

LUNENBURG CEMETERY COMMISSION

Nancy Foss-Yasko, Chair
David Dorren, Vice-Chair & Clerk



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MEETING MINUTES

Monday, February 05, 2024– 9:00 AM
Lunenburg Town Hall – Bilotta Meeting Room

In accordance with the requirement of the Open Meeting Law, please be advised that this meeting is being recorded and broadcast live over the Lunenburg Public Access channel, on FacebookLive on the Public Access Facebook page (<https://www.facebook.com/Lunenburg-Public-Access-Cable-157427270975305/>) and will be uploaded to the LunenburgAccess YouTube after the meeting.

A member of the public who wishes to record a meeting must first notify the chair and must comply with reasonable requirements regarding audio or video equipment established by the chair, so as not to interfere with the meeting. The chair is required to inform other attendees of any such recording at the beginning of the meeting. If someone arrives after the meeting has begun and wishes to record the meeting, that person should attempt to notify the chair prior to beginning recording, ideally in a manner that does not significantly disrupt the meeting in progress, (such as passing a note for the chair). The chair should endeavor to acknowledge such attempts at notification and announce the fact of any recording to those in attendance. Is there anyone today that wishes to record this meeting with their own devices?

The agenda lists all the topics which may be discussed at the meeting and are those reasonably anticipated by the Chair. Votes may be taken as a result of these discussions. Not all items listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by Open Meeting Law. Public participation is encouraged and public comments may be welcome during committee member discussions at the discretion of the Chair.

Please note during Public Comment that you have three minutes to give your Public Comment.

9:00 AM – Call to Order – The Cemetery Commission Meeting was called to order at 9:06 AM – by Chair, Nancy Foss-Yasko, other members present were David Dorren, Vice-Chair & Clerk; Bill Bernard, DPW Director; Todd Holman, Cemetery Superintendent; Attorney Adam Costa, Lunenburg Town Counsel; and Heather Lemieux, Town Manager. Public attendance were John Bowen, Jeanmarie Price and John Bowen, Jr.

Prior to the Public Comment – Attorney Costa made the statement to Mr. John Bowen and other public attendee's. There was some confusion regarding the Open Meeting Law and rules regarding the public recording or videoing. Mr. John Bowen was under the impression that you could send a letter once to the Chair of the Cemetery Commission stating that he could record at all meetings on his own device from this one letter sent.

Attorney Costa explained that this is not correct and read the Open Meeting Law – Public Participation Section – which states the following: “Any member of the public may make an audio or video recording of an open session of a public meeting. A member of the public who wishes to record a meeting must first notify the chair and must comply with reasonable requirements regarding audio or video equipment established by the chair so as not to interfere with the meeting. The chair is required to inform other attendees of any such recording at the beginning of the meeting. If someone arrives after the meeting has begun and wishes to record a meeting, that person should attempt to notify the chair prior to beginning recording, ideally in a manner that does not significantly disrupt the meeting in progress (such as passing a note for the chair to the board administrator or secretary). The chair should endeavor to acknowledge such attempts at notification and announce the fact of any recording to those in attendance”.

There was a small glitch with the audio at this time, and Public Access was not able to play the first 5 minutes and 14 seconds of audio during Opening the Meeting and Attorney Costa's explanation on the Open Meeting Law – Public Participation Section.

1. **Public Comment** – John Bowen presented his public comments below.
 - a. Mr. Bowen presented many allegations throughout his three minutes of public comments. Statements include the Cemetery Commission being redundant to the Town and DPW; Harassment to other individuals for dogs that are running loose in the North Cemetery; dogs that are not on leashes; claims that Mr. Bowen, Jeanmarie Price and others were falsely accused, including “Highland Farms” and a person that is on the “Finance Committee” in past minutes; condemnation of the “DPW Director” and “Cemetery Superintendent” for failure in not doing their jobs; harassment/engaging activity “reserved for the DPW and the Local 39 Union, particularly in conclusion of the collective bargaining agreement for the Town”; “proposed a wall and shrub replacement to the Capital Planning Committee, Select Board, and overseeing the Town Manager”; “engaged in overlapping work that falls under the care and maintenance of the DPW”; “patronage to a former Town Official, who was on your board allowing a four foot bench vs. a three foot bench in the North Cemetery by changing a rule, which has always been the history/authority under the DPW”; “these are the same comments that I made to you on November 30th, before you reached out to the police and demanding that I leave that meeting after I made those exact and same comments”; “you adjourned the cemetery meeting and then reconvened the meeting 30 minutes later, which by the way is a Public Notice and Meeting Law violation – which you have on your agenda today to hear, which is my complaint and I filed”; “this board is unnecessary red tape for this town, as I mentioned to the Select Board meeting last week”; “the DPW and Town Manager carry all Superintendent and Management power, how you can have overlapping duties makes no sense and under the Charter, which can be separable and redundant under the DPW Director and Superintendent”. “Sorry that I spoke too fast, as I have three minutes to speak”.
2. **DPW Director Updates** – document was presented to the Cemetery Commission in a previous e-mail to the Chair. Bill Bernard, DPW Director presented the hard-copy document at the meeting. It reads as follows:
 - a. Burials continued through week ending 01/05/2024. The cemeteries were closed to vehicular traffic on Saturday, January 6, 2024, due to snow accumulation making the roadways unsafe to travel on. Due to the snow, the cemeteries remain closed to vehicles. One body has been stored in the mausoleum for interment in the springtime. **Comments made by the Cemetery Commission** – none made.
 - b. Recent pruning of the Arborvitae hedges at North Cemetery – no communication or plan provided to date. In addition to being impractical, Rule 310-4 B oversteps the authority of the Cemetery Commission as this is considered day-to-day care and maintenance per the Charter Section 3-5(b) and puts an undue burden on the DPW. The DPW cannot provide 30 days’ advance notice for the removal of trees that are deemed hazardous as it is a public safety issue. The DPW will continue to maintain trees and shrubs as needed, and will update the Cemetery Commission at regular scheduled meetings. Specifically, the dead branches were cut out of the last round of trimmed hedges at the North Cemetery. The same work was done to the hedges at the South Cemetery and the other hedges at the North Cemetery, which have subsequently grown back and filled in. **Comments made by the Cemetery Commission** – Nancy Foss-Yasko, Chair stated that the Cemetery Commission was not called in to discuss the last pruning of the hedges in North Cemetery. Bill Bernard stated that this is a day-to-day maintenance, and the DPW does not have to communicate to us. The Cemetery Commission disagrees and believes that this is a major physical alteration of the cemetery landscape; and in hindsight, has probably resulted in the demise of these boundary hedges – per the professional Arborist’s. The rules and regulations were reviewed and revised by our Town Manager, Legal Counsel, Select Board Member and was voted and accepted by the Cemetery Commission. Statement was made that we have a couple that would like to give a generous gift of building a stone-wall in memory of the four generations of the Barney Family. This wall would be low maintenance for the DPW going forward. Going forward, Dave Dorren, Vice-Chair requested that the DPW communicates and works together with the Cemetery Commission.
 - c. Leaf/raking blowing labor hours – North and South Cemeteries. Break-out of all numbers from DPW vs. outside participants – no communication or plan provided to date. This is a routine annual operation and maintenance function, which per the Town Charter is under the direction of the DPW. There was no reason to track the hours. **Comments made by the Cemetery Commission** – Nancy Foss-Yasko, Chair wanted to understand the use of Cemetery Commission’s general funds and did not accuse mismanagement of funds to the DPW Director directly. Bill Bernard, DPW Director objected, which I apologized for the use of that phrase.
 - d. Next Steps for the 2024 Season. Rule 310-4 Landscaping Standards for Perpetual Care Part C: Annual Maintenance Plan: Prior to March 15 of each calendar year, the Cemetery Superintendent will provide a maintenance plan to the Cemetery Commissioners that identifies how the cemeteries and burial grounds will be maintained for the year, consistent with the rules, regulations, and standards of the Cemetery Commissioners. The DPW will provide a general maintenance plan in accordance with the rule. **Comments made by the Cemetery Commission** – Nancy Foss-Yasko, Chair, moved on as the Maintenance Plan from the DPW will be given to the Cemetery Commission in March, 2024.
 - e. Capital Planning Budget – issues and concerns. The DPW/Cemetery requests were presented to the Capital Planning Committee on November 8, 2023. Dave Dorren was present. The agenda for the Capital Planning Committee on 12/21/23 stated: Review and vote on final ranking of all FY25 Capital Planning Requests. The minutes are not posted. The projects to be funded will be on a warrant article for the Spring Town Meeting. **Comments made by the Cemetery Commission** – Nancy Foss-Yasko, Chair wanted to make sure that the public understood that Bill Bernard, DPW Director and Cemetery Commission had a meeting to include all projects and items that needed to be placed on the Capital Plan for FY25. This was a collaboration effort of the DPW and Cemetery Commission.

- f. Ramaker updates and concerns. Ramaker is a Cemetery Information Management System (CIMS). CIMS Light is an easy-to-use database that helps cemetery managers track ownership, interment, and marker information. The database contains information that is available to employees only. This is considered day-to-day care and maintenance per the Charter Section 3-5(b) and not a function of the Cemetery Commission. Passwords for this software are assigned to staff only. The Cemetery Superintendent updates Ramaker during the winter months. Data from the interred from the past year is added. Any data found missing from previous interments is also added. **Comments made by the Cemetery Commission** – Nancy Foss-Yasko, Chair brought to light that the Cemetery Commission has always had the password provided to the Chair. The Cemetery Commission wants to understand what seems to be different with this year with regards in not allowing the Cemetery Commissioners not to have the password given? The Cemetery Commission since the software was purchased, has paid for this software, maintenance and upgrades. In fact, in the past there was information provided that the past documents from the Cemetery burial's were supposed to be included into this database. This was the main reason that the Cemetery Commission had purchased this software from the beginning. If we lose those hard copy documents that are stored in boxes at the DPW, we lose our history in this town. They will be lost forever. Bill Bernard, DPW Director was unaware of this knowledge and the role that the Cemetery Commission played in this matter. This will be tabled until the next meeting. Dave Dorren, Vice-Chair requested that we have a meeting with the Town Manager regarding this matter, and table this discussion until the next meeting.
- g. Town Report FY23 – The Cemetery Commission and DPW Director, William Bernard met throughout the year to discuss cemetery business. Projects that were unfolded and being reviewed this year, include the surveying of the open field at North Cemetery; projects with the existing historical walls that surround North Cemetery; historical and Veterans grave-sites that need care and repositioning. Review of diagrams of healthy trees that will be kept in place around the grave-sites for future burials. The Cemetery Commission looks forward in the upcoming months to begin the project with the DPW and Engineering Firm to expand for burials, well into the future at the North Cemetery. (Names of businesses and individuals were also added to this document.)

3. **Discuss Open Items – Cemetery Commission**

- a. Recent pruning of the Arborvitae hedges at the North Cemetery. ***Table this discussion at the next Cemetery Commission Meeting.***
- b. Review and discussion of validation letter sent to the Cemetery Commission by Bill Bernard, DPW Director. ***Under the Cemetery Rules and Regulations – there are no perception of favoritism and possible discrimination by the Cemetery Commission. As stated in the regulations – it is at the sole discretion of the Commission the acceptance of donations/gifts will be evaluated on a case-by-case basis. Comments made by the Cemetery Commission*** – Nancy Foss-Yasko, Chair read from a letter that Bill Bernard, DPW Director, which had e-mailed her as Cemetery Commission, Chair on November 29, 2023. In that letter the Bill Bernard, DPW Director made the statement that “since this rule was first proposed (section 310-13 Gifts and Donations), I voiced my objection because of the perception of favoritism and possible discrimination.” Points made by Nancy Foss-Yasko, Chair – there are both 3 foot benches and 4 foot benches in the North Cemetery today. People will be reasonable if they are only able to have a 3 foot bench because of the size of the lot vs. a 4 foot bench on a lot that may be able to accommodate a longer bench. This is why the sole discretion is up to the Cemetery Commission to be evaluated on a case-by-case basis. Dave Dorren, Vice Chair stated “that he believes that we need to go by the rules and regulations and work it out together.”
- c. Leaf/raking blowing hours – North and South Cemeteries. Break-out of numbers from DPW vs. outside participants. ***The DPW Director stated that there are no hours recorded.***
- d. Next Steps for the 2024 Season. ***The DPW Director stated that the Cemetery Commission will have an Annual Maintenance Plan prior to March 15 of each calendar year.***
- e. Capital Planning Budget – issues and concerns. ***Table this discussion at the next Cemetery Commission Meeting.***
- f. Ramaker updates and concerns. ***Table this discussion at the next Cemetery Commission Meeting.***

4. **Response to Open Meeting Law Complaint from John Bowen** – Attorney Costa spoke on behalf of the Cemetery Commission and Michael-Ray Jeffreys, Chair Select Board. This discussion was turned over to the Legal Counsel, Attorney Costa – presented copies of the letter's that Attorney Costa had written to both the complainant and Division of Open Government - Office of the Attorney General to Nancy Foss-Yasko, Chair and Dave Dorren, Vice-Chair. Explanation of the Open Meeting Law and how this process works. A new process was created and begin in early 2010's for those that believed that an Open Meeting Law may have been violated. The complaint is submitted by the complainant to the public body, in which a period of time in which the public body can review the substance of the complaint, and can then prepare a response. That response gets sent to the complainant, and then filed with the new Division of Open Government, within the Office of the Attorney General; which reviews these sort of complaints. In the event that the complainant is satisfied with the response from the public body, it will then end there – end of process. If the complainant is then dissatisfied with the response, then the complainant can make a filing of their own with the Division of the Open Government, will then conduct their own investigation of the complaint; which consists of phone call/conversations with the complainant and members of the commission that are alleged to the Open Meeting Law violation. This usually falls within the 45 to 60 days, the Division of the Open Government will make a determination if the Open Meet Law has been violated, and will order any remedies that might be appropriate. Again, this is the process. In this case an Open Meeting Law Complaint was submitted – originally filed on January 17, 2024. Filed the Open Meeting Law Complaint Form – 2 pages. Description of the alleged violation complaint completed by Mr. Bowen, and a request for certain actions to be undertaken by the public body. Attorney Costa did his own investigation after conducting many investigations for other

communities that he represents; and for probably about a dozen times over the years for the Town of Lunenburg. The investigation was conducted of the facts, and prepared a proposed response. This was sent in advance, but because of the open meeting law, we could not discuss in advance to having this Cemetery Commission Meeting. This is a straight forward response a couple of paragraphs with many footnotes that take up the better half of the first page. The essence of the response of the Open Meeting Law is untimely. The way that the Open Meeting Law is structured, a complainant that believes that the Open Meeting Law has been violated – has 30 days from the date of the alleged violation to make a request to the Cemetery Commission and Division of Open Government; claiming that the violation of Open Meeting Law has occurred. The 30 days run from the date of the alleged violation. There are provisions in the law, as I saw some correspondence from Mr. Bowen that he did not realize, or was not aware that there was alleged violation, and that had occurred then sometime long after the date of November 30, 2023. There are some provisions in the Open Meeting Law, within the regulations that say if/or the 30 days have been responsibly known or discovered – then the date would change to the time that this was 30 days when discovered. For example, if an Executive Session took place, then the only time you would know if the violation occurred was when the meeting minutes were released to the public. The date would start from the date of the minutes being released to the public. This was not the case, as Mr. Bowen had attended the meeting and was present on November 30, 2023 – Open Public Meeting. Mr. Bowen contend that a violation occurred at a meeting that he attended on November 30, 2023; yet the complaint is dated and was received on January 17, 2024, 48 days later and 18 days beyond the aforementioned deadline. You will see the response that because of Mr. Bowen's untimely complaint, that occurred more than 30 days prior thereto, Attorney Costa on behalf of the Cemetery Commission has declined to substantively respond to it. Several key points were discussed regarding footnotes that Attorney Costa had presented in his letter to Mr. Bowen. One in particular is the civil rights action against the Commission, the Town or any Town official(s), nor may the Open Meeting Law enforcement process be utilized by a complainant to advance claims(s) of civil rights violation(s). Motion was made to accept these letters to go forward by Attorney Costa, and send copies of these signed letters to the Cemetery Commissioner's and Mr. Bowen.

Review & Approved Motions

- a. **Open Meeting Law Complaint Letter** – John Bowen – Motion Passed 2 to 0.
 - b. **Open Meeting Law Complaint Letter** – Office of the Attorney General – Motion Passed 2 to 0.
5. **Review & Approve Minutes and Annual Report FY23 Document**
- a. 11/30 Meeting Minutes – Motion Passed 2 to 0.
 - b. Cemetery Commission document for the Annual Report 2023 – Motion Passed 2 to 0.
6. **Future Meeting Schedule**
- a. Third Thursday of each month – March 21, 2024

Motion was made to adjourn by Chair, Nancy Foss-Yasko, seconded by Vice-Chair and Clerk, David Dorren. With no further discussion, meeting was adjourned at 10:10 AM – Motion Passed 2 to 0.

Respectfully submitted,
Nancy Foss-Yasko, Chair
David Dorren, Vice-Chair and Clerk
Electronic Signatures