

LUNENBURG CEMETERY COMMISSION

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



17 Main Street, P. O. Box 135
Lunenburg, MA 01462
978-582-4144 Fax 978-582-4148

MEETING MINUTES

Thursday, February 22, 2024– 12:00 Noon
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.

12:06 PM – Call to Order – 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 (ZOOM Conference). Public attendance were John Bowen, Jeanmarie Price, John Bowen, Jr., and Dave Passios.

Prior to the Public Comment – Nancy Foss-Yasko, Chair, read the statements/paragraphs above, as there is still some confusion regarding the Open Meeting Law and rules regarding the public recording or videoing within the public meeting. Mr. John Bowen was under the impression that you could send a letter prior to the meeting to the Chair, that he was going to record and video from his own devices.

Nancy Foss-Yasko, Chair – explained that this is not correct to Mr. Bowen and tried to explain the process on 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”. Nancy Foss-Yasko, Chair announced that the Cemetery Commission Meeting was being recorded/videoed by Mr. Bowen.

Nancy Foss-Yasko, Chair made sure that Attorney Costa was present on Zoom and requested that Attorney Costa gives the Open Meeting Law – Public Participation Section (short version, as this was presented and discussed at our last Cemetery Commission Meeting on February 05, 2024). Reviewing the e-mail that was sent to the Cemetery Commission Chair, there seemed to be a few errors with respect to the date of the meeting that was going to be recorded. You are correct prior meeting, that an e-mail is not a substitute. Using the correspondence sent to the Cemetery Commission Chair, is not a substitute prior to the meeting. Mr. Bowen,

under the Open Meeting Law, you have the right to record/video, as long as you are not interrupting the meeting; and you must announce at each meeting that you attend that you are recording/video. Since Mr. Bowen has announced this, then this is sufficient for this meeting. Mr. Bowen asked to respond, no response needed per Attorney Costa. Attorney Costa is satisfied that Mr. Bowen has met the requirements of the Open Meeting Law.

1. **Public Comment** – John Bowen presented his public comments below.
- a. Mr. Bowen presented many allegations throughout his three minutes plus of public comments. Statement was made by Mr. Bowen – “the Cemetery Commission construction plan for a wall is a flawed and clearly erroneous plan. The receipts of these donations on this agenda today, prior to Town approval of a bid by the DPW is greatly being premature; as the bid process will fall under the purview of the DPW; who handles these types of projects. The construction of the wall presentation is flawed, due to the of the lack of the qualified construction planner. The proposals approved by the Commission is not a pre-production plan, nor an accurate representation of costs calculations. The Arborist from Flag Trees is not a true Arborist, which was mentioned in your last meeting. He is a tree cutter and a landscaper. He is not licensed as an Arborist. This is many issues plaguing the process of the commission over-stepping its authority that have been reserved by the DPW; who has the all the technical and knowledgeable skills to make these determinations. Other issues flawed is the possible issue of using minors when working on projects within this community pursuant to Massachusetts General Laws Chapter 149. The proper planning and placing of the project – putting it out for a bid, pursuant to the same chapter. The studies as well, will reflect a valuation of abutting properties with any changes to Town property or any Public Works Project. Studies of noise to comply with the Town bylaws and state codes upon removal of a sound barrier type structures. These trees are barriers going both ways. From residents property going to the Cemetery and from the Cemetery to the residents property. How these changes will impact okay with the quiet enjoyments of the rights of the abutter’s of the family – needs to be addressed. Your Commission used money from the perpetual care funds for engraving a bench and provide a foundation for the bench; which is in violation of conflict of interest laws for a donor on behalf of passing of late cemetery commissioner – my condolences to the family, which also needs to be addressed. This is in there minutes at the Cemetery Commission believe me that this is patronage the request for Capital Planning money to wash cemetery graves and fallen stones. This falls under the responsibility to fall under the families interred, unless the families are unreachable. Does this fall under the Towns function, as these are old stones and families are unreachable? The following items that have been unbecoming of this Commission is clear- liable remarks in the minutes and false accusations, calling the police contentiously on dogs that are loose, placing an advertisement in the newspaper misleading voters, in conjunction with Michael R., reflects of the Select-Board as well as rewriting of the rules together with the same. I am just scratching the surface. The Cemetery holds no power or duties because the cemetery commission does not fall under a Corporation. That’s General Laws Chapter 114. This is why we see these issues. There is no experience on this board with the cemeteries but you put yourself before the people as you are under control of operations, which clearly you are not. You have no power, and you need permission from the Town Manager and DPW for day-to-day maintenance operations and in conjunction with the Cemetery Superintendent. This rabble-rousing controversially elected position that consistently defaults their debate about why we cannot get along. That is not how the government works. Healthy debates can concession transparency and compromise is exactly how this works. Stop playing victim Cemetery Commissioners – because I am speaking for the people, my number is greater then 175 to petition this.... Mr. Bowen went over the allotted time of three minutes and was thanked for his public comments by Cemetery Commission, Chair – Nancy Foss-Yasko.
- b. **Public Comment** – Dave Passios presented his public comments below.
- c. Mr. Passios for full transparency, I am presently seated as a member of the Finance Committee here in the Town of Lunenburg, and I am hear speaking as a lifetime resident of the Town of Lunenburg and am a person that is involved in Municipal Town Government, for more than a decade in the Town. I would like to read directly from the Charter the powers and duties of the Cemetery Commission. “The Board of Cemetery Commissioners shall have the sole responsibility to make regulations governing the care, superintendence and management of all public burial grounds in Lunenburg and to lay out existing public burial grounds and may lot out in lots or other suitable subdivision with property paths, lanes and ways appropriate for burial use any other land acquired by the town for burial purposes.” The “day-to-day care and maintenance of the cemeteries,” shall be under the supervision of the Town Manager. I added a note here, this is my own note, “Town Manager has tasked the DPW Director to assume the supervisory, supervision over the cemeteries.” The wording of the Charter has been questioned since the day that the Charter was created. Especially with the edits that were made previous. Including and previous to August 20, 2020. I sat in on many of those meetings as they were reviewing the Charter, and the definition between the day-to-day care, and other maintenance and care items in both cemeteries. The Cemeteries and Parks Commission of properties was struggled with and never fully dealt with. So there is still a struggle back and fourth between these commissions, and whoever is tasked with day-to-day care. There is no fine or clear line between the two definitions. This is part of the problem. The other thing is that in my interpretation, this does give the power to the Cemetery Commission, to make regulations for the care, which is if they want to make a regulations that the grass cannot be no more than an ½ inch long, then that is my interpenetration; which means that they are allowed to do that. This needs to be followed with that regulation. Superintendence and management, that is where the battle is. This is not a new thing between what is day-to-day and what is long-term planning. Mr. Passios went over the allotted time of three minutes and was thanked for his public comments by Cemetery Commission, Chair – Nancy Foss-Yasko.

d. **Public Comment** – Jeanmarie Price – yielded her public comment of three minutes to Mr. Bowen. The Cemetery Commission spoke briefly to Attorney Costa on giving this public comment to another person that has already spoken. Attorney Costa stated that this is not a violation of the law, this is under your discretion. Some boards will allow and some will not. Mr. Bowen wanted to thank the commission for allowing them to yield Jeanmarie’s 3 minutes for public comment. Mr. Bowen wanted to make a comment that “there were policy procedure changes with regards to this commission that were written by Selectman Jeffrey’s, with you Miss Yasko, I have the e-mails. That is a duty reserved for your commission of which the Select Board engaged. According to the Massachusetts General Laws it says that the Select Board to be an overseer of these policies and changes. And for them to influence these policy and changes. As Mr. Passios has referred that okay, okay, it is a conflict of interest, and ethics violation to engage him. I also have multiple e-mails from you to Michael Jeffrey’s. This would be out of the preview would be outside of the rules and regulations, which Mr. Passios is recognizing. The State Law that Mr. Passios recognizes comes under Chapter 114 – Massachusetts General Law, which states that an elected official to Cemetery Commission has these powers and duties. The problem with these powers and duties, you have clarified in a definition that you submitted to the Town of what superintendence in maintenance and operations. I guess Mr. Passios hasn’t read that yet. Because if he read that, he would see clearly that the only thing that you have power over is lots that its. That’s its. Day-to-day maintenance is left for the DPW and Town Manager. I thank the Commission.”

e. The meeting was then turned over to Attorney Costa, which was on a Zoom Conference link. Response listed below.

f. **Response to Open Meeting Law Complaint from Jeanmarie Price** – Attorney Costa spoke on behalf of the Cemetery Commission. 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 was stated in our last Cemetery Commission Meeting. 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 February 05, 2024. Filed the Open Meeting Law Complaint Form – 2 pages. Description of the alleged violation complaint completed by Miss Jeanmarie Price; which is Mr. Bowen’s significant other – that’s my understanding anyway. Attorney Costa announced that this complaint is similar to the filed by Mr. Bowen during the same meeting of November 30, 2023. This complaint is somewhat different, than Mr. Bowen’s complaint. It specifically she speaks to the issue of adjourning or recess the meeting that occurred which point and time, Mr. Bowen and Miss Price left the meeting. The meeting was then reconvened a short while later – 20 to 25 minutes later; and the business was then completed. The concern and nature of the complaint raised by Ms. Price is that she perceives the that to be a violation of the Open Meeting Law. I reviewed the complaint and as I have said, included with the materials that accompanied it. I prepared and circulated a few days ago, prior to today’s meeting; a proposed response to the complaint. In some respects, this is similar to the last complaint response that I provided you for Mr. Bowen’s complaint, but an another respect it is similar refers to the time-frame that is stated with the Open Meeting Law. That the complaints files pursuit to this procedure needs to be filed within 30 days of the meeting that is complained of. Obviously, this complaint was received on February 05, 2024; which was received for more than 30 days. I think, it was a total of 67 days, after the November 30, 2023 meeting. Which is 37 days too late, for the response to the complaint. Footnotes will reveal on the first page, that both Mr. Bowen and Miss Price attended the meeting, but Mr. Bowen in my summarizing and my understanding was acting in a disruptive or threatening manner. The Commissioners felt unsafe. This was based on my research and discussions, this is when Mr. Bowen was asked to leave the meeting. The police were called in requested by the Chair, which Mr. Bowen then left the meeting. Apparently prior to the arrival of the police. This addressed on what occurred at the meeting. The draft is before you, will will follow the same next steps in questions that you may have, and then voting on authorization to submit the response that is before you. Copies sent to Miss Price with other copies sent to Office of the Attorney General. 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 Jeanmarie Price.

Review & Approved Motions

g. **Open Meeting Law Complaint Letter** – Jeanmarie Price – Motion Passed 2 to 0.

h. **Open Meeting Law Complaint Letter** – Office of the Attorney General – Motion Passed 2 to 0.

2. Review & Approve Minutes and Annual Report FY23 Document

a. February 05, 2024 – Meeting Minutes – Motion Passed 2 to 0.

b. Cemetery Commission Warrant Article for FY25 Annual Town Meeting Article (\$10K) – Motion Passed 2 to 0.

3. **DPW Director Updates and Discussions** – The cemeteries in Lunenburg will remain closed to vehicular traffic because of the weather, as it looks like more snow coming in tonight. Even though it might look clear today, I think it is prudent to keep them closed for now. That's all I have for an update.

4. **Cemetery Commission Updates and Discussions** – Chair, Nancy Foss-Yasko, spoke to when Ramaker was purchased by the Cemetery Commission. The desktop software was purchased on May 20, 2010. This desktop version was signed off by Cemetery Commissioner, Charles Deming. The last update was purchased as an upgrade – cloud based product. This was signed on April 12, 2019; which Cemetery Commissioner, Bill Tyler had signed off on. It made us more protected, and kept us up-to-date with Cemetery Software. The previous Cemetery Commissioner Chairperson's have always had the password. Access to this data is not part of the Cemetery Commissions day to day duties, however, ad hoc access on an as needed basis are required from time to time.

Question: I would like to know, as of today, are we up to date with all available and required data having been entered in Ramaker?

Answer: DPW Director, is not sure?

Action Request: I would like a report for the next meeting detailing the up to-date status of data entry in Ramaker going back as far as 2010. This would include everything that is out there, old records in boxes stored underneath the DPW Cemetery Superintendent's desk, and historical information that has been entered into that database. If this cannot be provided or is incomplete, the Cemetery Commission would like to know why? Is there a plan going forward for getting all this data entered into this software. Understanding that this takes time, but since 2010, and by now, you should have a good handle on this. I would like to know the status of where we are to-date, as well as the way ahead.

Answer: DPW Director, will provide this report/response for our next meeting.

5. **Question:** Cemetery Commission Chair, Nancy Foss-Yasko, is questioning why was the Cemetery Commission not notified and informed that a refund was given on a grave and burial plot fee? It looks like the 7th and 21st November, 2023. I want to keep the name confidential, but it looks like there were two incidents that a refund was issued without notification or Cemetery Commission knowledge? Can you tell me why that the Cemetery Commission was not informed or notified of this?

Answer: DPW Director, I think I know the reason, but I do not understand why you need to be informed? This is a day-to-day operations. We do plots everyday, and we do not inform you that.

Response: Again, you use the words day-to-day operations when it is convenient for you Bill. Primarily I am telling you that the Cemetery Commission has always voted on and concurred on the circumstances for a requested burial plot to be refunded, and that has always been the way that it has been done, with all of the Cemetery Commissioner's prior to my being Chair. We are here again today, with little to no respect for my being Chair. Every Commissioner before me has received this information. Why am I the only one that cannot get this information from your organization? Can you please explain that to me?

Answer: DPW Director, I am not aware of any other refunds. I can tell you I know about this specific one, but prior to that, not aware of any.

Response: Dave Dorren, Vice-Chair, "under the previous Cemetery Commission Chair, we had a vote and it is reflected in the minutes that we reviewed and voted to refund the money. This transaction was on record as paying money out of our budget funds to give to the parties. My concern in hearing about this today, that it seems to come out of the Cemetery Commission budget. In essence, the DPW is controlling the cemetery-budget without having accountability, knowledge of, or an audit trail of this transaction. Personally, your not even part of the Commission, I do not think this is fair. If we did give money back with these two people, I would like to fully understand where it came from?"

Response: Nancy Foss-Yasko, Chair, wanted to make clear, that the Cemetery Commission, has authority for the Perpetual Care Account Funds. We are not allowed to spend the principle, only the interest generated. No one else, except the Cemetery Commission is authorized to use these funds, including the Town and DPW.

Question: Dave Dorren, Vice-Chair would like to know from the DPW Director, why the money was returned in our next meeting?

Answer: DPW Director, believes that they moved out of Town, so therefore, were not going to be buried here.

Response: You are stating that the Cemetery Commission was not involved because this is your day-to-day business. DPW Director, stated correct, The Cemetery Commission was not told because he believes this falls under the day-to-day business. Nancy Foss-Yasko, Chair stated "this needs to change, as here again is yet another example of no communication with the Cemetery Commission."

Question: Another point is the discussion around the Capital Planning Budget. When the Cemetery Commission asked how many lots were available in the North Cemetery, we were given a number of around 40ish in the spring/summer time of 2023. Now we hear that there are 100 lots that available. The DPW and Cemetery Commission had discussed opening up the back field, as there was going to be a need very soon for other lots at the North Cemetery. A decision was made, based on your 40ish data, that the Cemetery Commission needed to put this into place. When we were given that 40ish number, and after the decision was made to proceed, you then told me that this was only an estimate. This was not a true number, as the Cemetery Superintendent was too busy. When the Cemetery Commission makes a decision on something, the Commission needs the data to be accurate and correct. If the data is not accurate and correct, then we cannot make a sound business decision to go forward with opening or not opening the back field at this time, and spend taxpayers money or not at this time. In theory, if the Cemetery Commission

can not open that back field up this year, and push this back a year, then the Town will not have the expense going forward at this time. Saving that \$50,000.00 for this year, may certainly help the Town in their budget going forward. This will be a better business decision for the Town. But if the Cemetery Commission does not have the correct data, then you cannot expect to make a sound decision.

Response: DPW Director, “explains that sometimes you need to go back to the well a few times to get the money that is needed from the Capital Plan committee.”

Response: Chair stated “that going forward, we all need to be careful on true data, not estimates.” This is how to make a better plan with true data.

Statement: DPW Director, made a statement that he believes that the DPW has been paying for Ramaker by his records a few years, and going forward he is going to be paying for it.

Response: Chair, Nancy Foss-Yasko, replied that this was not correct, as she had reached out to Ramaker today, and the Cemetery Commission has paid for this software continuously since it was initially purchased in 2010. The Cemetery Commission will make the decision and I will talk with Heather regarding this, and going forward with this. Again, the DPW is making a unilateral decision without consulting the Commission. We have paid it from the beginning, and we will see this through. I will bring this up to where it needs to be brought up to. No way ahead on this Ramaker; therefore, it will be tabled to the next meeting. Dave Dorren, Vice-Chair wants to go forward with a meeting with the Town Manager, or whoever else needs to be part of this meeting regarding Ramaker.

6. Mr. Richard McGrath – unable to be at this meeting today. This will be rescheduled for the next meeting.

Cemetery Commission is grateful for the possibility of a generous gift of \$175K. This is simply in the researching stages at this time. We have endorsements of many other people in this Town that would like to see a wall put in place, and we are still in the stages of learning and researching for this project. The hedges are not presentable, as a result of the severely pruning. We need to continue researching the best solution for this situation. The DPW Director, is in agreement to the hedges being cut down; however, the Cemetery Commission needs the end to end plan for this solution before proceeding further. If there is enough money to put out a bid contract, then it is definitely could take all the hedges and chip them up by the DPW. All the hedges would be taken down.

7. **Future Meeting Schedule**

a. Thursday, March 07, 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 12:56 PM – Motion Passed 2 to 0.

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