

DIVISION OF CEMETERIES

STATE OF NEW YORK
DEPARTMENT OF STATE
123 WILLIAM STREET
NEW YORK, NY 10038
TELEPHONE: (212) 417-5708
FAX: (212) 417-2322
WWW.DOS.NY.GOV

ANDREW M. CUOMO
GOVERNOR

CEMETERY BOARD

ROSSANA ROSADO
SECRETARY OF STATE
CHAIR

LETITIA JAMES
ATTORNEY GENERAL

DR. HOWARD A. ZUCKER
COMMISSIONER OF HEALTH

DRAFT

Cemetery Board Minutes March 9, 2021 Via WebEx

BOARD MEMBERS PRESENT:

Mark Pattison, Department of State, Chair
Jill Faber, Office of the New York Attorney General
Thomas Fuller, Department of Health

OTHER ATTENDEES:

Joshua Beams, Dep't of State
John Fatato, Dep't of State
Andrew Hickey, Division of Cemeteries
Antonio Milillo, Dep't of State, Counsel
Lewis Polishook, Division of Cemeteries
Michael Seelman, Division of Cemeteries
Brendon Stanton, Division of Cemeteries
Robert Vanderbles, Dep't of State
Alicia Young, Division of Cemeteries
Chris Cosco, Division of Cemeteries
Vince Gimondo, Division of Cemeteries

GUESTS:

David Fleming, NYSAC, FWC
Bruce Geiger, Bruce Geiger & Assocs. for Pinelawn Memorial Park
Richard Moylan, Green-Wood Cemetery
Justin Locke, Pinelawn MP
Jay Ivler, Lebanon Cemetery
Mark Stempa, Mount Carmel
Joan Grambo, Glenside Cemetery
Andy Devorsetz, Frumah Packard
Ashton Matyi, Ostroff Associates
Kathleen Orlan

Opening Remarks

Mr. Pattison gave an overview of how the meeting would proceed via WebEx.

Mr. Milillo explained that the meeting is operating pursuant to Executive Order 202.1, which suspends the requirement to appear in person. The notice was posted in accordance with law and notice, agenda, and materials have been posted on the Division of Cemeteries website.

We take attendance; lobbyists must identify themselves and the entity they represent; speakers shall identify themselves.



Department
of State

21-03-A-13 Minutes of Previous Meeting

Mr. Pattison explained that the minutes needed additional time to review, and that these would be presented to the Board at a subsequent meeting.

21-03-B-14 Legislation and Regulations

1. Pending Legislation

Mr. Milillo reported that.

A.382: this bill would amend the definition of “cemetery corporation” to include a company that performs final disposition by “natural organic reduction.”

S.866: passed both houses and signed February 16; changes the requirements for a State veterans cemetery

S.1598: Modifies the General Business Law to allow pet cemeteries to bury pet cremated remains for a fee if certain conditions are met, superseding our regulation prohibiting pet cemeteries from charging a fee to accept human cremated remains. Referred to corporations

A.5671: Would permit municipalities to impose certain charges on tax exempt property

S.4735: provides a funding mechanism for people to donate to veterans’ cemeteries

S.1517: would require a death certificate for any fetal death, regardless of gestational age, and would permit the mother to make arrangements for final disposition without regard to gestational age.

Mr. Polishook asked what “natural organic reduction” covers. Mr. Milillo states that the definition is “contained accelerated conversion of human remains to soil.” Ms. Faber stated that this appears to be composting.

Mr. Milillo further explained that, as he recalls, composting occurs in an above-ground building. Once the remains are reduced to soil they are buried in the ground.

2. Rules and Regulations

Mr. Milillo reported that the abandonment regulations are still pending within the Department of State and are not ready to be presented to the Board.

21-03-C-15 Division Report

Division Director Lewis Polishook reported that:

1. During the recent increase in Covid cases, cremations were as high as 75% above 2019 average the first week in January. For the most recent week available, cremations are 38% above 2019 average, and there are no significant delays in booking a time for cremation in any region.
2. Annual reports are due March 31 for cemeteries whose fiscal year ends December 31. We encourage filing on line.
3. We received an inquiry about human composting. If the process requires removing remains from one place to another, we regard this as a disinterment; if not, it is just a burial and is permitted. However, cemeteries should be careful with such products as “tree pods.” Cemeteries should consider what happens if the tree dies or needs to be trimmed?
4. We are getting numerous inquiries about grave resales. If lot owners want to sell unoccupied graves, they must first offer it to the cemetery at the price paid plus four percent annual simple interest (the statutory price). Typically, lot owners first try to negotiate with the cemetery before making this offer. If the cemetery does not want to reacquire the grave, or if it wants to offer more than the statutory price,

those are both permissible. But, the lot owner may resell the grave privately only if the cemetery refuses to pay at least the statutory price. If the cemetery does refuse it should do so in writing and then the lot owner has a year to try to sell the grave. The only restriction at that point is that the lot owner cannot use a broker or sell to or through a funeral director.

5. In June 2019 the Board approved the renovation of a historic chapel at Woodlawn Cemetery in Canandaigua. The Rochester Democrat and Chronicle wrote about this project in yesterday's paper.

Mr. Pattison asked about the status of the New Paltz Rural/ Ulster County veterans' section. Mr. Milillo stated that he had exchanged phone calls with the County's representative.

Assistant Director Alicia Young reported that We have received 1,422 annual reports received, of which 27% were filed on line.

21-03-D-16 Vandalism, Abandonment and Monument Repair or Removal Fund Report

Assistant Director Alicia Young provided the vandalism report. So far in the 2021 calendar year the Division has collected \$195,455 in vandalism funds. Assessment collections total \$108,879. In the current fiscal year, we have collected \$270,150 and \$153,629.

In vandalism fund claims for the current fiscal year:

\$171,925.24 has been paid on applications approved in the 2018-19 fiscal year.

\$550,551.31 was paid on applications approved in 2019-20.

\$526,764.08 was paid on applications approved in the current fiscal year.

Vouchers on previously-approved applications totaling \$193,320.11 have been processed by Fiscal but not yet paid.

\$138,912.96 remains unpaid on prior years' applications

\$189,020.80 remains unpaid on applications from the current year.

\$239,615 remains available for future applications from this fiscal year's appropriation of \$2,000,000

The Division will present six applications totaling \$258,525.48 to the Board today.

There remain two applications, totaling \$42,435, in the pipeline (received by the Division but not ready for presentation to the Board).

15027 Forest Lawn (Erie): Lakeside for \$55,070.50, St Mathews for \$53,292.50, and Forest Lawn Cemetery for \$66,335.00

Mr. Polishook reported that the Board had tabled these three applications at its regular February meeting because of potential related party issues and to give the cemetery additional time to seek additional bids.

The cemetery received one additional bid that is much higher than their own bid and the low bid they received from their employee's relatives' company. The cemetery also contacted other companies that declined to bid. The cemetery also clarified that one of the three companies that previously declined to bid does its own foundation work (an issue raised at the February meeting). Finally, the President of the cemetery provided a letter explaining that its board is aware of the relationship between its employee and the bidder, that the cemetery did not feel comfortable asking the state for more money than the lowest bid just because this relationship exists, noted that the time for considering the issue of related parties would be the when it actually

contracted for the work, which would not happen unless the Board approves the application, and affirmed that the cemetery would comply with the related party provisions in considering who will do the work.

Mr. Polishook reiterated that the Division recommends approval.

Mr. Milillo stated that he is glad that the cemetery obtained an additional bid. He added that the related party provisions require due diligence but do not require a not-for-profit to choose a higher bid over a related party's bid.

Motion made, seconded, and unanimously adopted approving these three applications in the amounts of \$53,292.50 (St. Matthews), \$55,070.50 (Lakeside), and \$66,335 (Forest Lawn), subject to availability of funds.

Town of Oswegatchie (Foxwood Memorial Park)-Abandonment

Mr. Polishook stated that it is unclear whether this matter requires Board action. In essence, the Board previously approved this application. Several items of work came in under budget but one or two items came in over budget. The total for the project still is under budget, but in a previous application the Department of State had required additional Board action to approve the over-budget items.

Senior Investigator Michael Seelman explained that the Town took over this mausoleum complex in 2015. The Board approved an application in the amount of \$504,610.74 for maintenance. The Town has completed the work. The roof work came in under budget; several items total were under budget by a total of \$28,539.67. However, the flooring work is over budget, \$27,360 higher than budgeted. The request is for approval of reallocating money saved on items that were under budget to those that were over budget, for a total project cost of \$503,507.53.

Mr. Milillo added that the Board should make clear this is a modification of its original order to approve the reallocation.

Ms. Faber asked why the Board needed to act, given that the Board had merely approved an amount.

Mr. Polishook responded that he believed all the Board approves is a total amount but that the Department's Bureau of Fiscal Management had asked for further Board approval where an applicant sought to spend more than the amount listed for that item in the application.

Mr. Milillo added that the Board ensures that expenditures are for appropriate items. A town cannot add unapproved items because it is under budget but that is not the situation here.

Motion was made, seconded, and unanimously adopted modifying the Board's previous approval of the Town of Oswegatchie's application to allow the use of \$27,436.49 in funds to cover additional expenses on approved items, without changing the total amount approved.

34-014 Frumah Packard (Onondaga)—Vandalism for \$43,735

Mr. Seelman reports that this cemetery sought funds for repair of hazardous monuments. When Mr. Seelman went to see the hazardous monuments, he and cemetery officials discovered some vandalized monuments. Mr. Seelman and the cemetery agreed to prioritize the work on the hazardous monuments and wait until its completion to address the vandalized monuments.

The cemetery obtained two estimates for repairing the vandalized monuments. The cemetery has asked that the board waive the requirement of filing a police report and submitted a detailed letter explaining why they were concerned about a police report impacting the outlook for the cemetery, especially because this cemetery is unaffiliated with any synagogue.

Mr. Polishook added that the cemetery had not published a legal notice. Legal notices would probably not draw unfavorable attention but also rarely receive any responses from lot owners. Mr. Polishook clarified that, generally speaking, lot owners are responsible for maintaining monuments and that we generally will provide funds only if the cemetery is unable to obtain funds from the lot owners within a reasonable time.

Mr. Milillo commented that the timing requirements are met here. The statute allows the Division to waive the requirement of a police report but does not authorize waiver of efforts to obtain funds from lot owners.

Mr. Polishook proposed that the Board approve the application and condition full payment on receipt of proof of publication of a suitable notice.

Andy Devorsetz spoke on behalf of the cemetery. He explained that these funds are important to the cemetery. The cemetery would agree to publish notice as required.

Mr. Pattison stated that approving the application contingent on the cemetery publishing notice is reasonable.

Ms. Faber asked how long publication would take. Mr. Polishook responded that this would take a couple of weeks but it would postpone second payment until the next fiscal year.

Ms. Faber suggested that the funds be approved but not disbursed until after publication. Mr. Polishook stated that his understanding is that unless payment issues in this fiscal year the funds would be drawn from next fiscal year's funds.

Mr. Pattison suggested that the Board could approve payment but not allow the cemetery to spend any of it until receipt of proof of publication.

After discussion, motion was made, seconded, and unanimously adopted approving the application in the amount of \$43,735, subject to availability of funds and disbursement of funds by the cemetery contingent on the Division's receipt of proof of notice by publication.

59-013 Glenside Cemetery (Wayne)—Vandalism for \$15,366.80

Mr. Seelman stated that this four-acre cemetery was vandalized in August 2020. 65 monuments were toppled. The cemetery obtained a police report but have neither leads nor arrests. Kids have congregated in the cemetery; that likely led to this incident. The cemetery has since made changes to keep loiterers out of the cemetery. The cemetery has two estimates and we recommend approval.

In this case, the cemetery posted a legal notice but the notice lacked a list of the lot owners and locations.

Mr. Polishook added that the cemetery did receive responses from two families whose lots were vandalized, but who declined to provide any funds for repairs.

Mr. Milillo stated that it's important for cemeteries to publish complete legal notices. This notice was not clear. Mr. Milillo recommended that the Board require republication of the notice to cure this issue.

The cemetery's representative, Ms. Joan Grambo, addressed the board, stating that she would be happy to run another ad and would personally cover the cost.

After discussion, motion was made, seconded, and unanimously adopted approving the application in the amount of \$15,366.80, subject to the availability of funds and disbursement of funds by the cemetery contingent on the Division's receipt of proof of notice by publication of a notice including names and locations of vandalized graves.

21-03-E-17 04-027 Riverhurst--Columbarium

Brendon Stanton explained that this cemetery in the Town of Union, Broome County, seeks approval of installation of a 96-unit columbarium. They already have a columbarium; this is unit no. 2 of a plan to install five units in this area. The cemetery has already poured the foundation and prepared paths as part of the installation of the first unit. The cemetery has posted the required notices. The cost of installation will come from the cemetery's general fund.

Mr. Milillo asked noted that the cemetery has experienced deficits in multiple years. Mr. Milillo asked about rental income; Mr. Stanton responded that the cemetery has purchased several houses adjacent to the cemetery but currently rents them out. Mr. Milillo asked whether the Board had approved these purchases; Mr. Stanton confirmed it had.

Mr. Milillo asked about fluctuations in wage expenses; Senior Accountant Andrew Hickey stated that the cemetery is transitioning from one type of management style to a different style, that there may have been some separation payments, and that management has informed the Division that it anticipates wages going down.

Mr. Milillo asked whether there are any related party transactions for accounting, legal, mowing, or other services that might result in inflated costs; Mr. Hickey stated that at this point we are unaware of any such transactions.

Finally, Mr. Milillo noted that because this is the cemetery's second columbarium, we see that it has a track record of selling niches.

Motion made, seconded, and unanimously adopted approving the application.

21-03-F-18 52-044 Pinelawn—Major Renovation (Fuel Tanks)

Pinelawn has a fenced off maintenance area with an underground tank. The cemetery seeks to remove this tank and replace it with above-ground tanks. The cemetery states that it has County and Town approval and needs no other approvals. There are no burials near the cemetery. Because this project, which will be funded out of its general fund, will benefit the environment, we favor approval.

Mr. Milillo noted that the contractor has a duty to test after removal to see if there have been spills and asked that the cemetery be required to provide Division with results of those tests.

David Fleming, representing Pinelawn, states that the application follows DEC guidelines and that the cemetery is anxious to complete the project.

Motion made, seconded, and unanimously adopted approving this project, and requesting that the contractor provide a report of sampling after removal.

Public Comment

Mr. Fleming, speaking on behalf of the New York State Association of Cemeteries, addressed the proposed composting legislation and stated that this legislation subjects composting to Article 15's protections. Mr. Fleming will also re-publish and send out a mailing to members concerning the grave resale process.

Motion made, seconded, and carried to adjourn the meeting at 11:58 a.m.

The next Board meeting is scheduled for April 13, 2021 at 10:30 AM, (presumably) via Webex.