

DIVISION OF CEMETERIES

STATE OF NEW YORK
DEPARTMENT OF STATE
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GOVERNOR

CEMETERY BOARD

ROSSANA ROSADO
SECRETARY OF STATE
CHAIR

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

DR. HOWARD A. ZUCKER
COMMISSIONER OF HEALTH

Cemetery Board Minutes

February 27, 2018
Department of State
One Commerce Plaza, Albany, NY

BOARD MEMBERS PRESENT:

Daniel Shapiro, Department of State, Chair
Christopher Wiles, Office of Attorney General

Paul Ambrose, Department of Health

OTHER ATTENDEES:

Lewis A. Polishook, Division of Cemeteries
Chester Butkiewicz, Division of Cemeteries
Leonard Breen, Division of Cemeteries

Antonio Milillo, Department of State, Counsel
Joseph Ambrose, Division of Cemeteries
Alicia Young, Division of Cemeteries

GUESTS:

David F. Fleming, New York State Association of Cemeteries
Calum d’Oelsnitz, New York State Association of Cemeteries
Bruce Geiger, Pinelawn Cemetery
Scott Henderson, New York State Funeral Directors Association

18-02-A-06 Minutes of Previous Meetings

Motion made, seconded, and unanimously adopted approving the minutes of the January 17, 2017 meeting as amended.

18-02-B-07 Legislation and Regulation

1. Pending Legislation

Mr. Milillo reported the following on pending legislation:

A3785/S2894 (A. Dinowitz/S. Ranzenhofer): This is a NYSAC bill and is intended to clarify that state regulated cemetery operations are under the sole jurisdiction of the state cemetery board. In the Senate it has advanced to the third reading.

A7256 (A. Englebright) This bill would add a new section 1518 to Article 15 of the N-PCL that would establish a Native American burial site review committee to which all discoveries of an unmarked burial site during ground-disturbing activities must be referred. It gives that committee certain duties and responsibilities that depend on whether or not the remains are determined to be Native American remains. While put in Article 15 it probably belongs in Article 14 which includes private and family cemeteries.

A7666/S5984 (A. Lupardo/ S. Seward) This bill would permit funeral entities that operate crematories to transfer the crematory to another entity; to expand the crematory; and to relocate the crematory. While it passed in the Senate, it died in Assembly and was referred to Consumer Protection.

A470 (A. Gunther): This bill would amend the EPTL and N-PCL to add a definition of "community foundation" and to allow such foundations to be custodians and trustees of cemetery trust funds. Nothing has happened in the Assembly.

2. Rules and Regulations

None.

18-02-C-08 Division's Report

Mr. Polishook reported that we have received online submissions of the new annual report. Division has received feedback on the hard copies of the form; this feedback will be used to make minor adjustments and clarifications to language, but no substantive changes. The new database is up and running replacing the legacy database while expanding data capture and access capabilities.

18-02-D-09 Vandalism Report

Mr. Butkiewicz presented the vandalism report: In this fiscal year, the Division has collected \$164,219 in vandalism fund fees. As of January 2018, the Board had granted \$886,355 from the vandalism fund. There are \$1,702,636 in applications pending.

Mr. Polishook presented a Supplemental Abandonment application for Whispering Maples Cemetery's electrical work. Electrical lines located between the two buildings and were entangled in branches appearing to be unsafe. The cemetery is proposing to perform electrical work at the Ellenburg location; running electrical lines under driveway and performing additional work to electrical boxes; which was not approved in the cemetery's original application for abandonment funds.

Motion made, seconded and unanimously adopted to approve the request for a change to the application to allow for payment for repair of the electrical connection as set forth in the application, without adjusting the appropriated amount, but without prejudice to a request for additional funds at this time.

18-02-E-10 Fishkill Rural Cemetery (14-007 Dutchess) – Mausoleum

Fishkill Rural Cemetery has submitted an application seeking approval for construction of a mausoleum. The cemetery's board of trustees unanimously approved the proposed construction of the mausoleum at the annual lot owners meeting held on July 20, 2017. There were no lot owners in attendance. The total budget for the project is \$1,293,100. The information provided appears to satisfy the requirements of section 201.11 of the not-for-profit corporation law.

The proposed mausoleum is to be 3,710 square feet with a 10' wide concrete sidewalk around the building with a connecting driveway. The mausoleum will have 192 single crypts, 180 tandem crypts, 12 triple crypts, 80 granite front niches and 124 glass front niches. The building is designed so that an addition may be added at a later date.

The building will be constructed using a loan of \$500,000 from Permanent Maintenance fund and estimated pre-sales of \$600,000. The cemetery will use a marketing firm in Fishkill to tailor a marketing plan for the mausoleum sales. All sales will be conducted in-house by cemetery employees. The cemetery estimates total revenue to be 4 to 5 million dollars.

The cemetery also plans to obtain a non-secured line of credit from the Putnam County Savings Bank for \$500,000 at 4.75%. The cemetery originally proposed to pay back the Permanent Maintenance loan by allocating an additional percentage of new mausoleum unit net sales to the Permanent Maintenance Fund. On February 12, 2018, at the Division's request, the cemetery proposed a fixed monthly payment of \$5,208.33 for eight years as an alternative to the percentage of sales payment method. The cemetery anticipates repayment to begin in 2020 post construction. The Division has no objection to this project as presented.

Motion made, seconded and unanimously adopted to: (1) approve mausoleum construction contingent upon review by the Division of any adverse comments received from lot owners in response to the required posting; if such comments appear then the Division should bring them to the Board. Also, contingent upon all local approvals; and (2) recommend to the court approval of PM loan contingent upon counsel review of the petition and in accord to representation made in the application review by the Division of PM loan of \$500,000 with a payback over eight years at \$5,208 per month.

18-02-F-11 Pine Plains Cemetery (34-038 Onondaga) – Columbarium

Pine Plains Cemetery Association has two 64 niche columbaria that are approximately 80% sold and seek to install a third unit. Application received requests approval to build a 64 niche columbarium. The columbarium construction was approved by the trustees at a meeting held September 9, 2017. The columbarium will be purchased for \$27,355. With foundation, the total cost of this project is estimated to be \$30,188.68. The project will be financed from the general fund of the Pine Plains Cemetery. Estimated total cumulative revenues from niche sales will be \$60,800.

Motion made, seconded and unanimously adopted to approve the project as set forth in the application contingent upon no significant opposition to the building in response to the cemetery's posting as required by regulation.

18-02-G-12 Wiltwyck Rural Cemetery (56-037 Ulster) – Major Renovation

The Board approved this project in June 2017. At the time, it was understood that the project would be financed by a commercial loan at the rate of 4.25%. However, the terms of the loan have changed slightly. For the first year of the loan, the interest rate will be a minimum of 4.25% with a ceiling of 5.25%. After the first year the interest rate will be 4.25% for the remaining nine years of the loan. The financial impact would be a maximum of \$13,000 if the full amount of the loan were to be withdrawn on day one of the loan. The Division continues to believe that the project will be profitable for the cemetery and will serve the area by providing a modern cremation facility instead of the current garage-type building with a propane-fired retort.

Motion made, seconded and unanimously adopted to approve the modification of the application of the Wiltwyck Cemetery commercial loan.

Public Comments:

Mr. Fleming comment that NYSAC opposes the community foundation legislation because of the way the community foundation funding works to ensure that cemeteries have continued oversight.

Motion to go into executive session made, seconded, and unanimously carried.

Motion to exit executive session made, seconded, and unanimously carried.

Motion to adjourn made, seconded, and unanimously carried.

The next Cemetery Board meeting is to be held on March 26, 2018 at 10:30 AM, One Commerce Plaza, 99 Washington Ave., Albany, NY 12231.