

Cemetery Commission Report

Introduction

This report presents the results of a review of a series of issues surrounding the Edgartown Cemetery Commission's operations that have caused concern. The Strategic Policy Partnership, LLC was asked to review the issues and report on ways that they could be resolved. Those recommendations are contained in this report.

While not receiving much public attention, town cemeteries are very important to many residents of a town in resident's planning for the future, as a remembrance of those who are deceased and as an historical memorial to former residents of the town. The Cemetery Commission, established by town by-law many years ago, has had responsibility for overseeing the operation of four cemeteries. There are three regular members of the Commission and one alternate member who is a voting member at meetings if one of the regular members is unable to be in attendance.

The Commission is expected to abide by normal committee procedures followed by all town committees, including abiding by Robert's Rules of Order, posting of meetings and the agenda in advance, keeping complete minutes of the meeting discussions, motions and votes, approving minutes at the next scheduled committee meeting, posting those minutes for public access after the meeting, and adherence to state ethics rules as well as open meeting laws.

A Cemetery Superintendent, reporting to the Cemetery Commission, has responsibility for day-to-day activities relating to cemeteries, including sale of cemetery plots, maintenance of sales and burial records, maintenance of the cemeteries, assistance in planning for needed growth in cemetery space, and numerous related issues. The Cemetery Superintendent, as a working supervisor, oversees seasonal employees who perform maintenance and upkeep in the cemeteries.

The Cemetery Commission meets about once a month throughout the year but sometimes more often in the warmer months. It has not always been easy for the town to find residents willing to serve on the Commission. One current member has been on the Commission for over ten years; another has several years of experience; the third member is fairly new and the alternate member was more recently appointed.

The position of Cemetery Superintendent is a year-round position, funded at 32 hours a week. There is far more work to be done during the spring, summer and fall months than during the winter, but under personnel by-laws, the Superintendent is not permitted to work beyond 32 hours a week. The current Superintendent also

works for the town for 8 hours a week as an Animal Control Officer, thus being a full-time town employee.

Within town government, personnel matters related to town departments and employees are coordinated through the Personnel Board, and its Human Resources Coordinator. The Town Administrator provides overall oversight of town government activities for the Board of Selectmen.

Robert and Susan Wasserman, Principals of the Strategic Policy Partnership LLC undertook this report and the review described herein. The firm interviewed all members of the Commission, the Cemetery Superintendent, and numerous other persons with knowledge of the current situation. All persons interviewed, particularly the members of the Commission and the Superintendent, were very forthcoming. Not all information needed was available, however, since minutes from Cemetery Commission meetings for some of 2015 and all of 2016, are not available and/or complete, have not been approved by the Commission or made available to the public.

The Evolving Conflict

Principal Players in the Cemetery Conflict

The Selectmen appoint three members of the Cemetery Commission for staggered three-year terms. In 2014-2015, an alternate Commissioner was appointed to fill in when a Commissioner could not attend a meeting. This was necessary because one member of the Commission leaves town in the winter months and is not available to participate in Cemetery Commission meetings. For many years, this was a very stable department. In the last three years, three new commissioners and an alternate have been appointed.

The Commissioners appoint the Cemetery Superintendent. It is a 32 hour/week, year around, benefited position with both a clerical and a working supervisor component. There is a job description for this position.

Timeline of Key Events

There were two key occurrences that sparked a complicated chain of events that seem to have precipitated an eventual breakdown in the Cemetery Commission-Superintendent relationship. First, in February 2015, the Superintendent broke several toes in an off-duty accident and was in a walking cast. She was required to use 19 days of sick time because she was not able to perform all of her normal job functions. Second, it appears that a commissioner, of her own accord and without a vote of the Commission, asked the Superintendent to work on an historical gravestone documentation project that was arguably outside of the normal scope of work specifically listed in the job description.

Earlier, in 2013, the Superintendent complained that one of the Commissioners had a conflict of interest as his business involved the cemeteries. He thus resigned from the Commission. A year later, the Superintendent accused another member of a conflict because she had a business that provided tours of the cemetery. She altered her business arrangements. This further strained the working relationship between Commissioners and their employee.

In March 2015, the Superintendent received a poor evaluation and a recommendation of no merit increase in pay. She sent a rebuttal of this performance review.

On April 28, the Superintendent was placed on administrative leave pending a disciplinary hearing.

The disciplinary hearing, chaired by the town's labor counsel, was held on May 5, 2015. Subsequently, a 30-day suspension was worked out between attorneys for the town and the superintendent. There is no public record of who voted for or

when the Cemetery Commissioners approved the suspension. The Superintendent signed the 30-day suspension agreement.

The suspension ran from May 15, 2015 to June 12, 2015.

On June 12, 2015, the Superintendent, as a result of her previous injury, was placed on administrative leave pending a doctor's certification of fitness to return to work. She returned to work after this paperwork was received. There appears to have been some controversy between the Commission and the Superintendent about what evidence was required from the doctor and how it was to be transmitted to the Commission.

On June 16, 2015, the Superintendent's attorney wrote the town's labor counsel alleging an open meeting law violation. The response from the labor counsel stated that there had been no open meeting law violations.

There were on-going disagreements between the Commissioners and the Superintendent pertaining to work projects, especially the historic gravestone data collection.

On January 7, 2016, the Superintendent sent a letter grieving the May 2015, 30-day suspension as beyond that allowed under the Edgartown personnel bylaws. Both the Cemetery Commission and the Personnel Board denied the grievance because the grievance was not filed in a timely manner (8 months later), and because both parties had signed the binding legal agreement.

The Superintendent then sent a letter to the Personnel Board on February 11, 2016, listing a "timeline" of events over the prior year and alleging "bullying, harassment, threats and civil rights violations". The Personnel Board, through the Human Resources Coordinator, moved to contract with the Strategic Policy Partnership, LLC for a review of the current situation toward finding a solution to the conflict. The Personnel Board, to avoid further difficulty, suggested that the Commission not meet or have contact with the Cemetery Superintendent until after the review was completed.

The current status of the Cemetery Department

The situation with charges and counter-charges from both sides has become irreconcilable. Neither party is able to work with the other to resolve issues or conduct normal business. Everyone seems to be afraid of lawsuits and/or being fired. Our review determined that given the history of these conflicts, the hard-lines now drawn, the perceptions of the parties and the personalities involved that no amount of mediation or intervention will resolve the current conflicts to allow regular cemetery operations to run smoothly. Neither side, Commissioners nor Superintendent, have found satisfactory ways of communicating with each other.

We understand the perception of harassment, bullying, violation of civil rights and willful intimidation. We found lots of evidence of inept communication, but no clear intent to commit the above. Charges and counter-charges including implied threats of firing and lawsuits have only served to further deteriorate the working relationships.

The Issues of Concern and Findings

Orientation of the Commission Members. There has been a range of issues that have surfaced which have tended to create tension among Commission members and Commission staff.

The Cemetery Commission has had little orientation or oversight regarding how Edgartown boards and committees are to operate, how to properly supervise and evaluate employees and the authority of persons serving on Commissions. Some members of the Cemetery Commission have very strong personal opinions about cemetery matters and are passionate about how these matters are managed. We found that there is little understanding among Commission members that the Commission can only act as a body of the whole; that individual members cannot direct employees to undertake activities without discussing the issue at a Commission meeting and getting a recorded Commission vote before direction is given.

Further, the Commissioners were required to address complicated personnel matters involving off-duty injuries, use of sick time and determinations of fitness to return to work that are beyond the normal knowledge of most volunteer boards and committees.

There appears to be confusion that it is the role of the Commission Chair to communicate Commission decisions to the Superintendent. Absent clear orientation of members about how the process is to work, individual members have many times issued directions individually to employees. In some cases, those instructions have been viewed by staff as self-serving, dictatorial, a conflict of interest or improper.

The town does not provide new members of boards and commissions with an orientation about the “rules” of government. This is not only an issue for the Cemetery Commission but a weakness among boards and commissions of the town. In many cases persons coming to serve on such boards may already have a sense of the “rules of the game” and act properly. But, the town does not have, at present, a means to ensure that all members have received the information required to manage their boards and/or commissions in accordance with standard rules of order and in compliance with Massachusetts State Law. Employee oversight and evaluation is often not understood or seen as a nuisance. Lack of that information

among members of the Cemetery Commission has caused some of the tensions between the Commission and the Cemetery Superintendent.

Work Schedule of the Commission staff. The Cemetery Superintendent is scheduled to work 32 hours a week throughout the year. As she has another own position – animal control officer – where she works 8 hours a week, she is scheduled to work for the town a full 40-hour week throughout the year. In reality, there is not usually 32 hours of cemetery work during the off-season winter months. And from the spring through fall, there is often more than 32 hours of cemetery work a week, largely related to maintenance of the town’s cemeteries and supervision of the seasonal maintenance staff. Town regulations prohibit an employee from working over scheduled hours. And there has been little guidance for what the Superintendent is supposed to do during the winter when 32 hours are not always needed for cemetery activity. In addition, the Superintendent has resisted taking any direction for winter work.

The seasonal maintenance staff are needed from early in the spring to clean up the winter debris to late fall to remove leaves and for other cemetery grounds-keeping activities. Access to the cemeteries after snowstorms is also needed. The current seasonal job description needs to be adjusted to allow for this necessary coverage.

The Superintendent appears to have done a good job in being available to the public to purchase plots and to assist with burials.

Commission Meeting Records and Minutes. Commission meetings are generally held monthly. During some of the winter months, one of the Commissioners is away so the alternate member fills in for that member.

The Commission has had a difficult time in figuring out how to ensure that minutes are taken at each meeting. Sometimes Commission members take notes at the meeting and in the past they have tried to merge those notes into meeting minutes. At other times, the Commission has asked the Cemetery Superintendent to take minutes. There appears to have been dissention among members as to what should be in the minutes and how they should be worded. Individual members appear to want different things in the minutes. During a July meeting, conducted by the Town’s Labor Counsel, there were comments made which were controversial and there was disagreement about whether those comments should be contained in the meeting record. There is no evidence that meeting minutes were regularly approved in a timely manner nor is it possible to determine specific directives or actions and who voted for what. For 2016, there appear to be no minutes presented to the Commission for approval and posting and it is unclear who actually was assigned to take the minutes. This is an example of the Commission’s general dysfunction.

It has been suggested to the Commission that they contract for an independent person to record the meetings and take minutes, as is the case with a number of other committees on the Island, but no decision to move in this direction has been made.

Behavior of Commission Members. Some members of the Commission behave in a problematic manner at meetings. In a recent meeting held to check on preparation for the Memorial Day holiday, called to ensure that arrangements for the holiday had the cemeteries in good order, members of the Commission spoke while others were speaking, showed clear disdain for the Cemetery Superintendent, who was in attendance, and even acted theatrically by banging down papers on the meeting table.

Members appear to want to have their own agenda pressed forward, and if it is not, they are willing to act on their own to achieve these objectives. While the current Chair of the Commission tried to maintain a civil atmosphere, when he is not there, the atmosphere is generally unprofessional and has become quite toxic. Without minutes, much of this behavior and the resultant decisions are not captured for the record.

There have also arisen a series of ethics and conflict of interest issues. As noted above, one member of the Commission had to resign because he had a cemetery-related business. At her disciplinary hearing, the Cemetery Superintendent accused another Commissioner of being in conflict due to her business, Vineyard History Tours. She has remained on the Commission

As noted above, there is no sense among Commission members that they can only act as a board, not individually. Their behavior at meetings indicates that they have little appreciation for how a board is required to work and how to keep accurate records.

Behavior of the Cemetery Superintendent. Apparently, the Cemetery Superintendent came to this position not having had experience in working under the supervision of a commission or town board. Thus, she was troubled when the Commission engaged in conversation about issues they were concerned about. She took any questions or comments as being personally critical. Some Commission discussion was critical but it seems the Superintendent regularly over-reacted. She assumed she knew how to do the job from her orientation by the former Superintendent and despite a broad job description, systematically refused to accept other duties or responsibilities. As time went on, she became more recalcitrant, exacerbating the difficult working relationship. Eventually, both sides were so intimidated by perceptions and threats that communication broke down completely.

The Superintendent was also resistant to accounting for her time, assuming that when such an accounting was asked for, it was a personal affront. Given that the

schedule of the Superintendent has substantial down time during the off-season months, it is understandable that there would be questions about how she was spending her time. The issues surrounding the uneven seasonal demands of this job became even more apparent when the Superintendent broke her toes in the winter of 2015, was in a walking cast which limited her ability to perform physical labor and had fewer than 32 hours of clerical work per week to perform. There continues to be no resolution to the seasonal nature of the workload.

It also appears that the Cemetery Superintendent has not fully accepted being a working supervisor. While there have been some times when she has been observed working in one of the cemeteries, many reported to us that she is not seen regularly in the cemeteries alongside cemetery workers.

The Discipline of the Cemetery Superintendent. At the height of the conflict between the Commission and the Cemetery Superintendent, the Commission brought charges against the Superintendent for “neglect of duty or incompetence” with a long list of grievances. The charges resulted in a formal hearing before the Commission run by the Town’s Labor Counsel. A suspension was imposed under a legal agreement constructed by the Superintendent’s Counsel and the Town’s Labor Counsel. The agreement, which was negotiated outside the parameters of the bylaws by the lawyers provided for a 30-day suspension. According to town personnel by-laws, the maximum suspension for an employee is 20 days in a twelve-month period. The Superintendent submitted a grievance about this disparity (eight months after the suspension). The Personnel Board and the Cemetery Commissioners voted to deny her grievance thus upholding her suspension.

Through the months of conflict, there was no progressive discipline utilized. It is clear that the dissatisfaction with the Superintendent among some Commission members was longer standing and should have been mediated or addressed by the Commission in a progressive manner. To complicate the matter, the charges set forth by a majority of the Commission (but not by all members) included a host of minor charges that had not been previously addressed, and some of which appeared to reflect personal piqué of individual Commission members. She was given an unsatisfactory performance rating in 2015, and a satisfactory performance evaluation, after all this conflict, in March of 2016.

Recommendations

Provide committee support for Open Meeting/Ethics issues; importance of Minutes; Robert's Rules of Order; voting procedures, etc. Every member appointed to a board or commission in the town should receive an orientation including how boards need to operate, the ethics and open meeting requirements of boards, the authorities of individual members of the board and of the Chair, the application of Robert's Rules of Order, and related materials. The importance of timely, complete and approved minutes needs to be emphasized.

An ideal orientation to ethics and open meeting law requirements would be more than a cursory on-line test or a document to read through. There are subtleties to the conflict of interest requirements and to the open meeting law that often need discussion and/or role-playing as part of a member's orientation.

Mediation support rather than labor law, union approach. When issues arise impacting boards and commissions and their staff, where staff are not union members, the town should arrange for early mediation rather than considering it a labor-management issue. In the current case of the Cemetery Commission and the Cemetery Superintendent, mediation might have mitigated problems at an early stage, rather than allowing the situation to become irreconcilable.

Abolish the Commission. The Cemetery Commission no longer functions as a responsible, effective board and should be abolished. There is no way to resolve the conflicts that have overtaken the Commission and its staff. Some current members often let their personal agendas cloud the necessity for the Commission to act as a constructive body without individuals taking things into their own hands.

Establish the Selectmen as Cemetery Commissioners. As is the case in many towns across the Commonwealth the size of Edgartown, and as is the case in West Tisbury and Tisbury, the Selectmen should be appointed Cemetery Commissioners. The Selectmen and the Town Administrator often have more experience in supervising and evaluating employees. This change would also ensure that the special interests that have become apparent with the current Commission are no longer clouding the operation of the cemeteries, which are so vital to many in the town. The Selectmen would provide the oversight necessary to ensure long range planning for expansion, provide updated rules and regulations for the cemeteries and any supervision needed.

Separate Cemetery Tasks into two groupings and move the Cemetery ground staff to the Highway Department. The Cemetery Superintendent's job involves two separate functions. One grouping is the maintenance of the cemeteries. The second is the administrative processing of plot purchase and record keeping. The seasonal nature of cemetery operations has been challenging and inefficient. Finding qualified and dedicated seasonal staff for cemetery maintenance needs has

not been easy. The uneven workload over the course of any given year, for the Cemetery Superintendent, and the legal necessity of overtime payments for more than a 40-hour workweek, necessitate finding a way to spread out the work required. It would be far more efficient for the town to place maintenance functions under the Highway Department. For many of these tasks (leaf and snow removal, spring clean up, etc.) the Highway Department is already providing staff time. In order to optimally coordinate purchase and use of equipment, to better coordinate maintenance tasks and perhaps most importantly, to allow necessary flexibility in assigning employee work schedules, the Highway Department and its Superintendent can best assume cemetery maintenance.

In the future, the Town might want to consider merging Parks and Recreation maintenance staff with the Highway Department and form a new Public Works Department. This would allow additional economies of scale in equipment purchase and the best utilization of maintenance time, further alleviating seasonal employment issues.

Provide a full-time clerical staff person. Whether under a new or existing position, the responsibility of interfacing with the public and managing the sale, record keeping and administration of cemetery plots, combined with clerical tasks of other town departments could be more efficiently staffed year around. This clerical work could be either under the current Parks Administrator or a new position created to also provide needed administrative assistance to the Highway Department,

Possibly appoint one or two special advisors to the Selectmen on their area of expertise (Historical issues or Road and Plot layouts). The Selectmen may feel that there are specific areas of cemetery operation that are beyond the scope of their expertise. Knowledgeable residents, possibly including present and former cemetery commissioners, might be willing to serve in an advisory capacity.

**CRONOLOGY OF EVENTS
CEMETERY COMMISSION (CC)
TOWN OF EDGARTOWN**

DATE	EVENT
2/10/15	Superintendent Jen Morgan notifies CC that she has broken “several toes and is in a walking cast.” This was a non-work-related injury. CC discusses use of her sick time, as she may not be able to perform all necessary manual labor. CC Minutes report that a project to “compile data from several cemeteries and compiling into one single sheet. They will start with Tower Hill and then move on to OWS” was noted as a way of preserving some of Jen Morgan’s sick time. [Minutes available. No specific directives or votes recorded]
2/19/15	Email from Commissioner Liz Villard to Jen Morgan discussing historic gravestone documentation and setting out specific work project components.
2/23/15	Email from Geoghan Coogan, Esq., attorney for Jen Morgan to Liz Villard. States above work appears to be beyond the scope of Superintendent’s job description. A meeting is suggested.
No Date	Town Labor Attorney John Collins, advises that present job description for Cemetery Superintendent covers above request.
3/10/15	Liz Villard met with Jen Morgan to discuss scope of historic project. E-mail from Liz Villard to Jen Morgan referencing a 3/20/15 CC meeting that instructed Jen Morgan to carry out historical gravestone project. (Meeting may have actually occurred on 3/17/15) [No record of vote. No minutes available]
3/20/15	E-mail from Jen Morgan to Liz Villard that questions validity of work project request
3/23/15	Performance review of Superintendent—poor evaluation/no merit increase
3/31/15	CC meeting to discuss and finalize Superintendent’s evaluation. [Minutes incomplete. No record of who was present or what vote(s) taken]
4/21/15	Jen Morgan sends rebuttal letter of performance review

- 4/22/15 Personnel Board meeting attended by CC and Jen Morgan. CC wanted clarification on whether Jen Morgan works for the Commission and whether she was a salaried or an hourly employee. CC asked what to do if Ms. Morgan refuses to do requested work. CC was told there is a disciplinary process in the personnel bylaw and that procedure should be followed.
- 4/28/15 CC placed Jen on Administrative Leave pending a disciplinary hearing [Minutes available]
- 5/5/15 Disciplinary hearing. Liz Villard recuses herself after Jen Morgan alleges that she has a conflict of interest. 18 complaints were detailed. John Collins asked to chair hearing and to make recommendations for CC action. [Minutes available, but very cursory]
- 5/12/15 Email from John Collins stating that attorneys for both parties negotiated a 30-day suspension, without pay. No public record of CC vote to approve suspension.
- 5/12/15 Agreed upon suspension signed by Jen Morgan
- 5/15/15 30-day suspension begun
- 6/12/15 CC placed Jen Morgan on Administrative Leave re: broken toes and walking cast and pending doctor's certification of fitness to return to work [Minutes available]
- 6/16/15 CC meeting [Minutes available]
- 6/16/15 Jen Morgan's attorney, T. Saulnier, sends open meeting complaint to John Collins
- 7/10/15 Collins replies to letter stating no valid complaint re: open meeting violations
- 7/14/15 CC Meeting [Minutes available]
- 8/11/15 CC Meeting [Minutes available]
- 9/15/15 CC Meeting [Minutes available]
- 10/15/15 CC Meeting—referenced in email below—[Minutes available]
- 10/20/15 Email sent to Jen Morgan directing grave stone restoration work re: 10/15/15 CC meeting directive

- 11/5/15 CC Meeting to discuss Rules and Regulations [No minutes available]
- 11/17/15 CC Meeting [Minutes available]
- 12/3/15 CC Meeting. No minutes taken. Action on rules and regulations postponed
- 1/7/16 Jen Morgan writes letter to CC grieving her 30-day suspension (from May 2015) as a violation of the 20-day suspension limit in the personnel bylaw. Asks that suspension be rescinded and that she be reimbursed for lost pay.
- 1/21/16 Jen Morgan follow-up letter re: above grievance of suspension
- 1/26/16 CC voted to deny grievance [Minutes available]
- 2/11/16 Jen Morgan filed grievance with the Personnel Board, subtitled a “timeline” of events of the past year, to the Human Resources Coordinator. This document contained allegations of bullying, harassment, threats and civil rights violations.
- 3/9/16 Personnel Board denies Jen Morgan’s January grievance request [Minutes available]
- 3/22/16 Jen Morgan receives positive performance evaluation from CC. Cemetery Commission had not seen 2/11/16 “timeline” letter sent to Personnel Board.
- 4/5/16 Personnel Board votes to contract with Strategic Policy Partnership LLC for review of the current situation and make recommendations for resolving the ongoing conflicts.

No CC Minutes from 2016