



**Town of Boylston** Conservation Commission [conservation@boylston-ma.gov](mailto:conservation@boylston-ma.gov)  
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## **SPECIAL MEETING MINUTES**

### **SEPTEMBER 16, 2021**

Members Present: Chip Burkhardt, Mark Coakley, Joe McGrath

Members Absent: Jeffrey Walsh

Others Present: Paul Dell'Aquila (Town Planner), Kim Ames (Planning Board Chair), Stephen Madaus (Town Counsel)

Recorder: Melanie Rich

The Chair opened the meeting at 6:02 p.m. Chip Burkhardt announced that the discussion tonight is for issues related to Compass Pointe only; the history is already known. This is the first meeting for the Planning Board, Water District, and the Commission to work towards closure; nothing will be resolved tonight. For the record, Mr. Burkhardt said an email was received this afternoon from Mr. Haynes asking that the meeting be postponed. Mr. Burkhardt said the process for a public meeting was followed. The Commission did not invite Mr. Haynes to the meeting, but again said the process was followed, the meeting was posted, and the meeting will continue; it will be the first of many.

The major issue from a Conservation standpoint is site stabilization and construction with the approved subdivision plan. After numerous meetings and site walks, there are areas behind a number of residences that have slopes that we are still not sure they were constructed to the right slope; we believe they are much steeper. Erosion is occurring on the slopes. At many meetings the Commission talked with Matt Marro (Mr. Haynes wetland and stabilization consultant), specifically about areas behind 46B Cheryl's Way, 3A&B Cheryl's Way, 5A&B Cheryl's Way; issues with stabilization between 7&8 Cheryl's Way; slope stabilization behind 8A&B Cheryl's Way, 4A&B Cheryl's Way, 2A&B Cheryl's Way; behind 44 & 42 Compass Circle. The issues have not been satisfied. The way the developer knows what to do is by the Order of Conditions and Stormwater Permits that have been issued; they reference a certain set of plans, in most cases the subdivision plan, which specifies the way it is to be built. The Commission has no as-built plans or statement from the professional engineer that tell us that everything has been constructed substantially with the plans that were provided to the Commission and Planning Board, nor have they asked for a Certificate of Compliance yet. An overlapping issue for Conservation is the cleaning of the catch basins, retention, and detention ponds on the site before acceptance. The developer is well aware of the open issues. There is a \$150,111 Conservation bond.

Paul Dell'Aquila (Town Planner) said there are many overlapping issues with Planning, Conservation, Water District and Board of Health. He suggested outlining all the outstanding issues and then decide the correct course of action to take. The original decision was issued in 2005. Mr. Dell'Aquila sent correspondence to Mr. Haynes in May outlining his questions; they met on site and discussed some of the issues. Planning Board issues are with road maintenance (roads are not expected be plowed until accepted by the town), documentation for easements is needed, and issues with land conveyed to the town; some has been conveyed to the Water Department. There is still some land around the "dam area" and pond on the northwest part of the site that is supposed to be conveyed to the town; there is a question of the Planning Board bond (currently they have a Letter of Credit for \$107,785) to bring the road up to standards of the town. He said the developer is looking to have the town accept the road in

the spring. There are some issues from the Water District that the land that was conveyed to them needs to be cleaned up; there are questions with testing that was to take place that may be part of the HOA; Conservation issues were noted; and there are BOH concerns raised by residents about the septic and FAST systems. All those issues were presented to Mr. Haynes ahead of his meeting with him. After that meeting, Mr. Dell'Aquila reached out to the other boards to organize a meeting with all the departments involved.

Stephen Madaus (Town Counsel) said in February 2021, at the request of the Board of Selectmen, sent Mr. Haynes a letter on behalf of the town since the town was anticipating that the developer would be seeking to have the ways accepted by the town in the spring. He explained the standard process that takes place. Attorney Madaus said he found that the developer did not intend to have it accepted this spring. He has had no response to his February 2021 letter. The town is trying to figure out what is required to get the ways closer to acceptance; this is not typical. The town is trying to get this project closed out in the best way possible considering what is outstanding and what the town has in security to ensure completion of some of that work. Attorney Madaus does not think we have security for all the work for various reasons. The security benefits the public interest, not private. He sees this meeting as the beginning of the end which will be a process. The developer is required to deliver to Attorney Madaus' office evidence of good title; that they reserve an interest in the way by either the fee or the easement to street purposes.

The process was discussed. Mr. Dell'Aquila will compile the list. He was told verbally in May that the developer plans the road acceptance in the spring of 2022; a written letter as to his intention is needed; Mr. Dell'Aquila will follow up. If for some reason the developer does not get the road accepted, the town will need to get an estimate from Graves Engineering to make a determination if it is appropriate to call the bond or ask for some other type of surety.

Mr. Coakley asked about access to the properties through the HOA. Attorney Madaus said typically the HOA gets easements to the detention ponds because they are obligated to maintain them. There is an HOA for the FAST systems and an HOA for the entire subdivision. Mr. Coakley suggested of the issues on the Planning Board side, is an analysis if the easements that are granted to the HOA are significant to cover all the work that needs to get done. Attorney Madaus would expect is it not over lots for slope stabilization; the individual lot owners would need to give permission. Mr. Coakley asked if there was any power through the Stormwater Control Bylaw or Wetlands Protection Enforcement to gain access. Mr. Burkhardt did not think either one would give you access. The homeowner would be responsible.

Joe McGrath said his understanding is that because the developer has not requested town acceptance of the right-of-way and has not done anything to relieve any of the permit responsibilities that are currently in place under the WPA and Stormwater Bylaw, he is still responsible for completing those activities. Attorney Madaus said he will have to research the Conservation aspect because those lots were sold. Kim Ames (Planning Board) commented that the Orders of Conditions should be on the title certificate as outstanding, and it is up to the builder to submit an as-built to get a Certificate of Compliance. Attorney Madaus said the private rights are enforceable by lot owners against the developer or seller, separate from the public rights of the Conservation Commission and the Planning Board; those bonds are for completing the public improvements.

Issued identified relate to stormwater management of the entire site which includes the slope erosion; the Order of Condition and Stormwater Control Permits are going to expire soon and no request to extend has been received; we need to make sure the transfer of the Operation & Maintenance Plan of the drainage structures to the HOA is conveyed properly.

The Planning Board original approval expired in 2014/2015 and no request to extend or modify has been received. The expiration happened before the developer bought the property; he said he did not know that but would do what the Planning Board asked.

Planning items include: question of the expiration of the existing permit; the town is not responsible for snow removal until it is accepted (but is already happening); need verification of the covenant for drainage easements and facilities; dam and detention areas shown to be maintained by HOA; clarify how the two HOAs interact with each other; crosswalks being striped per highway (they did it themselves); language of the decision says lots A,B,C,D are to be conveyed to the town (it is unclear where A,B,C,D are on the plan); part of the land has been transferred around the Water District's facility; the piece Mr. Dell'Aquila identified has not been conveyed yet; and clarifying the bond status. FAST systems issues will be deferred to the Board of Health. Joe McGrath will follow-up on that.

Water District items include: the land conveyed to the Water District needs to be cleaned up; there was a question about testing (who pays for the testing and who is responsible for performing testing on the wells). Scott McCubry (Superintendent, Water District) said there were three monitoring wells around the wells in Morningdale. They were supposed to be tested by Mr. Haynes four times/year, but their engineer has been testing them for the last 4-5 years. They want to know who will be responsible for testing them going forward. The cost \$1,500+ every time they are tested for the nitrogen level. The wells were put in because some of the septic systems were within the 400-foot recharge area. The only positive thing Mr. Haynes did was for all the homes that were built that were around the 400-foot buffer, they have a FAST system; it is away from the wells. Their concern now is with the fertilizer. Mr. McCubry said a barrier needs to be put up on the property that was deeded to the Water District.

Elaine Jones (250 Sewall Street) asked who is responsible to notify all the residents about the HOA. Attorney Madaus said there should be a reference on the title report. She also thought the testing should be paid by the people who use it, not only Compass Pointe residents. Mr. McCubry said the Order of Conditions says it's up to the homeowner to test the well. Theresa Prunier (Water Commissioner) said there is a Wellhead Protection Act that is incorporated within the Boylston Water District. It shows allowable uses and information on zoning. She said it would be educational for the residents to read it.

Matt Mecum (Board of Selectmen) said we are here tonight to identify what has not been completed. Any developer needs to be held accountable for meeting an Order of Conditions. The town boards and Commissions need to be held accountable as well to make sure we are proactive in holding the developer accountable to the Order of Conditions so we don't find ourselves in this situation in the future. Mr. Burkhardt commented that is why we are looking at the punch list of items and what where the conditions. Mark Anttila asked what the town's position is on the Orders of Conditions not being followed (it will be included in the list).

Mr. Dell'Aquila told the residents that they could reach out to him directly if they had any questions and he will circulate them amongst the boards and the Commission. He will prepare a draft list and forward it to the boards and Commission as well.

Mark Coakley made a motion to adjourn; Joe McGrath seconded; all voted in favor; motion approved.

The meeting was adjourned at 7:42 p.m.