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The Commonwealth of Massachusetts
Executive Office of Public Safety and Security
Fire Prevention Regulations Appeals Board
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CHIEF KEVIN C. ROBINSON
CHAIRMAN

Docket # 2013-02
Holly Glen Subdivision (formerly 36 Muller Road)
Burlington, Massachusetts

FIRE PREVENTION REGULATIONS APPEALS BOARD

A) Statutory and Regulatory Framework

This is an administrative appeal held in accordance with Massachusetts General Laws Chapter 30A and Chapter 22D, section 5, relative to the Burlington Fire Department's denial of two (2) sets of permits to install temporary and permanent propane tanks used to store Liquefied Propane gas ("LP gas") at the Holly Glen Subdivision (formerly 36 Muller Road), Burlington, Massachusetts. The property is owned by Muller Glen, LLC. Said owner and Eastern Propane Gas Inc. (hereinafter referred to as the Appellants), are filing this appeal relative of the Fire Department's decision to deny both sets of permits.

B) Procedural History

By an e-mail dated November 14, 2013 and received by the Appellant on the same date, Captain Hanafin, on behalf of the Burlington Fire Department issued a decision denying two sets of permits to install tanks used to store LP gas at the subject location.

On December 13, 2013, the Appellant filed an appeal of the department's determination with the Fire Prevention Regulations Appeals Board. The Board held a hearing on March 27, 2014, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant was: Donald R. Pinto, Esq.; Jeff Rhuda, Muller Glen, LLC; Theodore Lemoff (TLemoff Engineering), Muller Glen, LLC; and Jim Blake of Eastern Propane Gas, Inc. Attorney Pinto indicated that he was representing both Muller Glen and Eastern Propane. Appearing on behalf of the Burlington Fire Department was Brian Winner, Esq., Town Counsel and Captain Michael Hanafin.

Present for the Board were: Chief Kevin C. Robinson, Appeal Panel Chair; Alfonso Ibarreta, and Bart Shea, designee. Peter A. Senopoulos, Esq., was the Attorney for the Board.

C) Issue(s) to be Decided

1. Whether the decision of the Burlington Fire Department to deny permits for storage of seven (7) 120 gallon above ground LP gas storage tanks on the subject property should be affirmed, modified or reversed?
2. Whether the decision of the Burlington Fire Department to deny a permit for the permanent underground storage of 16,500 gallons of LP gas on the subject property should be affirmed, modified or reversed?

D) Evidence Received

1. Application for Appeal filed by Appellant
2. Letter to Jeff Rhuda from Town of Burlington (11/7/2013)
3. E-911 New Official Addresses from Town of Burlington (8/28/2013)
4. E-mail Correspondence to Kristin Kassner and Jeff Rhuda (sender unknown)(11/12/2013)
5. E-mail from Jim Blake to Captain Hanafin, Burlington Fire Department (11/14/2013)
6. E-mail Correspondence chain between Captain Hanafin, Burlington Fire Department, Mark T. Vaughan, Jeff Rhuda and Jim Blake – including denial to issue permits for project (11/14/2013)
7. Correspondence to Muller Glen LLC from Town of Burlington (11/16/2013)
8. Site plan showing location of proposed gas mains and other utilities (Undated)
9. 1st Notice of Hearing to the Parties
10. 2nd Notice of Hearing to the Appellant
11. 2nd Notice of Hearing to the Burlington Fire Department
12. Copy of Guidance Document that accompanies Hearing Notices
13. Appellant's Additional Submissions (A-K)
- 13A. Letter to Board from Attorney Pinto
- 13B. Letter from Eastern Propane Gas (dated 3/7/14)
- 13C. Application for a Permit of Propane and removal of a temporary installation – 3 Azalea Drive
- 13D. Application for Permit of Propane – 5 Azalea Drive
- 13E. Application for Permit of Propane – 1 Marigold Way
- 13F. Application for Permit of Propane – 3 Marigold Way
- 13G. Application for Permit of Propane – 5 Marigold Way
- 13H. Application for Permit of Propane – 9 Marigold Way
- 13I. Application for Permit of Propane – 7 Marigold Way
- 13J. Signed Receipt from Burlington Fire Department that Eastern Propane Gas permits were received (3/7/14)
- 13K. E-mail from Jim Blake to Captain Michael Hanafin (3/12/14)
14. Appellant's Additional Submissions (J-L)
- 14J. Plot Plan relative to the Area (12/18/13)
- 14K. Plot Plan relative to the Area (dated 11/18/11 but revised 3/10/14)
- 14L. Resume of Theodore Lemoff
15. Letter from the Burlington Board of Selectmen on conditional license (2/11/14)
16. Present Pictures of the Development (A-D)
- 16A. Photograph (with white vehicle)
- 16B. Photograph (with chain link fence)

- 16C. Photograph (with the road)
- 16D. Photograph (with gray/blue house in the foreground)
- 17. Utility Plan – Muller Glen, LLC (3/11/13)

E) Subsidiary Findings of Fact

- 1) By a series of correspondences, including a correspondence dated November 14, 2013 and received by the Appellant on the same date, Captain Hanafin, on behalf of the Burlington Fire Department, denied the issuance of permits for the installation of propane tanks at the Holly Glen Subdivision, Burlington, MA. The denial involved two sets of permit applications. One was an application for a permit to install 19 permanent underground propane tanks, totaling 16,500 gallons and another set, consisting of seven (7) permit applications to install seven (7), 120 gallon aboveground propane tanks to be used for storage on a temporary basis pending the installation of the permanent underground tanks and related piping system. Application for the temporary tanks were made for the following addresses: 3 Azalea Drive, 5 Azalea Drive, 1 Marigold Way, 3 Marigold Way, 5 Marigold Way, 9 Marigold Way, 7 Marigold Way.
- 2) On December 13, 2013, the Appellant filed an appeal of the department's determination with the Fire Prevention Regulations Appeals Board. The Board held a hearing on March 27, 2014, at the Department of Fire Services, Stow, Massachusetts.
- 3) The Muller Glen, LLC project involves the construction of 32 freestanding single family homes. Currently, 80% of the roadways are already built. As of the date of the hearing, 16 houses are in various phases of construction. The development land is currently owned by the Appellant, Muller Glen, by means of a master deed. The buildings will be owned by means of a condominium arrangement and the land will continue to be owned through a master deed, rather than by subdivision.
- 4) The original development plans submitted to the Burlington Planning Board indicated that fuel for heat would be provided by means of the installation of natural gas pipelines to each dwelling. The plan, which included said natural gas plan, was approved by the Burlington Planning Board. Subsequent to this, the Appellant, after receiving estimates for the installation of the natural gas, decided that the installation of a system of underground liquid propane tanks and associated piping would be more cost effective.
- 5) The Appellant applied for a license (see M.G.L. c. 148, s. 13) from the Burlington Board of Selectmen to store 16,500 gallons of propane gas in the aggregate. The license application indicated that such storage will be by means of the installation of fourteen (14), 1,000 gallon tanks and five (5), 500 gallon tanks.
- 6) By letter dated February 11, 2014, the Burlington Board of Selectmen "conditionally" approved a license to store the LP gas. However, the license included the following conditions: "Approval necessary for a minor engineering change by the Conservation Board" and "Approval necessary by the Planning Board regarding special permitting."

- 7) The representatives for the Burlington Fire Department indicated that the department denied the permit to install the underground tanks totaling 16,500 gallons of LP gas since they believe that the storage of the gas, in such quantity, requires a license to be issued by the Board of Selectmen pursuant to MGL c. 148, s. 13. The representatives for Burlington Fire Department believe that issuance of such license is a pre-condition to the fire department's issuance of the permit in accordance with 527 CMR 6.08(1)(b). They believe that the license issued by the Board of Selectmen was conditioned upon approval of the engineering change by the Conservation Board and approval by the Planning Board
- 8) As of the date of the hearing, a determination relative to the stated conditions has not been issued by the Burlington Planning Board.
- 9) It was the Appellant's position that the license is valid and that the Burlington Fire Department has not issued the permits based upon safety concerns regarding the installation of the LP gas tanks. The Appellant indicated that such concerns are unreasonable and not supported by facts or applicable laws and regulations.
- 10) With respect to the denial of the seven (7) permit applications to install seven (7), 120 gallon aboveground propane tanks to be used for storage on a temporary basis pending the installation of the underground tanks, the representatives for the Burlington Fire Department indicated that initially there were concerns about such storage. However, at the hearing, the Town indicated that there are no technical or code based issues other than those relating to the plans as approved by the Planning Board.
- 11) Both parties indicated that issues relating to the safety of an LP gas installation and use in this development has been raised at the Planning Board hearings relating to the change from natural gas to LP gas. However, the representatives for the Burlington Fire Department indicated that the reasons for the denial of the permits are based upon procedural grounds. They indicated that permits have not been issued since the planned installation of LP is contrary to the development plan approved by the Planning Board and will not be issued until the change is approved by the Planning Board, as required by the condition on the license.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The provisions of 527 CMR 6.08 (1) prohibits the installation or connection of any LP gas storage equipment unless a permit has been obtained from the head of the fire department. Subsection (1)(b) requires that a M.G.L. c. 148, s. 13 license "must **first** be obtained" if the amount of LP gas to be stored exceeds 2,000 gallons in the aggregate. A copy of the license shall be submitted with the application for the permit.
- 2) 527 CMR 6.08(2)(a) prohibits a person to keep or use any LP-gas, or install or connect any LP gas storage equipment unless in accordance with the requirements of 527 CMR 6.00. Subsection (2)(b) also establishes 2,000 gallons of LP gas, as the aggregate threshold maximum amount that may be kept, stored, manufactured or sold, in one or more containers without a license as long as a permit is obtained.

- 3) Based upon the interplay of the applicable provisions of 527 CMR 6.00 and M.G.L. c. 148, s. 13, a license is required to store LP gas on land in an aggregate amount in excess of 2,000 gallons. The land, which is the subject matter of this appeal, is currently owned by the Appellant, Holly Glen, by means of a master deed. The buildings will be owned by means of a condominium arrangement and the land will continue to be owned through a master deed, rather than by subdivision. The license must be issued in this case by the Board of Selectmen. The permanent installation of 19 underground propane tanks throughout the land totals 16,500 gallons, which is well over the 2,000 gallon threshold necessary to trigger the requirement of a M.G.L. c. 148, s. 13 license. Accordingly, a license issued pursuant to the provisions of M.G.L. c. 148, s. 13, is clearly required prior to the issuance of a permit to install the permanent tanks and piping to store 16,500 gallons of LP gas at the subject location.
- 4) By letter, dated February 11, 2014, the Burlington Board of Selectmen “conditionally” approved a license to store the LP gas. However, this approval was subject to the following conditions: “Approval necessary for a minor engineering change by the Conservation Board” and “Approval necessary by the Planning Board regarding special permitting.” Based upon the testimony of the parties, the placement of the condition regarding Planning Board approval was related to the change caused by the owner’s desire to install the permanent underground LP gas tanks and system. Accordingly, the Board finds that the Burlington Fire Department’s action in withholding the issuance of the permit for the permanent installation of the tanks for the storage of 16,500 gallons of LP gas in the aggregate was correct pending resolution of the condition with the Planning Board.
- 5) With respect to the denial of the seven (7) permits to install seven (7), 120 gallon aboveground propane tanks used for storage on a temporary basis pending the installation of the underground tanks, the Board finds such action was in error since this permit amount involves the installation of less than the 2000 gallon threshold amount that triggers the license requirement. Additionally, the representatives of the Burlington Fire Department provided no grounds to deny such permit based upon the Board’s regulations (527 CMR) or on any other technical or public safety reason.

G) Decision and Order

Based upon the aforementioned findings and reasoning, the Board **modifies** the decisions of the Burlington Fire Department, as follows:

1. The Board hereby **upholds** the determination of the Burlington Fire Department to deny, at this time, the permits to install or store permanent underground installations consisting of 16,500 gallons of propane on the subject property for the above stated reasons.
2. The Board hereby **reverses** the decision of the Burlington Fire department to deny permits for the seven (7), 120 gallon tanks (which includes the removal of the existing 3,500 gallon tanks) on the property. However, the Board does note that this decision could be subject to determinations of other boards or public bodies not subject to the appellate jurisdiction of the Board.

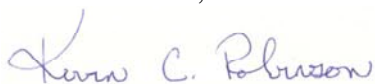
H) Vote of the Board

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|---|----------|
| Chief Kevin C. Robinson, Chairman | In Favor |
| Deputy Chief Bart Shea, designee, Boston Fire Dept. | In Favor |
| Alfonso Ibarreta | In Favor |

I) Right of Appeal

You are hereby advised you have the right, pursuant to section 14 of chapter 30A of the General Laws, to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order.

SO ORDERED,



Chief Kevin C. Robinson, Chairman
Fire Prevention Regulations Appeals Board

Dated: May 5, 2014

**A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY E-MAIL AND
CERTIFIED MAIL, RETURN RECEIPT REQUESTED TO:**

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