

DIVISION OF CEMETERIES

STATE OF NEW YORK
DEPARTMENT OF STATE
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GOVERNOR

CEMETERY BOARD

ROSSANA ROSADO
SECRETARY OF STATE
CHAIR
LETITIA JAMES
ATTORNEY GENERAL

DR. HOWARD A. ZUCKER
COMMISSIONER OF HEALTH

APPROVED

Cemetery Board Minutes

**January 8, 2019
Department of State
One Commerce Plaza, Albany, NY**

BOARD MEMBERS PRESENT:

Mark Pattison, Department of State, Chair
Jill Faber, Office of Attorney General

Paul Ambrose, Department of Health

OTHER ATTENDEES:

Lewis A. Polishook, Division of Cemeteries
Joshua Beams, Department of State
David Jacobson, Division of Cemeteries

Antonio Milillo, Dep't of State, Counsel
Chester Butkiewicz, Division of Cemeteries

GUESTS:

Bruce Geiger, Pinelawn Memorial Park
David Fleming, New York State Association of Cemeteries
Calum d'Oelsnitz, New York State Association of Cemeteries/FWC
Scott Henderson, NYSFDA

19-01-A-01 Minutes of Previous Meetings

Motion made, seconded, and unanimously adopted approving the minutes of the December 11, 2018 as amended.

19-01-B-02 Legislation and Regulation

1. Pending Legislation

Mr. Milillo reported that two bills (S345 - Felder and S502 - Kaminsky) were submitted regarding amendments to the penal law. He also reported that as this is the first term of the new legislative session, any bill filed prior to this term must be refiled and given a new number. Mr. Milillo anticipated more bills to be recirculated throughout the year.

2. Rules and Regulations

None.

19-01-C-03 Division Report

1. Annual Mailing - Update

Mr. Polishook reported that the annual mailing will be sent to cemeteries on or about January 15, 2019. The Division will not mail paper copies of the annual report. The mailing will indicate where cemeteries can file online or print out copies of a paper form. If a cemetery cannot do either, it may contact the Division to obtain a paper copy. Mr. Polishook also reported that the online fillable form has also been removed from the website. Associate Accountant Alicia Young is recording a video instructing cemeteries on how to complete online filing. The link will appear on the website. Mr. Polishook stated that while online filing is not required, it is preferred.

2. Delegated Powers

The Board discussed the list of delegated powers to the Division. The regulations provide that where the Division acts in the Board's name, aggrieved parties can appeal to the Board. The delegation of powers to the Division does not mean the Board cannot review cases under proper circumstances.

Mr. Polishook reported that review of annual reports, vandalism/assessment fees, and approved cemetery fees are already tracked and can be reported to the Board. The Board discussed the fact that certain of the delegated responsibilities also include potential penalties; the Division clarified that it would only propose the imposition of penalties, and that cemeteries would be free to challenge those before the Board.

Motion was made, seconded, and unanimously approved affirming the delegation of the following Board responsibilities to the Division:

1. Review of cemetery annual reports;
2. Collection of vandalism and assessment fees;
3. Review of cemetery rules and regulations;
4. Review of cemetery service charges;
5. Review of charges that do not appear on a list of service charges (one-off charges);
6. Charges for cement beds;
7. Fees for no-liner burial where there is a religious objection;
8. Review of reclamations;
9. Requests for additional reports;
10. Extensions of time for reports: the Division routinely grants additional time for filing of annual reports;
11. Reports on use of vandalism fund money;
12. Approval of grave resales for graves bought before 1949 for purpose of resale;
13. Review of applications to use a portion of net appreciation, pursuant to N-PCL section 1507(a) and 1507(c).

19-01-D-04 Vandalism, Abandonment and Monument Repair or Removal Fund Report

Mr. Butkiewicz presented the vandalism report. In this fiscal year, the Division has collected \$104,592 in vandalism fund fees. The Vandalism Fund appropriation amount is \$939,000. For the current fiscal year, the Board had granted applications totaling \$1,548,734. Applications pending review total \$1,588,863.

The Board approved the following applications for funds for restoration of dangerous monuments, subject to availability of funds:

15-072 Workmen's Circle Cemetery of Buffalo - \$37,424.50

19-01-E-05 Mount Lebanon (41-010 Queens) Reclamation of Society Graves

Mount Lebanon Cemetery submitted an application seeking approval of reclamation of graves owned by the Kovner Ladies Gemilath Chesed Verein Inc. (the Society), a society that had its last burial in 1989. Both of the society's two last signatories are interred at the cemetery. The cemetery applied to reclaim graves owned by the society pursuant to Not-for-Profit Corporation Law section 1513-a(i). The statute allows for reclamation of society graves after either one of two things has happened: (1) "a request to make a burial on the grounds of a nonsectarian burial society and the provisions of paragraph (h) of section fifteen hundred twelve of this article had to be invoked to make the burial"; or (2) routine mailings or proxy mailings are sent to the officers of record of a nonsectarian burial society and such mailings are returned by the post office. The cemetery relied on the first prong based on a burial that occurred in 1989. However, that burial occurred years before the enactment of N-PCL section 1512(h)(1). Additionally, counsel to the Division and the Board questioned the sufficiency of evidence that the cemetery, family, or funeral home had made reasonable efforts in 1989 to find a society signatory before authorizing the burial.

After extensive discussions, the Board agreed that cemeteries may rely on burials that occur without society signature before the enactment of N-PCL section 1512(h)(1). After review and discussion of the record before it, motion was made, seconded, and unanimously adopted approving the reclamation based on the memorandum prepared by the Division.

Counsel suggested, and the Board agreed, that consideration should be given to promulgating regulations concerning such reclamations. The Division Director suggested that, pending such consideration, the Division should consider revising its guidelines to reflect the discussion held before the Board at this meeting.

Public Comments:

Mr. Fleming of NYSAC addressed the issue of non-sectarian burial societies and stated that non-sectarian and sectarian burial societies are a problem for cemeteries today. There are often very few records which puts families in difficult situations, and officers are often not available to sign for the burials. This causes operational problems. NYSAC proposed the nonsectarian burial society reclamation bill to assist cemeteries running out of land, giving the opportunity to reclaim some of the land that had been excluded previously. Mr. Fleming anticipates many more cemeteries submitting applications for the reclamation of these types of graves.

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

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

The Board exited executive session with no additional actions to be taken,

Motion to adjourn made, seconded, and unanimously carried.

The next Cemetery Board meeting is to be held on February 8, 2019 at 10:30 AM, One Commerce Plaza, 99 Washington Ave., Albany, NY 12231.