

MINUTES OF : **Meeting of the Cemetery Commissioners**

MEETING POSTED: YES

DATE: 2/8/2012      TIME:            2:00pm                    PLACE: Town Hall Room 126

MEMBERS PRESENT: Brewster Conant, Bill Klauer, Barbara Walsh

ALSO PRESENT: Shawn O'Malley, Allura Overstreet

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MEETING CALLED TO ORDER AT: 2:05pm

OLD BUSINESS:

Review and sign minutes from 12/14/2011 meeting  
Reviewed and signed.


Update on paving efforts in the cemeteries.  
Tabled for discussion at a later date.

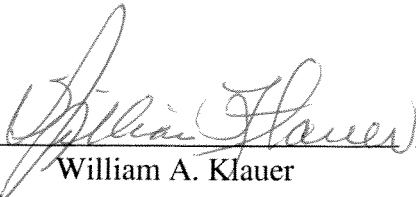
Bill Klauer has an update on the attorney's response on the use of the trust funds.  
See attachments. Bill Klauer will discuss things further with the attorney.


Meeting adjourned at : 2:45pm

Next meeting scheduled for: 3/7/2012

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Brewster Conant

  
William A. Klauer

  
Barbara Walsh

# AGENDA FOR: Meeting of the Cemetery Commissioners

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## OLD BUSINESS:

Review and sign minutes from 12/14/2011 meeting

Update on paving efforts in the cemeteries.

Bill Klauer has an update on the attorney's response on the use of the trust funds.

## NEW BUSINESS:



Verizon Message Center

Monday, Jan 30 at 8:43 AM

**From:** Mina Makarious <mmakarious@AndersonKreiger.com>  
**To:** "Bill (abklauer@verizon.net)" abklauer@verizon.net  
**Cc:** "Stephen D. Anderson" , "Christine M. Griffin"  
**Subject:** RE: RE: RE: Acton/Gen-Cemetery Funds

Bill,

We reviewed the 1901 ordinance you sent us last week. Section 1 of the ordinance provides, in relevant part:

The Town of Acton, Mass., will receive of any person any sum of money not less than Fifty Dollars nor more than Five Hundred Dollars, the interest thereof **to be applied to the annual care of such lot in the public burial grounds of the Town of Acton as the person paying the money shall designate**. Such deposit may be made perpetual if so desired by the person depositing the same.

(Emphasis added). Pursuant to Section 2 of the ordinance, the Town Treasurer was to "receive all sums of money paid in accordance with the provisions of the preceding section" and annually pay to the Cemetery Committee:

interest at the rate of three and a half per cent per annum upon all sums so paid to and receipted for by him, with a statement of the several lots in the public burial grounds of said town upon which the interest so paid is to be expended. **All of said amounts shall be judiciously and economically expended on each of the variously specified lots**, and in addition to keeping the grass cut as many flowers as the money will permit shall be planted, watered and cared for on these lots, also once in every five years the monuments, markers, corner stones and curbing shall be properly cleaned and repaired, the expense of same to be deducted from the income, if sufficient, of the funds of the lot so cleaned, should the town neglect to faithfully carry out the provisions of this act, the money so deposited shall revert to the heirs of the person so depositing it.

(Emphasis added). Section 3 provided that "no part of said sums shall be used in paying for the official duties of [the Cemetery] Committee." Finally, a separate vote was made requiring the receipt provided by the Town Treasurer to state the lots for which funds were given.

As you can see, the permitted uses of lot payments under the 1901 ordinance are much more limited than under the current ordinance (described in my email below). The funds collected under the 1901 ordinance, it appears, would have to be used *only* for the lots for which they are designated, rather than the cemetery where that lot is located.

The current Bylaw, however, refers to money collected under the 1901 Ordinance "as amended." It is possible that the amendments to the ordinance between 1901 and 1977 loosened the restrictions on funds collected pursuant to the ordinance. If possible, it would be

good to have Eva find these amendments so we can determine whether that was the case.

Please let me know if you think it would be possible to retrieve these amendments or if you would like to discuss.

Mina

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**From:** Bill [<mailto:abklauer@verizon.net>]  
**Sent:** Sunday, January 29, 2012 8:28 PM  
**To:** Mina Makarios  
**Subject:** Re: RE: RE: Acton/Gen-Cemetery Funds

Thanks, glad you got it. I hope you can find some leeway within it to help us find the funding to make ends meet.

On 01/27/12, Mina Makarios<[mmakarios@AndersonKreiger.com](mailto:mmakarios@AndersonKreiger.com)> wrote:

Bill,

I received the Town Meeting warrant you sent today. We will review it and get back to you.

Mina

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**From:** Bill [<mailto:abklauer@verizon.net>]  
**Sent:** Monday, January 16, 2012 11:30 AM  
**To:** Mina Makarios  
**Subject:** Re: RE: Acton/Gen-Cemetery Funds

Likely at some point but I want to see what the Town Meeting accepted a century ago and see how that fits into the puzzle.

On 01/14/12, Mina Makarios<[mmakarios@AndersonKreiger.com](mailto:mmakarios@AndersonKreiger.com)> wrote:

Bill,

Glad to hear it was helpful. If you need to discuss any of it, let me know.

Mina

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**From:** Bill [[abklauer@verizon.net](mailto:abklauer@verizon.net)]  
**Sent:** Saturday, January 14, 2012 10:13 AM  
**To:** Mina Makarios  
**Subject:** Re: Acton/Gen-Cemetery Funds

Thank you so much for your response. I will look up the by-law and forward it to you.

On 01/13/12, Mina Makarios<[mmakarios@AndersonKreiger.com](mailto:mmakarios@AndersonKreiger.com)> wrote:

Bill,

Below is a summary of our research and our initial recommendations on the Cemetery Perpetual Care fund issues you and I discussed by phone in the fall. As you will see below, we will need to obtain the Town's 1901 bylaw governing perpetual care funds to complete the analysis. We would greatly appreciate it if you could obtain that bylaw from the Town Clerk.

Once you have had a chance to review the summary below, feel free to call me with any questions or comments.

Mina

#### Statutory Framework

G.L. c. 114, § 25 permits a town "in which cemetery commissioners are chosen" to:

receive gifts or bequests for maintaining cemeteries or cemetery lots, which shall be paid into the town treasury and...shall be kept separate from the other money and accounts of said town. The town treasurer shall invest all such funds in accordance with the stipulations, if any, accompanying them; otherwise he shall invest them as ordered by said commissioners and pay the income therefrom upon their order or with their approval.

(Emphasis added). Section 25 also permits towns to sell cemetery lots or "rights of burial." The "proceeds of sales of lots or rights of burial in such cemeteries shall be paid into the town treasury and be appropriated to reimburse the town for the cost of the land, its care, improvement and embellishment, or the enlargement of the cemetery." (Emphasis added).

#### Categories of Funds

Section 25 establishes a statutory framework in which "gifts or bequests" are treated differently from monies acquired as part of the purchase price that the Town charges for a cemetery lot. The Attorney General, however, has interpreted "perpetual care funds" to include not only those funds that are voluntarily donated, (e.g., through a trust), but also those that are allocated from the proceeds of lot sales to the perpetual care fund by the Cemetery Commissioners. See Attorney General, Municipal Law Unit, Tyringham Annual Town Meeting of May 13, 2003-Case #2560 (Oct. 1, 2003)(attached).

Thus, the two relevant categories of funds are: (1) those collected through the sale of lots but not allocated towards perpetual care by the Commissioners and (2) those either donated for perpetual care or set aside for perpetual care by the Commissioners from the lot sale proceeds. The Department of Revenue ("DOR") delineates the permitted uses for each type of fund as follows:

perpetual care funds, in contrast to proceeds from the sale of cemetery lots, do not require appropriation, and cannot be used to reimburse the town for the cost of the cemetery or for enlargement or capital improvements to the cemetery. They are in effect a revolving fund that the cemetery commissioners may use to supplement their operating budget appropriation.

DOR, Division of Local Services, Opinion No. 2008-228 (Feb. 10, 2009) (emphasis added) (attached).

#### Use of Lot Sale Proceeds Not Allocated to Perpetual Care Funds

The Town may use proceeds of lot sales not allocated to the perpetual care fund to pay for improvements to Town cemeteries. For instance, if the Town pays for a road improvement in the cemetery, it may use these funds to pay for that improvement. Unlike perpetual care funds, however, the lot sale proceeds must be appropriated by the Town for cemetery purposes through the Town's normal budget appropriation process.

#### Donated Funds and Funds Allocated to the Perpetual Care Fund

The use of perpetual care funds is limited by the terms of the specific trust or fund documents providing those funds or the conditions imposed on their use by the Cemetery Commissioners at the time they were allocated to the perpetual care fund.

#### Donated Funds

You have provided us with the language for one of the dedicated funds, the Susan Noyes Hosmer Fund. That fund provides:

income only...[is to] be applied to the care and upkeep of our family lot in Woodlawn Cemetery...the remainder of the income to be used for beautifying and improving the cemetery, but no part of said income shall be used for the erection or maintenance of any building.

Although there are no relevant cases or statutes defining the terms "beautifying and improving," the term likely includes maintaining access roads in the cemetery and general landscaping and maintenance of

cemetery grounds. At least one older case also describes the creation of "paths and drives" and "support of...other parts of the cemetery of common benefit to all owners" as an accepted use of perpetual care funds. *Town of Milford v. Commissioners of Worcester County*, 213 Mass. 162, 164 (1912). See also *In the matter of Catholic Cemetery Association of the Archdiocese of Boston, Inc., Order for Commencement and Notice of Adjudicatory Proceeding*, Docket No. ER-2005-0035 at 19 (2005)(attached) (Adjudicatory complaint providing Secretary of State's view that "[t]he perpetual care payments made by contributors and constituting a part of the purchase price of grave lots [in private cemeteries] are intended to preserve cemetery grounds and are not intended for any other purpose.").

The Cemetery Commissioners can therefore use the "remainder" of the Noyes Hosmer fund to make improvements elsewhere in Woodlawn cemetery, including landscaping and access improvements, so long as the Noyes Hosmer family lot is already well kept. The fund may not be used to erect buildings at the cemetery.

The Commissioners will need to conduct a review of the documents for each of the other family or personal perpetual care funds to determine if they contain similar restrictions.

#### Money Allocated to the Perpetual Care Fund

Chapter D of the Town's General Bylaws governs the use of funds in the Town's general perpetual care fund that were deposited in that fund after November 28, 1977 (including those set aside from lot sale proceeds, the remainder of which are deposited in the general fund). The Bylaw provides that income deposited with the Town

for the annual care and maintenance of such lot or lots in a public cemetery as the person shall designate...shall be a perpetual fund and will be pooled with other deposits of a similar nature that are received to comprise the Acton Cemetery Perpetual Care Fund.

Bylaw D4. The income from this fund:

shall be judiciously and economically expended by the Cemetery Commissioners, first, for the care and maintenance of the lot or lots, including the monuments and markers thereon, designated by the donor and second, for the care, maintenance and improvement of the cemetery in which such lot or lots are located.

Bylaw D5 (emphasis added). As with the Noyes/Hosmer funds above, such "excess" funds can likely be used for general cemetery improvements, including roads or landscaping within the specific cemetery in which the lots paid for are located.

The current Bylaw states that this prior bylaw, adopted in 1901, governs deposits to the perpetual care fund made before 1977. We will have to obtain the prior bylaw in order to determine the restrictions on older deposits. We would appreciate it if you could obtain a copy of the 1901 bylaw from the Town Clerk for our review.

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*Annual Reports**School Committee,*

Charles J. Williams, (term expires 1902),

Horace F. Tuttle, (term expires 1903),

Frank R. Knowlton, (term expires 1904).

*Trustees of Memorial Library, (elected by the Town),*

Charles J. Williams, (term expires 1902),

Lucius A. Hesselton, (term expires 1903),

William D. Tuttle, (term expires 1904).

*Board of Health,*

Frank J. Barker, (term expires 1904),

Frank E. Tasker, (term expires 1903),

Charles J. Williams, (term expires 1902).

*Fence Viewers,*

Daniel H. Farrar,

Oliver W. Mead \*

Reuben I. Reed,\*

*Surveyors of Lumber, Wood, Hoops and Staves,*

Herbert T. Clark,

Edgar H. Hall,

Jona P. Fletcher,

Edward F. Richardson\*

James E. Billings,\*

M. E. Taylor,\*

Charles E. Smith.

*Field Drivers,*

James Kinsley,

L. E. Reed.

William H. Kingsley,

*Tree Wardens,*

Charles J. Williams.

*Registrars of Voters (appointed),*

Samuel A. Guilford, (term expires 1904),

James McGreen, (term expires 1903),

David T. Kinsley, (term expires 1902),

Horace F. Tuttle, ex-officio.

\* Not sworn.*Town of Acton*

## PROCEEDINGS OF THE ANNUAL TOWN MEETING.

FEBRU, MARCH 25, 1901.

ARTICLE 1. To choose a Moderator to preside at said meeting.

Luther Conant was chosen Moderator.

ART. 2. To see if the Town will accept the reports of the Selectmen; Overseers of the Poor, School Committee and other Town officers.

*Voted,* To accept the reports of the several Town officers as printed.

ART. 3. To hear and act upon the report of any committee chosen to report at this meeting.

No action taken.

ART. 4. To choose all necessary Town officers and committees and fix salaries.

*Voted,* To fix the salary of the Collector of Taxes for the ensuing year at one hundred and fifty dollars, the same to include posting the warrants, enforcing the dog law and all other duties hitherto performed by said officer.

*Voted,* That the salary of the Road Commissioners be fixed at twenty five cents per hour employed.

*Voted,* That laborers be paid seventeen and one-half cents per hour employed.

*Voted,* That a double team and man be paid forty-two and one-half cents per hour employed.

*Voted,* That travel to and from work shall not be reckoned as time employed.

*Voted,* To proceed to choose on one ballot a Town Clerk, Town Treasurer, three Selectmen, three Assessors, three Overseers of the Poor, one member of the School Committee for three years, a Collector of Taxes, four Constables, three members of the Cemetery Committee, three Fence Viewers, seven Survey-

ors of Lumber, Wood, Hoops and Staves, four Field Drivers, one member of the Board of Trustees of the Memorial Library for three years, one auditor, one Road Commissioner for three years, one Road Commissioner for two years, and a Tree Warden.

The following town officers and committees were chosen:

Town Clerk: Horace F. Tuttle.  
Town Treasurer; Jona K. W. Welherbee.  
Selectmen; William F. Stevens, E. Faulkner Conant, Edwin A. Phalen.

Assessors; Job. W. Dupree, Fred S. Whitcomb, William F. Kelley.

Overseers of the Poor; David C. Harris, William F. Kelley, Lyman C. Taylor.

School Committee for three years; Frank R. Knowlton.  
Collector of Taxes; William F. Stevens.

Constables; James Kinsley, William H. Kingsley, L. E. Reed, Daniel H. Farrar.

Cemetery Committee; Julian Tuttle, Herbert T. Clark, Horace F. Tuttle.

Fence Viewers; Daniel H. Farrar, Reuben L. Reed, Oliver W. Mead.

Surveyors of Lumber, Wood, Hoops and Staves; Herbert T. Clark, Jona P. Fletcher, Edgar H. Hall, Edward F. Richard. son, M. E. Taylor, James E. Billings, Charles E. Smith.  
Trustees of Memorial Library; William D. Tuttle for three years.

Tree Warden; Charles J. Williams.

Field Drivers; James Kinsley, William H. Kingsley, L. E. Reed, Daniel H. Farrar.

Auditor; Frank W. Holt.

Road Commissioners; Anson C. Piper for three years, Albert H. Perkins for two years.

Arr. 5. To see if the Town will appropriate the sum of twenty-two hundred dollars for providing protection against fire in the villages of Acton Center, East, North, South and West Acton or do or act anything thereon.

*Voted*, To lay an eight inch cast iron pipe from the factory of Hall Brothers in West Acton to the corner of the store of C. H. Mead & Co, and place one hydrant at said store and properly

locate another on the line between said points. To purchase one thousand feet of unlined linen or rubber lined cotton hose, as may be decided later and hose carriage for the same.

To purchase for South Acton eight hundred feet of rubber lined hose of same quality as lately purchased for that place at a cost of one hundred and sixty-five dollars. To purchase for one hundred dollars the F. R. R. water supply basin located near the cider mill of Henry Barker, excavate and properly fix said basin for a possible water supply in case of fire. Also, to purchase a small hand tub, and two hundred feet of hose same as is in use of Town at East Acton, for North Acton at a cost of two hundred dollars.

To purchase at a cost of two hundred and ninety-four dollars, twenty-one small fire extinguishers and place three at North Acton, three at East Acton, five each at South Acton, West Acton and Acton Center.

*Voted*, To authorize the hiring of a competent man at each part of the town where fire apparatus is located to properly care for it, to discharge and refit all the Town chemicals as needed and clean and properly care for the hose after a fire.

*Voted*, To appropriate the sum of twenty-two hundred dollars for the carrying out of these votes, to assess eleven hundred dollars of said amount in the taxes of 1901 and eleven hundred dollars in taxes of 1902.

*Voted*, To instruct the Selectmen to immediately carry out these instructions except the laying of the pipe in West Acton which is to be done at the earliest possible moment in the spring of 1901.

*Voted*, To instruct the Selectmen to borrow eleven hundred dollars in anticipation of the assessment of 1902, if necessary.

*Voted*, That Deletta H. Hall and F. C. Hayward be a committee to co-operate with the Selectmen in carrying out these votes, Mr. Hall to act so far as it relates to West Acton and Mr. Hayward for South Acton.

Arr. 6. To see if the town will rescind all action taken on Articles 21 and 22 in warrant of April 3, 1899, and except ordinance in relation to burials and Cemetery Trust Funds or act anything thereon.



ACTON, IN THE YEAR 1901, AN ORDINANCE  
IN RELATION TO BURIALS.

SECTION 1. The Town of Acton, Mass., will receive of any person any sum of money not less than Fifty Dollars nor more than Five Hundred Dollars, the interest thereof to be applied to the annual care of such lot in the public burial grounds of the Town of Acton as the person paying the money shall designate. Such deposit may be made perpetual if so desired by the person depositing the same.

SECTION 2. The Town Treasurer shall receive all sums of money paid in accordance with the provisions of the preceding section, giving a proper receipt of the town therefor, and shall annually at such time as the Cemetery Committee of the public burial grounds of said town shall request, pay over to said Committee interest at the rate of three and a half per cent. per annum upon all sums so paid to and receipted for by him, with a statement of the several lots in the public burial grounds of said town, upon which the interest so paid is to be expended. All of said amounts shall be judiciously and economically expended on each of the variously specified lots, and in addition to keeping the grass cut as many flowers as the money will permit shall be planted, watered and cared for on these lots, also once in every five years the monuments, markers, corner stones and curbstones shall be properly cleaned and repaired, the expense of same to be deducted from the income, if sufficient, of the funds of the lot so cleaned, should the town neglect to faithfully carry out the provisions of this act, the money so deposited shall revert to the heirs of the person so depositing it.

SECTION 3. Said Cemetery Committee shall receipt for and faithfully apply all sums of interest so received by it in accordance with the statement so made by the Town Treasurer, and report its doings in the premises annually to the town. But no part of said sums shall be used in paying for the official duties of said Committee.

*Vote*d, That the following form of receipt shall be given in behalf of the town by its Treasurer to persons depositing money.  
"Received of (A. B.) dollars as a perpetual fund, the income of which is to be used to pay the expense of keeping in repair and good order lots in the cemeteries of Acton, Mass., as follows: (Description of lots)  
This money is received in accordance with an ordinance of the town passed March 25th, 1901.  
Town of Acton, by Treasurer"

ARR. 7. To see what amount of money the Town will raise for the observance of Memorial Day.  
*Vote*d, To appropriate the sum of fifty dollars.

ARR. 8. To see if the Town will accept the jury list as revised by the Selectmen, or take any action thereon.  
*Vote*d, To accept the jury list as revised by the Selectmen.

ARR. 9. To see what amount of money the Town will raise for the repairing of roads and bridges.  
*Vote*d, To raise forty-four hundred dollars.

ARR. 10. To see if the Town will authorize its Treasurer, with the approval of the Selectmen, to borrow money for the Town if necessary in anticipation of taxes the present year.

*Vote*d, To authorize the Treasurer, with the approval of the Selectmen, to borrow money for the Town, if necessary, in anticipation of taxes the current year.

ARR. 11. To vote Yes or No in answer to the question: "Shall licenses be granted for the sale of intoxicating liquors in the Town of Acton the present year?"

Whole number of ballots cast, 317  
Yes, 136  
No, 181

*Vote*d, To appropriate \$500, to be placed in the hands of the Selectmen to enforce the liquor laws.

ARR. 12. To see what amount of money the Town will raise for the support of Memorial Library the present year.

*Vote*d, To raise two hundred dollars for the purchase of books.  
*Vote*d, To raise four hundred dollars for running expenses.

ARR. 13. To see what amount of money the Town will raise for the support of schools the present year, and act anything thereon.

*Vote*d, To raise for common schools, \$3,670  
" " " High School, 1,700  
" " " school supplies, 475  
" " " transportation, 1,030  
" " " books for High School, 30  
" " " salary of Superintendent, 450

*Voted,* To defer action for the present.

*Voted,* That the Selectmen be authorized to employ an engineer to make an estimate of the cost of separating the grades between the N. Y., N. H. & H. R. R. and B. & M. R. R. Co.'s tracks and the Great Road, so called, including land damages.

ARR. 19. To see if the Town will authorize its Selectmen to release the Commonwealth of Massachusetts from all claims for damages arising from the change of grade on a proposed section of State highway in the village of West Acton, or act anything thereon.

*Voted,* To pass over the Article.

... appropriate a sum of  
... appropriate a sum of money for the purpose of placing markers at the graves of persons who served in the war of 1812, the Seminole and the Mexican wars.

*Voted,* To appropriate twenty-five dollars to carry out the purpose of the Article.

ARR. 25. To see if the town will appropriate money for the care of cemeteries the present year or act anything thereon.

*Voted,* To appropriate Five Hundred dollars.

ARR. 26. To see if the town will build a road from the Ireland-Stevens road (so called) past the Cold Storage Building of O. W. Mead to the turnpike, as laid out by the Road Commissioners or act anything thereon.

*Voted,* Not to build the road as laid out.