

# 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 September 8, 2020 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:**

Vince Gimondo, Division of Cemeteries  
Andrew Hickey, Division of Cemeteries  
David Jacobson, Dep't of State  
Kerry McGovern, Division of Cemeteries  
Antonio Milillo, Dep't of State, Counsel  
Michael Seelman, Division of Cemeteries  
Brendon Stanton, Division of Cemeteries  
Robert Vanderbles, Dep't of State  
Alicia Young, Division of Cemeteries

### **GUESTS:**

Richard Bethel, Pryor Cashman LLP  
Anthony Biolsi, Old Montefiore Cemetery  
Brendan Boyle, NYSAC, FWC  
Kimberly Dempsey  
Joe Dispenza, Forest Lawn Group  
Herbert Engman, Greensprings Natural Cemetery  
David Fleming, NYSAC, Featherstonhaugh, Wiley & Clyne  
Bruce Geiger, Bruce Geiger & Assocs. for Pinelawn Memorial Park  
Adam Ginsberg, Cedar Grove/ Mount Hebron Cemetery  
Jay Ivler, Mount Lebanon Cemetery  
Richard Moylan, Green-Wood Cemetery  
Mitch Rose, The Woodlawn Cemetery

### **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 were posted on the Division of Cemeteries website.

We take attendance; lobbyists must identify themselves and the entity they represent; speakers are asked to identify themselves.



**Department  
of State**

## **20-08-A-47 Minutes of Previous Meeting**

Motion was made, seconded, and unanimously adopted approving the minutes of the July 14, 2020 meeting as distributed.

Mr. Milillo noted that he had not had an opportunity to review the minutes and recommended approval, subject to possible modification next month.

## **20-07-B-48 Legislation and Regulations**

### 1. Pending Legislation

Mr. Milillo informed the board that there were no updates on legislation.

### 2. Rules and Regulations

Mr. Milillo indicated that we had met with NYSAC concerning abandonment regulations

## **20-08-C-49 Division Report**

Mr. Polishook observed that for the last nine weeks the weekly number of burials at selected downstate cemeteries was noticeably below than average for 2019.

Mr. Polishook also explained that the Division has held calls with six cemeteries that never experienced burial delays during the pandemic—Kensico, New Montefiore, Oak Hill, Old Montefiore, Pinelawn Memorial Park, and United Hebrew. Broadly speaking, these cemeteries saw burial numbers of between two and six times their average number.

The Division posed questions to those cemeteries as to how they kept up, what worked, what they learned, and other factors they wished to share. The Division also posed questions concerning changes in office and grounds operations, burial practices and scheduling, PPE, and emergency planning.

Few cemeteries indicated they would do things differently, other than imposing pandemic restrictions and implement pandemic responses sooner and improve telephone and virtual communications with families.

Finally, continuing education sessions for funeral directors have resumed and Division staff will participate virtually.

Mr. Fuller asked whether the Division had information about cemeteries' experiences outside the downstate region. Mr. Polishook responded that the Division was unaware of burial delays outside of downstate, although some cemeteries did implement Covid protocols. Outside of downstate, the most common issue with cemeteries was demand to bring in larger groups than permitted. Some crematories outside downstate did experience delays.

## **20-08-D-50 Vandalism, Abandonment and Monument Repair or Removal Fund Report**

So far in the 2020 calendar year the Division has collected \$452,697 in vandalism funds. Assessment collections total \$259,956.

In the 2020 fiscal year, beginning April 1, 2020, vandalism funds collected total \$68,365, and assessment funds total \$43,124.

\$27,715.92 out of \$294,122.98 has been paid on this fiscal year's applications.

Two applications are before the board this month, totaling \$49,045.65

The Division has received 1,248 annual reports, 376 (about 30%) of which were filed on line.

The Board discussed two vandalism fund applications, one for repair of hazardous monuments, the other for maintenance of an abandoned cemetery:

Hope Cemetery (No. 51-028) (Steuben County) requesting \$22,650.82 for restoration of 21 monuments, which the Division confirmed are hazardous. The estimates appear adequate.

Mr. Milillo stated that the public notice included only names of lot owners, and not the lot numbers, but that the names are more important, although notices should include both.

Motion was made, seconded, and unanimously adopted approving the application in the requested amount, subject to availability of funds.

Baptist Rural Cemetery (No. 59-002) (Wayne County) requesting \$26,394.78 for restoration of 15 hazardous monuments, which the Division confirmed are hazardous. This is a follow-up application; the cemetery had two previous applications and, after this work, there will be no more monuments that appear hazardous. We have inspected the work on the previous two applications.

Motion was made, seconded, and unanimously adopted approving the application in the requested amount, subject to availability of funds.

#### **20-09-E-58 Woodlawn Cemetery (03-002) – Mausoleum**

The Woodlawn Cemetery in the Bronx now primarily sells mausoleum space. It proposes to install nine structures as part of a garden mausoleum/ columbarium complex on a road it closed with Division permission in 2018. The Division believes the project will be successful. The cemetery posted the required signs and has received no adverse comments.

Mr. Milillo commented that application involves the sale of spaces pre-construction. Counsel questioned whether pre-construction funds would be used for construction. The Division stated that pre-construction deposits would be held in trust.

Mr. Milillo questioned why officer salaries had grown from \$535,000 to \$862,000 in a three-year period. Mr. Milillo asked whether this raised any concerns for the Attorney General.

Ms. Faber stated that in the absence of a relationship to the application, she did not believe it would merit investigation by the Office of Attorney General.

Mr. Milillo asked about the 20 acres of undeveloped land potentially available for further development and wondered whether this was land to be acquired.

Mr. Fleming, representing the cemetery, stated that the total increase in salaries was more like \$200,000. Mr. Fleming also noted that the 20 acres were scattered throughout the cemetery. Mr. Polishook added that there is no contiguous land the cemetery could acquire.

Mr. Milillo asked about a note in the financial statements concerning inter-fund borrowings and repayments. Mr. Polishook explained that this results from litigation and a settlement in the 1990s concerning the use of perpetual care and permanent maintenance principal for maintenance. Mr. Milillo also asked when repayment will be made. Mr. Fleming indicated that the cemetery would comply with the court's orders.

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

#### **20-09-F-59 Old Montefiore Cemetery (41-006) – Major Renovation – New Section**

This cemetery in Southeastern Queens seeks to develop a vacant parcel of land across the street from the existing cemetery. The parcel is approximately two acres. The cemetery projects that it will recoup its investment within five years. The cemetery lacks space for family plots and feels that the new project will sell quickly. The approximately total cost of the project is \$1.5 million. They expect returns of almost \$30 million after allocation of \$7,740,000 to the permanent maintenance fund.

Mr. Milillo cited authority (a 1904 decision) for the fact that a public street separates this parcel does not mean that the land across the street is not contiguous to the cemetery.

Mr. Milillo also asked that any approval of the application be conditioned on the cemetery obtaining all required permits and approvals.

Motion was made, seconded, and unanimously adopted approving the major renovation in the amount of \$1.5 million, subject to the acquiring of all required approvals.

### **20-09-G-60 Rockland Cemetery (44-008) – Major Renovation – Building Demolition**

The Board approved Rockland Cemetery's acquisition of property in August 2019. After further clarification by the Board as to the conditions of closing, the cemetery closed on the property in February 2020. Now the cemetery wants to take down several buildings and structures on the property that are in bad shape, in some cases have asbestos, and are not usable for cemetery purposes. The anticipated cost of the project is \$128,500; the Division recommends approval.

The Division noted that counsel found certain omissions in the cemetery's annual report form. The cemetery has submitted a completed version, but the Division reminds cemeteries that they must fill out the required form as well as submitting audited financial reports and can cross-reference only as to certain points.

Ms. Faber asks whether the sale needed AG approval and whether it received such approval. Mr. Polishook responded that he did not know whether the seller was required to seek AG approval but that the cemetery states that the sale did receive such approval. Mr. Polishook explained that the issue of the contractual restriction was resolved by the modification of the restriction to prevent further sale of the property.

Mr. Milillo explained that his role was merely to seek clarification from the Board that the restriction to be removed need not be a deed restriction but rather any prohibition on further transfer.

Mr. Milillo also asked whether sales graves in the new section would realize a profit after the expenditure to acquire the land, clear the buildings and develop the new section. Mr. Polishook responded that the Division anticipates the cemetery will make money on its new section but had not analyzed the profitability of sales in the new section because there is no application for approval of developing that section before the board. Mr. Polishook also noted that the buildings are a potential attractive nuisance and need to be demolished regardless of profitability

Motion was made, seconded and unanimously adopted approving the application for approval of a major alternation in the amount of \$128,500.

### **20-09-H-61 Greensprings Natural Cemetery (55-034) – Land Sale**

Greensprings is the only 100% green cemetery in New York. The cemetery acquired land in 2014 and seeks to sell a small piece of that land to a not-for-profit that would run a green pet cemetery on the land. When the cemetery first submitted the application, the Division was concerned about the fact that if the pet cemetery failed the human cemetery would become the owner of that failed pet cemetery. The cemetery attempted to address this concern and the pet cemetery would now pay cash for the land.

The Division still has two concerns about the application. First, the appraisals are outdated and will need to be updated. Second, the contract of sale provides that the human cemetery will provide certain services to the pet cemetery in return for 20% of its income. The Division believes that the compensation for such services should be based on the value of the services rendered and not indefinite in duration.

Herbert Engman, past president and current trustee of Greensprings, stated that the sale of five acres is straightforward: no burials on the five acres and the sale benefits the corporation and site owners. Greensprings views this sale as more beneficial to the corporation than future lot sales. Mr. Engman also approached an appraiser about using the sales (by which he appears to mean income) approach, but that the appraiser was unwilling to do that because the time frame for sales is too long. Mr. Engman also explained the 20% fee for maintenance as 20% of Greensprings' own cost of maintenance because Greensprings has 14 acres maintained and the pet cemetery will have three acres.

Mr. Pattison questioned whether this is a related party transaction and, if it is, has the cemetery followed the related party transaction procedure. If not, what can the entities do to show that dealings between the two entities will be at arms' length.

Mr. Polishook asked for clarification on a number of items, including the following:

Mr. Polishook also asked whether the human cemetery considered alternatives to selling the land to the pet cemetery. Mr. Engman responded that the cemetery does not want to sell to anyone other than a natural pet cemetery, to preserve the natural aspect of the hill on which the cemetery sits.

Mr. Polishook asked how much land would be left after the sale. Mr. Engman responded that 125 acres would remain, of which 70-80 acres would be available for burial.

Mr. Polishook asked how the human cemetery will: 1. ensure that its provision of services to the pet cemetery is in the human cemetery's best interests; 2. handle the overlapping trustees; 3. Benefit from the pet cemetery (aside from the \$27,000 sale price). Mr. Engman responded that the provision of services by the human cemetery would provide an additional income stream. The human cemetery anticipates that the two shared directors would be temporary. The pet cemetery has five trustees, the human cemetery has 11.

Mr. Milillo also asked for clarification of some items:

Mr. Milillo observed that the agreement on shared provision of services was based on the pet cemetery's income and not the cost of provision of services. Mr. Engman responded that they are happy to base the agreement on actual cost.

Mr. Milillo observed that the current and former president of Greensprings are heavily involved in the pet cemetery, that the pet cemetery's address on file with the Department of State is Mr. Zeserson's home address, and that Greensprings had used its own mailing and newsletter to raise money for the pet cemetery. He also asked about the relationship of each member of the pet cemetery board to Greensprings Cemetery.

Mr. Engman responded that he and Mr. Zeserson (President of Greensprings) were both involved in the establishment of the first dog park in Tompkins County and went through the list of directors with Mr. Milillo. Mr. Engman explained the absence of a pet cemetery mailing address by stating that it did not make sense for the pet cemetery to pay for a mail box before it acquired land. Once the path to the pet cemetery becomes clear, it will have a separate address. Mr. Engman stated that he and Mr. Zeserson discussed the terms with the pet cemetery board members but that there was agreement as to all terms. Mr. Engman stated he is not on the board but was one of the founding directors.

Mr. Milillo asked whether Greensprings board members had contributed to the pet cemetery. Mr. Zeserson has pledged \$3,000 and Mr. Engman has promised \$15,000. Mr. Engman has contributed significant sums to Greensprings.

Mr. Milillo stated that his overall concern is that the public will regard the two entities as one entity. Mr. Engman stated that he shared some of that concern but others felt that they would be mutually beneficial. Mr. Engman added that the cemeteries have two separate entrances and that the Greensprings office is not open to the public.

Mr. Milillo indicated that the Office of the Attorney General might have a concern about whether the pet cemetery is complying with its legal obligations and whether it has done its due diligence in seeking other possible tracts of land. Mr. Engman indicated that the pet cemetery has considered other parcels of land but it would need equipment and storage if it could not enter into a maintenance arrangement with the human cemetery.

Mr. Milillo also questioned whether the boards of the two cemeteries have approved mutual agreements. Mr. Engman indicated that they had but that questions raised by the Division and counsel will require that the boards revise and again vote on those agreements. Mr. Milillo indicated that this had to occur first. Mr. Engman questioned why that should happen before the cemetery knows whether it can sell the land. Mr. Milillo explained that it is necessary to comply with the related party transaction requirements of the Not-for-Profit Corporation Law before obtaining board approval. Mr. Engman responded by asking that approval be given contingent on addressing these issues and explained that there are no financial conflicts of interest.

Ms. Faber asked several questions.

Ms. Faber asked whether the pet cemetery has had board meetings concerning the relationship between the two entities and whether there are minutes of such meetings. Mr. Engman responded that the pet cemetery board has not met much because there is little to do until it has land but was unsure if the pet cemetery board had approved the purchase and would review additional pet cemetery minutes concerning this issue.

Ms. Faber indicated that the board must review each transaction for compliance with statutory provisions regardless of the motivation of board members. She further observed that a cemetery corporation is permitted to operate in certain ways and not in others and that the board is concerned that the human cemetery could be engaged in activities not permitted to human cemeteries.

Mr. Fuller asked whether the cemetery considered the formation of a pet cemetery when it acquired this land in 2014. Mr. Engman indicated that it was not contemplated at the time. Greensprings acquired the land because it was surrounded by Greensprings' existing land and the cemetery wanted to ensure that it would not be acquired by anyone else and used for purposes that would raise issues for the cemetery.

After entering and exiting executive session, the Chair indicated that the Board had taken no action. He reported that it is the sense of the board is that Greensprings' proposal is a "related party" transaction requiring compliance with Not-for-Profit Corporation Law section 715 and that it might be in the interests of both the human and the pet cemetery to be represented by counsel so concerns related to this issue are satisfied and to ensure that the cemetery corporation is not doing things that are not permitted by the not-for-profit corporation law. In terms of the board's approval, it needs to see all the terms of the transaction, not just the land sale.

**Public Comment**

None

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

Motion made, seconded and carried to exit executive session.

Motion made, seconded, and carried to adjourn the meeting at 1:07 p.m.

The next Board meeting is scheduled for October 13, 2020 at 10:30 AM, via Webex.