

BURLINGTON CONSERVATION COMMISSION
MINUTES OF JULY 9, 2009
BURLINGTON TOWN HALL
29 CENTER STREET, BURLINGTON, MA

Approved August 13, 2009

Members Present: L Cohen, G. Lima, K. Melanson, A. McNamara
Members Absent: N. Celik, I. Deb, G. Carey

Also Present: J. Keeley, Conservation Administrator and R. Newell, Conservation Assistant

1. Citizen's Time – No one was in the audience for citizen's time.
2. Minutes – The minutes of June 25, 2009 were not ready for approval.
3. Request for Determination of Applicability – 31 Fairfax Street – Above Ground Swimming Pool

James Casella, the owner, and Thomas Murphy, Esq. of Shea, Murphy and Gulde, were present. T. Murphy described the property. T. Murphy stated the house was bought five years ago. The previous house was torn down and a new one was constructed. A 20-foot "no-disturb" area was added to act as a buffer to the adjacent wetland. He explained that the applicant is requesting permission to install an aboveground pool in the backyard. The grade of the yard slopes away from the house. T. Murphy said that no fill will be brought in for the installation of the pool. The slope will be excavated to create a level base for the pool. A corner of the pool is proposed to be located in the no-disturb. The deck for the pool is near the house and is above grade. J. Keeley stated there is a stream at the rear of the property, which may be perennial, but he added that the stream's status probably does not matter because the bordering vegetated wetland is closer to the pool than the inner 100 feet of the Riverfront Area, and is therefore the more restrictive resource area. The proposed pool is approximately 10 feet from the wetland. J. Keeley said he would recommend allowing the work with no further encroachment in the no-disturb. He added that the applicant should extend the existing fence around the length of the pool once it is installed. G. Lima asked if the existing, straight section of the fence is coming down and J. Casella said, "no". G. Lima would like to see the fence extended straight across the rear of the yard in order to protect the no-disturb area. She stated she would not be in favor of any more disturbances in the no-disturb area. K. Melanson asked about ledge and J. Casella told her no there was no ledge during the construction of the house. A. McNamara asked if the pink markers delineated the location of the pool and J. Casella told her yes. R. Newell reviewed the draft Negative Determination. T. Murphy had several questions regarding planting in the restoration area. R. Newell said the area beyond the fence should be left alone. K. Melanson said the applicant should be careful not to discharge any water from the pool near the wetland. J. Casella said water

will go to a leaching pit. L. Cohen stated he wants a finding in the decision saying this decision is an exception to the Commission's no-disturb policy.

MOTION TO APPROVE A NEGATIVE DETERMINATION OF APPLICABILITY UNDER BURLINGTON BY-LAW ARTICLE 14 AND THE MA WETLANDS PROTECTION ACT FOR THE PROJECT AT 31 FAIRFAX STREET – APPROVED 4-0-0

4. Request for Certificate of Compliance - 62 Mountain Road – DEP File No. 122-425

The applicant was not present. J. Keeley described the lot and the construction of the single-family house. He said, because of the topography, it was a difficult lot, but the project came out well, and there are no outstanding issues. J. Keeley said he received all inspection reports.

MOTION TO APPROVE AND ISSUE A CERTIFICATE OF COMPLIANCE UNDER BURLINGTON BY-LAW ARTICLE 14 AND M.G.L. CH. 131 S.40 FOR THE PROJECT AT 62 MOUNTAIN RD– DEP FILE NO. 122-425 – APPROVED 4-0-0

8 Harriett Avenue – DEP File No. 122-422

Rich Kirby of LEC Environmental Consultants, Inc. and Richard Bagni, the applicant were present. R. Kirby explained that the applicant is requesting a Partial Certificate of Compliance. He stated the replication has been done and is doing well. He further stated that as-built plans and a letter explaining deviations from the proposed plan were submitted to the Conservation office. R. Kirby said the elevation of the basement was raised by approximately three feet because of groundwater. He also stated that pavement associated with the driveway was reduced by 300 sq. ft. He stated the replication area is slightly larger than proposed due to the retaining wall being closer to the house than originally planned. The 2009 monitoring report for the replication area was also sent to the Conservation office. He said plants are growing well and the soils are hydric. J. Keeley said this is a new lot and 1,200 square feet of wetland were filled in to create room for the house and a lawn. J. Keeley said the property was sold after the initial permitting was completed. J. Keeley stated the proponent of the Notice of Intent is not the applicant for the Certificate of Compliance. He said that the construction of the house is complete, but the wetland replication area is not. J. Keeley stated the report he received doesn't give a breakdown of dominance of wetland plants, and there may *not* be a dominance of wetland plants based on what he observed during the recent site visit. J. Keeley said it is premature to issue a Certificate of Compliance at this time. L. Cohen commented this is not a normal application of a Partial Certificate of Compliance. He clarified that it is not as if the Notice of Intent was for multiple houses in a subdivision, and the applicant is asking for the release of one lot. It is just one house. He then asked why the applicant is requesting a Partial Certificate, and if it is just to clear the title. R. Kirby told him, "Yes, the buyer is leery because of the outstanding Order of Conditions." A. McNamara commented not all of the plantings are wetland plants, such as rye. She also stated she went to the site on Tuesday and the replication area looks good. R. Kirby said they intentionally planted rye to stabilize the soils through the winter months. R. Kirby stated the rye will die in two years and be replaced by wetland plants. K. Melanson commented the wetland looks pretty stable, but would like to wait two years to

issue a full Certificate of Compliance to include the wetland replication. G. Lima stated there are areas near the wall which look dry. G. Lima stated the jewelweed stops and there are no wetland plants, but upland plants are growing. G. Lima commented she saw a drip line under the gutter on one side of the house. J. Casella told her it is probably due to all the rain we have had lately. No one was present in the audience for this project. L. Cohen commented the Commission was close to denying this project initially because of the substantial wetland impacts, but they were convinced that the replication area would work. He further stated he is not in favor of approving this Partial Certificate of Compliance because it would set a bad precedent. He suggested the Conservation Staff write a letter to the applicant stating the conditions which have been met except for the replication issues. J. Keeley commented that the Conservation Department signed off on the occupancy permit for this property. R. Newell said he has spoken to the potential buyer about these issues. J. Keeley told the applicant the 401 permit requires him to place a deed restriction on the wetland area.

MOTION TO ISSUE A PARTIAL CERTIFICATE OF COMPLIANCE FOR 8 HARRIETT AVENUT - DEP FILE NO. 122-422- GL/KM 1-3-0 (L. COHEN, G. LIMA, A. McNAMARA OPPOSED)

5. Planning Board Comments – J. Keeley commented the Planning Department is reviewing two Planned Development Districts. One for the old Burlington Dodge site, and one for the New England Executive Park. The applicants are coming before the September Town Meeting. L. Cohen had several comments on the proposed PDD's. J. Keeley said he would distribute paperwork to the Commission so they could submit any comments to the Planning Board.

6. Administration

a. Meeting Schedule – August 13, 2009 (L. Cohen may not be at meeting) and September 10, 2009

b. Sub-Committee Reports – There were none

c. Other – Ratification of Emergency Certification for the cleanup of a fuel spill on the Rt. 128/Rt. 3 on-ramp. J. Keeley stated a truck's fuel tank ruptured. Most of the fuel was contained on the pavement but some spilled on the side of the wetland. The area will be hand cleaned.

MOTION TO RATIFY EMERGENCY CERTIFICATION 4-0-0

A motion was made to adjourn the meeting at 8:05 P.M. – 4-0-0

Minutes respectfully submitted by:

Ellen F. Longo, Principal Clerk
Conservation Department