



TOWN OF MILLBURY

Cemetery Commission 127 Elm Street Millbury, Ma 01527 Tel: 508-865-9143

RECEIVED
TOWN CLERK

13 AUG 13 AM 8:45
MILLBURY, MASS.

CEMETERY COMMISSION MEETING MINUTES

April 8, 2013

5:00 PM

Present: Gil Picard, Randy Mogren, Marica Landry, Rob McNeil, Cindy Allard

Rob advised the board that the abutting property is going to be appraised so we can discuss the sale to the Town for expansion

Board reviewed acct balances.

Rob advised received stamped plans for the survey that was done, now can look into the electronic file system to start mapping

First double lot was sold in the new section, which is section 10

Cremation section in new lot, need to amend the rules and regulations to state "No plantings only potted plants in cremation area, flush mounted stones 1X2 only, no artifacts, no plantings of any kind, allowing perpetual candle and flags, Veterans Markers flush mounted only, no addition stones in the cremation section

Receive letter from Town Council that the Town Manager had full authority over perpetual care (see attached)

Marcia advised the water station area should be beautified with a walk way etc. Rob advised it will be done after the water expansion is complete.

The trim on the shed is in need of repairs, will be done shortly

Grave Digging will be put out for bid in July, so there can be a contract in place.

St. Brigid's Cemetery contacted the office to see if they could expand their part of the cemetery which would be the right side. Town needs to investigate further.

New meeting dates set for - June 10th & July 15

Meeting adjourned @ 7:00 pm.



Gil Picard



Marica Landry



Randy Mogren



KOPELMAN AND PAIGE, P.C.
The Leader in Municipal Law

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April 24, 2013

RECEIVED
APR 29 2013

Lauren F. Goldberg
lgoldberg@k-plaw.com

BY:

Mr. Robert J. Spain
Town Manager
Millbury Town Hall
127 Elm Street
Millbury, MA 01527

Re: Town Cemetery - Perpetual Care Fund

Dear Mr. Spain:

You have requested an opinion regarding authority to expend the Town Cemetery perpetual care fund. By way of background, I understand the Town currently has three funds related to the Town cemetery: a sale of graves fund, expended annually by a vote of Town Meeting; a perpetual care fund for the maintenance of the cemetery; and a gift fund for cemetery flowers. Pursuant to the Town Charter, the Town Manager appoints the three-member Cemetery Commission and cemetery maintenance and operations is conducted through the Department of Public Works, in coordination with the Town Manager's office. Relevant portions of Section 4-2 of the Charter provide the Town Manager with authority and jurisdiction over town facilities, negotiation of contracts and purchase of supplies. Finally, we are informed that prior to adoption of the Charter in 1999, the Town had an elected Cemetery Commission.

In my opinion, where the Town Manager, pursuant to the Town Charter, has jurisdiction over the maintenance and use of all Town facilities, including the Cemetery, as well as authority to negotiate contracts and purchase supplies, the Town Manager is the entity with authority to expend funds from the Perpetual Care fund for maintenance and operation of the Cemetery.

Relevant State Law – Relationship to Town Charter

In the absence of a Town Charter, G.L. c.114 governs the maintenance of municipal cemeteries by both elected and appointed Cemetery Commissions and the expenditure of perpetual care funds. Towns that have accepted G.L. c.114, §§122-125, or an earlier version of such statutes, have elected cemetery commissions with the duties of such commissions as defined in said sections. General Laws c.114, §127 addresses appointed cemetery commissions, although provides much less detail concerning the duties thereof. Duties of elected commissions include care, custody and control of town cemeteries, authority to provide direction with respect to investment of funds for cemetery-related purposes, and expenditure of those trust funds that do not require approval of town

KOPELMAN AND PAIGE, P.C.

Mr. Robert J. Spain
Town Manager
April 24, 2013
Page 2

meeting. We understand that there is no record of the Town having accepted the statutes at issue, but that prior to the adoption of the Town Charter, the Town had an elected Cemetery Commission. We understand further that such commissions, historically, were created to provide the physical work necessary to operate and maintain the cemetery, and in connection therewith, to expend monies appropriated for the care and maintenance of the cemetery, and ensure that gifts for the cemetery were used or invested consistent with the purposes therefor.

Be further aware, however, of G.L. c. 43B, §20 (part of the Home Rule Procedures Act), which provides, in part, “[t]he provisions of any charter or charter amendment adopted pursuant to the provisions of this chapter shall be deemed consistent with the provisions of any law relating to the structure of city and town government, the creation of local offices, the term of office or mode of selection of local offices, and the distribution of powers, duties and responsibilities among local offices...” Further, G.L. c. 43B, §20(f) provides “the powers, duties and responsibilities of one local office be divided and exercised by two or more local offices.” Thus, pursuant to the provisions of G.L. c. 43B, §20, the Town Charter may assign various matters relating the structure and function of government to any other entity or entities, and any variation between state law and the Town Charter, is deemed consistent with state law and resolved in favor of the Town Charter.

Town Charter

As you are aware, the Town adopted a Charter in 1999. That Charter altered the manner in which state law applies to a number of different areas of Town government, creating a more centralized form than had previously existed. One such change conveyed to the Town’s full time staff responsibility for daily operations of the Town, and in connection therewith, created the office of Town Manager. At the same time, it established many of the Town’s multiple member boards as policy-making in nature. This is, of course, consistent with DOR’s recommendations with respect to financial management and with current municipal management trends.

Section 4-2(h) of the Town’s Charter provides that the Town Manager shall “have full jurisdiction over the rental and use of all town facilities and property except property under the control of the school committee, or the conservation commission. The town manager shall be responsible for the maintenance and repair of all town buildings and facilities placed under the town manager’s control by this charter, by by-law, by vote of the town or otherwise.” (emphasis added). Although not defined in the Town Charter, municipal facilities are generally understood to mean those properties improved for public purposes as well as utilities such as water or sewer service, transfer stations, and cemeteries. Moreover, the only Town buildings and facilities exempted from the Town Manager’s responsibility under this section are those under the control of the School Committee and Conservation Commission. Rules of statutory construction require the conclusion that the voters of the Town intended to exclude from the provisions of Section 4-2(h) only the facilities and property specifically identified therein. See Glorioso v. Retirement Board of Wellesley, 401 Mass. 648, 650 (1988) (stating, “The expression of one thing is an implied exclusion

KOPELMAN AND PAIGE, P.C.

Mr. Robert J. Spain
Town Manager
April 24, 2013
Page 3

of other things omitted from the statute”). For these reasons, in my opinion, the Cemetery is a Town facility, and the use of such facility, as well as maintenance and repair thereof, are under the control of the Town Manager.

Moreover, Section 4-2(k) of the Town Charter authorizes the Town Manager, “To negotiate all contracts involving any subject within the jurisdiction of the office of town manager All contracts shall be subject to ratification and execution by the board of selectmen.” (emphasis added). As described above, the care and maintenance of Town facilities is a matter within the authority of the Town Manager, and therefore, any contracts related to such matters also falls within the authority of the Town Manager.

In addition, Section 4-2(l) of the Town Charter creates somewhat of an exception to the requirement that the Board of Selectmen approve contracts within the Town Manager’s jurisdiction, stating that the Town Manager shall:

be responsible for purchasing all supplies, material and equipment for all departments and activities of the town, but not including food for schools, school books and other instructional material, supplies and equipment, unless otherwise specifically requested by the school committee. The town manager shall examine, or cause to be examined, the quantity, quality and condition of all supplies, material and equipment delivered to or received by any town agency, except schools. The town manager shall be responsible for the disposal of all supplies, material and equipment which have been declared surplus by any town agency.

Thus, contracts for supplies and services under G.L. c.30B fall within the sole authority of the Town Manager, otherwise than as stated in Section 4-2(l). Similar to the authority of the Town Manager under Section 4-2(h) of the Town Charter, Section 4-2(l) contains several exceptions, but not for cemetery-related matters, and such an exception should not be inferred.

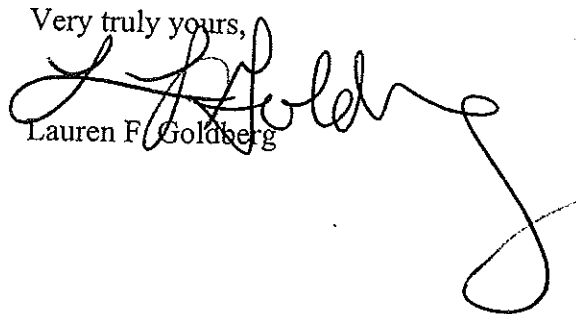
Reading the Charter at a whole, and in the context of G.L. c.43B, §20, it is clear that the Town Charter has shifted to the Town Manager authority with regard to the use and maintenance of the Town Cemetery, and, in connection therewith, for procurement and execution of contracts under G.L. c.30B for supplies and services, and for negotiation of all non-G.L. c30B contracts. It necessarily follows, in my opinion, that only the Town Manager has authority to expend the Cemetery Perpetual Care fund for the purposes of such fund.

KOPELMAN AND PAIGE, P.C.

Mr. Robert J. Spain
Town Manager
April 24, 2013
Page 4

Please do not hesitate to contact me or Attorney Janelle Austin if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "L. Goldberg", with a long, sweeping flourish extending downwards and to the right.

Lauren F. Goldberg

LFG/JMA/eon
cc: Board of Selectmen
472453/MILL/0001