

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

May 6, 2019
The Desmond Albany
660 Albany Shaker Rd, Albany, NY 12211

BOARD MEMBERS PRESENT:

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

OTHER ATTENDEES:

Lewis Polishook, Division of Cemeteries
Antonio Milillo, Dep't of State, Counsel
Joshua Beams, Department of State
Joseph Ambrose, Division of Cemeteries
Len Breen, Division of Cemeteries

David Jacobson, Division of Cemeteries
Holly Huckabone, Division of Cemeteries
Michael Seelman, Division of Cemeteries
Brendon Stanton, Division of Cemeteries
Alicia Young, Division of Cemeteries

GUESTS:

Attendees at New York State Association of Cemeteries' Public Affairs Seminar

Opening Remarks

Chairman Pattison addressed the attendees of the meeting stating that Division staff would be available to speak and offer assistance. The Chairman also thanked NYSAC for hosting the Cemetery Board meeting at the conference. The Chairman addressed the increase in the vandalism fund appropriation, and that the fund is already depleted. The Chairman mentioned the Division's updating of the board application process and annual reporting process in effort to streamline and simply processes.

19-05-A-22 Minutes of Previous Meetings

Motion made, seconded, and unanimously adopted approving the minutes of the April 9, 2019 meeting as submitted.

19-05-B-23 Legislation and Regulation

1. Pending Legislation

Mr. Milillo stated that there was action on multiple bills currently before the Legislature.

1. A1605A/S1876A would require cemeteries to give the cemetery board and the municipality where they are located 180 days' notice that they are heading toward abandonment. It would require the Division to appoint a receiver prior to the abandonment if requested by a municipality and would permit a cemetery to again seek abandonment funds 25 years after the first application. It is similar to a bill previously vetoed by the Governor, although some changes have been made.
2. A07301/S00820 would amend General Business Law § 453 and Public Health Law §§107 and 3208 of the Public Health Law to permit funeral directors who are licensed insurance agents to receive a commission for the pre-need life (funeral) insurance.
3. A07350/S04610 would amend the Religious Corporation Law § 7 to prohibit a religious corporation that has a cemetery from selling/displaying monuments.
4. A.7651/S.5463 would allow cemeteries to use a percentage of the total value of their permanent maintenance and perpetual care funds, replacing the existing "net appreciation" statute. Counsel noted that this could allow cemeteries to deplete their trust funds and would not permit the New York State Cemetery Board to object to such usage provided that the cemetery maintained a certain type of investment policy. Public discussion ensued on the need for and effects of this proposed change.

Rules and Regulations

None.

19-05-C-24 Division Report

1. Annual Reports (statistics and delinquency notice)

Mr. Polishook reported that the Division has received approximately 300 online submissions, which is just under 30% of the total received to date. The Division has noted cemeteries that are delinquent in annual filings and will be sending postcards, mostly electronically, reminding cemeteries to file.

2. Staffing update (including interns)

Mr. Polishook reported that the Division is closer to filling two vacancies. Interviews are being conducted for the Buffalo Senior Accountant position. The Division is close to setting up interviews for the Assistant Director position. Also hired two interns for the summer. One will focus on data entry and the other will assist in building database capacity.

3. Division represented at the upcoming local government conference at Houghton College
4. Possible misappropriation of funds

Mr. Polishook reported that the State Police have identified a possible misappropriation at Perth Cemetery in Fulton County and have made an arrest. The cemetery's board was reorganized. The Division is working with the cemetery's board to get access to funds. The

amount misappropriated does not appear to be large enough to threaten the cemetery's existence.

5. St. Matthews Cemetery/ Forest Lawn Group

Mr. Polishook reported that the Division learned last week that there had been a partial collapse of a section at St. Matthews Cemetery, which is part of the Forest Lawn Group, and that Forest Lawn had disinterred bodies because of their reported concern about a collapse of the entire section. The Division is looking into situation, including the issue of whether the cemetery followed proper protocol.

6. Changes in board application process

Mr. Polishook reported that there should be a new application form for mausoleums and columbariums by next month. The Division already has a working template for four-year comparisons of income, expenses, and fund balances that should be included in any application to the Board. The new process will result in time saved for both the Division and cemeteries.

19-05-D-25 Vandalism, Abandonment and Monument Repair or Removal Fund Report

Mr. Polishook reported that the Division has collected \$83,553. The Board has granted \$123,389.49 in applications, and \$95,076.33 is pending.

In the 2018-2019 fiscal year, the Division overspent its appropriation of \$939,000 by \$182.55. Approximately \$1.86 million in approved amounts was left unpaid.

Of the \$2,000,000 appropriation for the 2019-2020 Fiscal year approximately \$21,000 remains to be committed. Currently, funds are available to pay in full all applications approved in or before April 2019.

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

34-024 Manlius Cemetery- \$22,060.12
08-009 Riverside Cemetery - \$19,362.42
09-032 Valley View Cemetery - \$19,003.54
46-015 Greenridge Cemetery - \$34,650.25

19-05-E-26 Oakwood Cemetery (60-016)-New Office and Garage

Oakwood Cemetery requests the Board's permission for a major renovation to construct a new office and garage as a part of its continuing major renovation to allow a space for meeting with those interested in purchasing plots as the current space has no meeting room and is not accessible and certain equipment cannot be garaged. The project will use funds from the general fund. The cemetery has gone to Court and filed papers to correct a permanent maintenance deficit. A motion was made, seconded and unanimously adopted approving the project conditioned on the cemetery obtaining all required local approvals and Division review of a complete stamped set of building plans; the project is not to exceed \$437,000.

19-05-F-27 White Plains Rural Cemetery (60-018)- New Crematory

White Plains Rural Cemetery is requesting a new crematory, as it is running out of graves, to create a new source of revenue. The application resulted in litigation, in which the cemetery has so far prevailed. As the City of White Plains has an application for leave to appeal pending, all board approvals would be conditioned on the results of that appeal. The current plan is to install one retort. The cemetery is estimating 500 cases per year. The financing is through the cemetery's general fund for approximately \$177,000. The Division recommends approval. A motion was made seconded and unanimously adopted approving the application, conditioned on receipt of all required approvals, termination of the litigation in the cemetery's favor, and Division receipt and review of a complete stamped set of building plans.

19-05-G-28 Canandaigua Cemetery (35-004)- Net Appreciation and *Nunc Pro Tunc* Cemetery Renovation

Canandaigua Cemetery received a grant from the State Historic Preservation Office in the amount of \$300,000 with another \$500,000 in donations to restore a chapel. The cemetery failed to apply for approval prior to beginning the renovation of the chapel which has already had significant work done. The cemetery wants to use net appreciation of \$550,000 (86 percent of its net appreciation on its PM Fund in the last five years) to finance the balance of the project (plus a small amount of general funds). The Division believes that the cemetery will earn income on rentals of the space, though not as much as the cemetery states. The total cost of the project is \$1.229 million. The Cemetery is looking to use \$550,000 in the net appreciation.

Counsel objected that brokerage statements required as part of applications for use of net appreciation were not included in the information provided to the Board. Mr. Polishook explained that the Division's accountant had in fact received and relied on this information, but, having verified the calculations, the Division decided not to include these statements in the board application. Counsel pointed out that the cemetery had made a mistake in its application (the amount in Box G on the application form was wrong).

A representative from the cemetery clarified on the financials included in the application.

After discussion, motion was made, seconded, and unanimously adopted (1) approving the application for approval of a major renovation, but (2) objecting to the appropriation of net appreciation to the net appreciation and allow the Division to withdraw the objection and consider it approved upon counsel final review; Chairman Pattison indicated his desire that this take place by May 17, 2019 if possible.

19-05-H-29 Elmlawn Cemetery (15-005) Major Renovation- Easement

Elmlawn Cemetery has an existing easement with a sewer running through it at the back of the cemetery. The cemetery seeks to grant another easement in the same location for a neighboring church to lay electric cable. The Cemetery has agreed to include a modified version of the standard cell tower rider which contains protections for the Cemetery. A motion was made, seconded, and unanimously adopted approving the application subject to counsel's review of the easement and rider (the proposed easement was inadvertently omitted from the materials provided to the Board).

19-05-I-30 D. Tonken Crematory (15-077) Major Renovation- New Retort

Public Comments:

Richard Moylan from Green-Wood Cemetery spoke in favor of the proposed “total return” legislation, explaining that it would allow cemeteries to invest for growth and disputing counsel’s concern about likely depletion of funds. Barbara Loring from Baron Hirsch Cemetery addressed the Board asking why the \$5 per interment contribution to the vandalism fund had not increased. Chairman Pattison noted that legislative action is needed, and there have been discussions of raising the fee by as much as \$20 per burial. Mr. Polishook stated that the money taken in is not enough to cover the need of what is paid and that the fund is now funded primarily out of general revenue. Julian Leone for Goldman Sachs addressed the board regarding the appropriate distributions, stating that 4 percent is appropriate if the portfolio has equities.

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

The Board exited executive session without taking any formal actions required to be reported.

The next Cemetery Board meeting is to be held on June 11th, 2019 at 10:30 AM, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231