe will direct flow into the infiltration system in the backyard.

**MOTION-** To continue the hearing for 4 Mildred Road to the June 9<sup>th</sup> meeting of the Commission. Mr. Deb voted Yes, Mr. LoTurco voted Yes, Mr. Moffatt voted Yes, Ms. O’Riorden voted Yes, and Mr. Cohen voted Yes. The Motion was passed with a vote of 5-0-0.

**8. Public Hearing – Notice of Intent** – 82 Macon Road – Stacie M. Colella – Construct residential addition – DEP #122-pending

Maureen Herald from Norse Environmental Services explained that a Notice of Intent was filed to raise the deck and patio, construct a single-family addition, and two decks while providing rooftop infiltration, grading, and associated utilities within the 100’ buffer zone. The proposal meets the 20’ no disturb zone, and the 40’ no build zone and provides erosion control.

Mr. LoTurco raised some concerns about grass clippings being dumped in the wetland area.

Mr. Cohen broached the possibility of further wetland restoration to replace grass with some vegetation.

Homeowner Ms. Stacie Colella chimed in and said she is willing to plant some vegetation along the stream.





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Mr. Keeley asked if the wetlands behind the headwall can be flagged to check if the dump yard clippings are in fact in the wetland. He also asked for clarification for the placement of the addition, more specifically why according to the plan, the proposed addition is offset to the left.

**MOTION-** Issue a Continuance for the project at 82 Macon Road to the June 9<sup>th</sup> meeting of the Commission. Mr. Deb voted Yes, Mr. LoTurco voted Yes, Mr. Moffatt voted Yes, Ms. O’Riorden voted No, and Mr. Cohen voted Yes. The Motion was unanimously passed with a vote of 5-0-0.

**9. Continued Public Hearing – Stormwater/Erosion & Sedimentation Control Bylaw Application – 4 Maureen Drive – Quinn Builders Co. – Demolish dwelling & construct 2 new dwellings.**

Mr. Tim Quinn of Quinn Builders explained updates to the proposed plan including stone trenches on the left side of the driveway and four additional drywells to the lot for roof runoff. With these revisions there will be a further reduction in runoff.

Ms. Coleman believes the project is permissible as is.

Mr. Cohen asked about the runoff from the driveway and if there is a pipe from the catch basin to the drywell. Mr. Quinn said that can be added to the plan. There were no comments from the audience.

Ms. Coleman read the draft Erosion & Sedimentation Control (Stormwater) Permit. The existing pool is remaining, the house is being demolished and replaced with two new dwellings with driveways and utilities, the current 19,000 ft<sup>2</sup> of impervious surface will be reduced to about 14,000 ft<sup>2</sup> and the runoff from the upper portion of the driveway of lot 4B will be directed to a stone trench. For lot 4A, the rooftop runoff will go to 4’x4’ drywells and the driveway flow will be pitched to the right, allowing water to flow onto grass. The contractor has agreed to a pre-construction meeting with the Commission and staff a week prior to the commencement of construction. There is a proposed surety of \$2,500 for this permit.

**MOTION-** To issue erosion and sedimentation permit under Burlington Bylaw Article XIV section 6. Mr. Deb Abstained, Mr. LoTurco voted Yes, Mr. Moffatt voted Yes, Ms. O’Riorden voted Yes, and Mr. Cohen voted Yes. The Motion was passed with a vote of 4-0-1.

**MOTION-** To close the hearing for 4 Maureen Drive. Mr. Deb voted Yes, Mr. LoTurco voted Yes, Mr. Moffatt voted Yes, Ms. O’Riorden voted Yes, and Mr. Cohen voted Yes. The Motion was unanimously passed with a vote of 5-0-0.

**MOTION-** To require the posting of a \$2,500 performance surety under Burlington Bylaw Article XIV section 6. Mr. Deb Abstained, Mr. LoTurco voted Yes, Mr. Moffatt voted Yes, Ms. O’Riorden voted Yes, and Mr. Cohen voted Yes. The Motion was passed with a vote of 4-0-1.

**10. Continued Public Hearing – Notice of Intent – 24 Terry Avenue – Amie Geary/Northern Business Machines – Construct 3-space parking lot – DEP #122-672.**







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Ms. Geary was in attendance virtually and explained her desire to begin the project immediately but had no further comments.

Mr. Keeley explained the Planning Board wants this project to go back to them for approval and it is Ms. Geary's preference that the hearing be closed at this meeting, and she would meet with the Planning Board later.

Ms. Coleman read the Draft Bylaw Decision and Order of Conditions. The project is an approximately 1,760 ft paved parking area within the 100' buffer zone of a Bordering Vegetated Wetland and within the locally regulated riverfront area to an unnamed stream. The closest work will be about 60' from the Bordering Vegetated Wetland and 180' from the regulatory stream. There is bordering land subject to flooding on the property but the work for this project will not affect that area. There is a proposal for a \$2,000 cash performance guarantee. Materials must be stockpiled more than 50' from the Bordering Vegetated Wetland and 100' of the streambank. No grading is permitted other than what has already been approved for the parking spaces. A no dumping sign will be placed north of the parking spaces to prevent dumping in the wetlands, some additional boulders will be added, and current debris will be removed. No invasive plants will be planted, and no pesticide, herbicide or insecticide are approved for this project.

Ms. Geary agreed to the conditions.

**MOTION-** To close the hearing for 24 Terry Avenue. Mr. Deb Abstained, Mr. LoTurco voted Yes, Mr. Moffatt voted Yes, Ms. O'Riorden voted Yes, and Mr. Cohen voted Yes. The Motion was passed with a vote of 4-0-1.

**MOTION-** To adopt the findings under Burlington Bylaw Article 14 for 24 Terry Avenue. Mr. Deb Abstained, Mr. LoTurco voted Yes, Mr. Moffatt voted Yes, Ms. O'Riorden voted Yes, and Mr. Cohen voted Yes. The Motion was passed with a vote of 4-0-1.

**MOTION-** To adopt the order of conditions for DEP #122-672 under Burlington Bylaw Article 14 and the state Wetlands Protection Act. Mr. Deb Abstained, Mr. LoTurco voted Yes, Mr. Moffatt voted Yes, Ms. O'Riorden voted Yes, and Mr. Cohen voted Yes. The Motion was passed with a vote of 4-0-1.

**MOTION-** To require the posting of a performance surety for \$2,000 under Burlington Bylaw Article 14 for the project at 24 Terry Avenue. Mr. Deb Abstained, Mr. LoTurco voted Yes, Mr. Moffatt voted Yes, Ms. O'Riorden voted Yes, and Mr. Cohen voted Yes. The Motion was passed with a vote of 4-0-1.

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

Ms. Coleman spoke about the progress within the Bylaw Committee and that she would like the Commissioners to review the current draft that has some slight revisions.





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Mr. Keeley proposed that on the abbreviated notice that only direct abutters be notified and that the standard permits current distance of 300' abutter notice be changed to 100' to be consistent with the Wetlands Protection Act guidelines.

Mr. Cohen asked if a bullet list of the changes since the last major iteration would be feasible to highlight the most recent changes that have been made within the previous two weeks. In response, Ms. Coleman agreed she would make a list.

The Commissioners have received an updated copy of the proposed bylaw and Mr. Cohen requested they review it and make any comments.

There was no one in the audience that had any comments or questions regarding the proposed bylaw.

**MOTION-** To continue the public hearing for the Proposed revisions to Stormwater Management Bylaw (General Bylaws, Article XIV, section 6) Mr. Deb voted Yes, Mr. LoTurco voted Yes, Mr. Moffatt voted Yes, Ms. O'Riorden voted No, and Mr. Cohen voted Yes. The Motion was unanimously passed with a vote of 5-0-0.

### **13. Administration**

#### **a. Planning Board**

The subcommittee and staff will be informed of the Commissions decision on the 24 Terry Avenue project.

**b.** There were no subcommittee and staff reports.

**c.** There was no other business.

Mr. Cohen asked when the bylaw needs to be submitted for Town Meeting. Ms. Coleman responded saying it was in June.

**d.** The next Conservation Commission meeting will be held on Thursday June 9, 2022, and Thursday June 23, 2022 at 7:00pm both nights.

**e.** Adjourn

**MOTION-** To adjourn the May 26, 2022, Conservation Commission meeting. Mr. Deb voted Yes, Mr. LoTurco voted Yes, Mr. Moffatt voted Yes, Ms. O'Riorden voted No, and Mr. Cohen voted Yes. The Motion was unanimously passed with a vote of 5-0-0.

*Respectfully Submitted by Tom Prior, Recording Clerk*

