

The Conservation Commission is considering changes to our Stormwater Erosion and Sedimentation Control Bylaw (Stormwater Bylaw). A hearing to take input and discuss responses to these proposals was opened on February 10 and will continue next Thursday, February 24th at 7:35 pm.

Our Stormwater Bylaw has been in existence for 15 years. It is a requirement for Burlington to have this bylaw by the "MA General Permit For Stormwater Discharges From Small Municipal Separate Storm Sewer Systems (MS4)" under the Federal Clean Waters Act and the Massachusetts Clean Waters Act.

Our Stormwater Bylaw specifies three levels of applicability:

Standard Permit – greater than 20,000 ft² of land disturbance and requires a public hearing, a Professional Engineer stamped plan, an as-built plan noting deviations and a performance bond.

Abbreviated Permit – from 10,000 to 20,000 ft² of land disturbance giving an administratively-issued permit and does not require a public hearing or a professional engineer or a performance bond.

No Permit – less than 10,000 ft² of disturbance where the bylaw is only invoked when a violation has occurred.

As everyone in Burlington knows, construction has morphed into larger projects, with single family house lots being built out to the zoning setback limits. This construction has led to an increase in impervious surfaces that produces stormwater runoff. If the water runs into the Town's piped drainage system, it is subsequently discharged into streams and wetlands that are in someone else's back yard. So, increasing runoff from one's property directly affects someone else in town.

The Conservation Commission and the Board of Health have also seen an increase in the number of intense neighbor-to-neighbor disputes stemming from stormwater flooding adversely affecting neighboring properties. The main causes of runoff affecting neighbors are increased impervious area, grading changes, and failure to capture runoff on the originating property (infiltration). Some disputes have involved lawyers. At the meetings and hearings generated by these disputes, both Boards have tried to resolve the issues presented in the context of existing bylaws (Stormwater Bylaw for the Conservation Commission) and of regulations (Stormwater Regulations for the Board of Health).

The Stormwater Bylaw focuses on compliance with the MA Stormwater Standards to control runoff quantity and quality, and permitting land disturbing activities above a threshold quantity. A routine permit condition is that no stormwater may run off onto a neighboring property. We do not see neighbor to neighbor disputes when we can rely on the tools of a fully permitted project to resolve the issue. When a problem arises for a project under a Standard Permit, the licensed engineer would review the issue and resolve it if needed. For projects that were not built under the guidance of a professional engineer, it is much more difficult to resolve, implement and enforce remedial action after the fact.

In an effort to protect residents from the adverse effects of construction projects that increasingly add to the flooding issues in Town, the Conservation Commission is considering changes to our current Stormwater Bylaw. We are considering:

- Lowering the threshold under which a full permit is required from 20,000 ft² of land disturbance to 15,000 ft² and/or added impervious surface greater than 900 ft². So a full permit, with engineer-stamped plans, would be required for an addition measuring 20 ft x25 ft with a single car additional driveway of 14 ft x30 ft or for construction of a single family house or larger.

- Lowering the threshold under which an abbreviated permit is required from 10,000 ft² of land disturbance to 5,000 ft² and/or added impervious surface of greater than 500 ft² but less than 900 ft². A PE stamped plan would be required for projects in this category proposing an increase in impervious surface 700ft² or more, or for projects with a total land disturbance of 7,000 ft² or more, or for projects including any filling of more than 6 inches. A bond would also be required for all projects receiving an abbreviated permit.

We estimate that approximately 50/year new projects will be covered under the Standard Permit threshold that were not covered under the current permit.

A couple of important points

The bylaw which has been in place since 2007 gives the Commission the authority under M.G.L.c. 44, Section 53G to retain a Registered Professional Engineer or other professional consultant to advise the issuing Commission/Board on any or all aspects of the plans submitted for a Standard Permit. This is not a newly proposed change. In the 15 years that this bylaw has been in existence, the Burlington Conservation Commission has never used this provision. We are fortunate to have professional staff and Commission members who are experienced in reading and interpreting plans.

The Conservation Commission has seen an increase in homeowner flooding. An amended Bylaw will protect neighbors from flooding due to poorly designed or improperly constructed structures.

In some cases, this flooding to a homeowner's property and to adjacent lands is a direct result of the removal of trees. A mature oak tree can take-in from 50 gallons to 200+ gallons per day. After cutting, all that water now remains in the ground and in yards. The current Stormwater Bylaw has no provision for tree replacement or limit to tree removals. The Conservation Commission is considering a change that would give the Commission the authority to require some tree replacement. It is not the intent to deny projects based on proposed tree removals.

We are aware that some projects being built out to the edge of the zoning allowed lot lines have been creating substantial flooding problems for their own and abutting properties. The Conservation Commission is also mindful that we do not want to create an undue burden on homeowners. The Commission is seeking a balance with changes to the Stormwater Bylaw that will allow projects offering the most risk of issues to be done correctly to accepted engineering standards so minimal problems occur.

The Conservation Commission has and will continue to approve waivers from some of these requirements when waiver requests are convincingly presented and properly justified.

The Conservation Commission has been working on these proposed changes for the last few months. We have had meetings with the Board of Health who has provided helpful comments. We have put this issue on our agenda for the last few months. We have now opened a public hearing on these changes and would very much welcome comments from our stakeholder public.

Larry Cohen, Chair
Burlington Conservation Commission