

Lunenburg Trust Fund Commission

Bilotta Meeting Room/PACC

Lunenburg Town Hall

April 23, 2026

The meeting was called to order at 5:04 pm by Chairman Bowen. Present were Mr Howard and Chairman Bowen. Members recited the Pledge of Allegiance.

Chairman Bowen proceeded to read the posted Agenda and open meeting law provisions.

There were no members of the public present on Zoom. There was a member of the public present at the meeting.

Chairman Bowen discussed the upcoming Annual Town Meeting, and mentioned the upcoming FY27 Budget Presentation and Override discussion. This is the public's opportunity to ask questions and engage with Town and School leadership about this important vote.

Chairman Bowen discussed the role and responsibilities of the Trust Fund Commission. Per MA GL 203e there are specifically defined duties and responsibilities, if we don't act there is a personal liability aspect (individual duty).

From Chairman Bowen's investigations he feels that over the past 50 years, \$62,000 of money has been amassed in interest that has not been dispersed to veterans, to the poor, to care for sidewalks and other things within a mile of the town. has not been given out to be able to fix or repair a gazebo which I think 25 years ago. They gave it to a selectman who used to own the house down here on the corner of Oak and Main when there was money that was put aside from what I see. But because there's missing paperwork, it's kind of hard to tell when these things have occurred. So all I'm saying is that there is an individual duty, but there is also a collective duty as commissioners. When it comes to scholarships in the school, the school for any gifts, okay, or or um uh or trusts that are given to them that follow a very very tight uh rule. That rule is chapter 55 and chapter 71 in Mass General Laws. They are not allowed to use the town's EIN number. They do not have permission to use the town's EIN number, that EIN number belongs to, in to, the care and custody of the Treasurer.

Chairman Bowen's position is that we have a duty to hand out funds, but we cannot pursue our duties due to Select Board positions and inactions. Chairman Bowen made comments in defense to the Trust Fund Commission being labeled as being adversarial with the Town Manager and Select Board. Even after breach, they declined to approve moving forward on a bylaw for action in the absence of quorum.

There was a brief update by Chairman Bowen on the response from both the Select Board and School Department on the breach letters that were sent in March.

Chairman Bowen did receive an email from the Attorney General's office who did acknowledge receipt of the documentation and is being reviewed for further action.

Agenda item 5 was a discussion on "preservation of continuity". Chairman Bowen drafted a document that was read during the meeting, the text is below:

BOARD OF COMMISSIONERS OF TRUST FUNDS
COMPREHENSIVE MOTION AND STATEMENT OF FINDINGS

Continuation of Fiduciary Oversight; Delegation of Ministerial, Administrative, and Individual Trustee Authority; Mandatory Executive and Town Counsel Cooperation; and Preservation of Charitable Trust Assets Upon Loss of Quorum

MOTION

I move that the Board of Commissioners of Trust Funds, acting pursuant to its sole management and control authority under M.G.L. c. 41, §§ 45–47, and in furtherance of its

fiduciary obligations under the Massachusetts Uniform Trust Code (M.G.L. c. 203E), the Massachusetts Prudent Investor Act (M.G.L. c. 203C), applicable Attorney General regulations governing public charities, and controlling Supreme Judicial Court precedent, hereby adopts this Comprehensive Motion and Statement of Findings. This action is taken to

preserve trust assets, enforce trustee obligations, ensure continuity of lawful trust administration and enforcement activity, and prevent irreparable harm in the event the Board's membership falls below the legally required quorum under M.G.L. c. 4, § 6.

I. FINDINGS AND LEGAL FRAMEWORK

1. Quorum Limitation Under Massachusetts Law

The Board finds that under Massachusetts law a three-member public body requires two members to constitute a quorum. Vacancies do not alter that requirement. In the event the

Board is reduced to one member, it may not deliberate, vote, or take new collective action

on behalf of the Board. The loss of quorum does not invalidate prior lawful votes, does not

suspend existing trustee obligations, and does not extinguish the independent fiduciary duties imposed by law on each individual trustee.

2. Trustee Status Under Massachusetts Law

The Board expressly finds and declares as a matter of law that the Town of Lunenburg, by

accepting charitable gifts, legacies, bequests, and restricted funds, assumed the role of trustee automatically and by operation of law. The Board of Commissioners of Trust Funds

is the statutorily designated authority charged with management and control of trust funds

pursuant to M.G.L. c. 41 § 45. The Town Manager, Select Board, and Town Treasurer, when exercising authority over trust assets, trust accounting, investment, administration, recordkeeping, or disbursement, act as fiduciaries and co-trustees with non-delegable duties.

Those fiduciary obligations arise independently under M.G.L. c. 203E, M.G.L. c. 203C, the supervisory and enforcement authority of the Attorney General – Public Charities Division,

and controlling Supreme Judicial Court precedent, including *Woodward School for Girls, Inc.*

v. City of Quincy, 469 Mass. 151 (2014), and *DeGiacomo v. City of Quincy*, 476 Mass. 38 (2016). These fiduciary obligations cannot be declined, delayed, suspended, or avoided on

the basis of quorum loss, administrative inconvenience, or executive inaction.

3. Duty of Executive Officers and Town Counsel to Cooperate With an Individual Trustee

The Board further finds and declares that the Town Manager, Select Board, Town Treasurer,

and Town Counsel, as officers, agents, and advisors of the municipal trustee, owe affirmative duties of cooperation to the Board and to any Commissioner acting in a lawful trustee capacity. When a Commissioner is acting as an individual trustee under M.G.L. c. 203E, including during periods in which the Board lacks a quorum, those officers must continue to cooperate fully.

Such cooperation includes providing records, trust instruments, historical accounting, donor documentation, and necessary factual and administrative support. Cooperation may

not be conditioned on the presence of a quorum or a collective Board vote. Refusal, delay, or

obstruction of cooperation with an individual trustee interferes with lawful trust administration and constitutes an independent fiduciary failure. Town Counsel, in particular, shall continue to advise and communicate with a Commissioner acting as an individual trustee when required to meet statutory obligations.

II. FINDINGS OF FACT – SYSTEMIC TRUST FAILURES

4. Longstanding Municipal Breaches

Based on historical trust ledgers, Town Meeting votes, Treasurer memoranda, financial statements, trust summaries, and related municipal records, the Board finds that for more

than fifty years the Town has failed to administer charitable trust funds in accordance with

law. These failures include the failure to distribute trust income according to donor intent, failure to reconstruct or preserve donor declarations, failure to initiate mandatory cy pres proceedings where purposes became impossible or impracticable, unauthorized trust disbursements in the 1970s, 2005, and 2017, and refusal or failure to fund administrative and legal resources necessary for compliance.

5. Accumulated Undistributed Income and Representative Trust Funds

The Board specifically finds that there has been a longstanding accumulation of unlawfully undistributed charitable trust income exceeding \$62,518.43 as of December 31, 2025, together with additional missing or unquantified amounts, arising from multiple restricted trusts that cannot lawfully be administered under their existing terms.

Representative examples, cited for illustration and not as an exhaustive list, include the American Legion Post #283 Fund; the American Legion Poor Fund; the Nathaniel Day Worthy Poor Income Fund; the J. & M. Howard Sidewalk and Grounds Fund; the Gazebo Restoration Fund; and the Susan Howard Poor Fund, which is documented historically but missing from current accounting.

6. School Scholarships and Educational Gifts

The Board further finds longstanding deficiencies involving school scholarships, prizes, and educational gifts, including missing donor declarations, undefined custodial authority among municipal bodies, accumulation or distribution without documented compliance with trust law, and treatment of such funds as ordinary accounts rather than legally administered charitable trusts. These assets require investigation, reconstruction of donor intent, and corrective action under M.G.L. c. 203E and Attorney General guidance.

III. BREACH NOTICES AS EXEMPLARS, NOT LIMITATIONS

The Board has issued a Formal Breach Notice and 30-Day Compliance Notice, hand delivered on March 31, 2026. The Board declares that breach notices are exemplary enforcement tools and do not limit the scope of ministerial, administrative, or trustee required actions necessary to preserve the status quo, enforce trust law, and prevent waiver of rights.

IV. DELEGATION OF AUTHORITY UPON LOSS OF QUORUM

In the event the Board lacks a legal quorum, the remaining Commissioner is authorized to continue all ministerial and administrative actions necessary to effectuate prior lawful Board decisions, preserve trust assets, and prevent waiver of rights. The remaining Commissioner may act in an individual trustee capacity under M.G.L. c. 203E, including filing or communicating breach notices or referrals without quorum approval where legally required. Executive officers and Town Counsel shall continue to cooperate fully with such actions.

EXPLICIT LIMITATIONS

Nothing in this Motion authorizes approval of new trust distributions, modification of investment policies, execution of new binding contracts, initiation or settlement of litigation on behalf of the Board, filing of final cy pres petitions requiring a collective vote, or deliberation as defined by M.G.L. c. 30A § 18.

SAFEGUARDS, DURATION, AND EFFECT

All actions taken under this Motion shall be documented in writing. The authority granted applies only during loss of quorum, expires automatically upon restoration of a quorum, preserves all prior independent delegations, and remains subject to later Board review, ratification, modification, or rescission.

PURPOSE AND EFFECT

This Motion preserves fiduciary oversight, enforces charitable trust law, protects donors

and beneficiaries, prevents waiver of statutory rights, ensures continued executive and legal cooperation, protects individual Commissioners from personal liability through clarity of authority, and establishes a durable public fiduciary record during any period of quorum loss.

END OF COMPREHENSIVE MOTION AND STATEMENT OF FINDINGS

A motion to approve the language as written was put forth by Mr Howard, the motion was seconded by Chairman Bowen. The motion was passed with Mr Howard voting = aye, Chairman Bowen voting =aye. The motion passed unanimously.

During further discussion Chairman Bowen mentioned his concern about the missing Susan Howard poor fund trust.

There was a discussion on the reports and presentation for the Annual Town Meeting, but the fund balances and the accomplishments over the past year.

There was no public comment on Zoom or from the public present.

Mr Howard read some comments from a constituent regarding the upcoming vote at Town Meeting on a 2 ½ override and the tiers proposed.

A Motion to adjourn was put forth by Mr Howard at 6:36pm. The Motion was seconded by Chairman Bowen. The vote to adjourn was unanimous.