

DIVISION OF CEMETERIES

STATE OF NEW YORK
DEPARTMENT OF STATE
ONE COMMERCE PLAZA
99 WASHINGTON AVENUE
ALBANY, NY 12231-0001
TELEPHONE: (518) 474-6226
FAX: (518) 473-0876
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

APPROVED

Cemetery Board Minutes

June 11, 2019
One Commerce Plaza
99 Washington Ave, Albany, NY 12231

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
Alicia Young, Division of Cemeteries
Michael Seelman, Division of Cemeteries
Brendon Stanton, Division of Cemeteries

David Jacobson, Division of Cemeteries

GUESTS:

Maureen Matthew, D. Tonken Corp.
Kevin Matthew, D. Tonken Corp.
Mitch Rose, The Woodlawn Cemetery
David Fleming, FWC/NYSAC
Calum d'Oelsnitz, FWC/NYSAC
Scott Henderson, NYSFDA
Bruce Geiger, Pinelawn

Opening Remarks

19-06-A-31 Minutes of Previous Meetings

Motion made, seconded, and unanimously adopted approving the minutes of the May 6, 2019 meeting as amended.

19-06-B-32 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 request appointment of 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 for maintenance of buildings. It is similar to a bill previously vetoed by the Governor, although some changes have been made. The bill has passed both Chambers.
2. 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. The bill passed in the Senate but there has been no movement in the Assembly.
3. A3429/S4284 would create a cemetery disclosure form which would be posted in the cemetery corporation's office and given to every potential customer. The details of the form would be created by the State Cemetery Board and would provide a lengthy list of detailed information to consumers.
4. A6739/S3952 amends Not-for-Profit Corporation Law §1506 to permit a merger of two cemeteries located in Suffolk county with contiguous or adjacent land dedicated for cemetery purposes and previously operating as public cemetery corporations where their total acreage does not exceed three hundred twenty-five acres.
5. A7652/S5591 – The current N-PCL § 1513(a)(3) makes it illegal for a cemetery to pay anyone other than a regular employee a commission, bonus, rebate, or other things of value in connection with the sale of a lot. This bill would add an exception for a contract with a third-party vendor that uses internet websites to offer cemetery goods or services to the public for a fee.
6. S5841 would amend Executive Law § 354-b to add funerals for first responders to the World Trade Center as eligible for a supplemental burial allowance. Such allowance is currently limited to funerals for members of the armed forces killed in combat or duty.

Rules and Regulations

Counsel reported that the Division and counsel had begun initial discussions of regulations to require certain disclosures for certificates of indebtedness and land share certificates.

19-06-C-33 Division Report

1. Annual Reports

Mr. Polishook reported that the Division has received approximately 1249 annual reports. Of that number, 29% have filed online. 394 are listed as overdue to file currently. The Division sent an email and postcard reminding cemeteries of the due date. The Division has received various responses, and many cemeteries are coming into compliance. Through this process, we learned that several cemeteries had been conveyed to Towns without notifying the Division. The Division, counsel, and the Board discussed the possibility of developing guidance and/ or promulgating regulations governing abandonment and explaining what happens after abandonment.

2. St. Matthews Cemetery-Update

The cemetery has now gone to Court. The matter is to be heard on June 13, 2019. An attorney is proposing to bring a class action lawsuit and wishes to be heard in the court procedures. The Court has stated that it is only interested in hearing if it should issue an order approving the disinterments nunc pro tunc. Mr. Polishook recommended a discussion in Executive Session.

19-06-D-34 Vandalism, Abandonment and Monument Repair or Removal Fund Report

Mr. Polishook reported that the Division has collected \$83,553. The Board has granted \$218,465 in applications, and \$52,891.94 in applications remain pending.

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

06-009 Indian Mound Cemetery- \$52,891.94

19-06-F-35 D. Tonken Corp. (15-077) – Major Renovation – New Retort

D. Tonken seeks approval of installation of a third operational retort and also seeks to build a chapel for viewings and committal ceremonies. D. Tonken was formerly one of the grandfathered stand-alone crematories in New York State. The last “grandfathered” funeral director affiliated with the crematory passed away in 2014. The crematory has no present funeral entity affiliation. The Division recommends that the Board deny the application as the Erie/Niagara county area has an overabundance of cremation capacity and the crematory is handling only a fraction of the number of cases it previously handled with two retorts. The Division does not have a complete application on file for the chapel.

Maureen Matthew, President of D. Tonken Corp., stated that the crematory currently has three retorts and is looking to replace the oldest one, and that viewings/ committal ceremonies are a service that is not readily available elsewhere.

In response to questions posed by the Board, Ms. Matthew stated that the total proposed cost of the project includes the chapel, that purchase and installation of the retort itself would cost between \$120,000 and \$150,000, and that the crematory would want to complete the renovation without the extra retort. Ms. Matthew stated they would.

Motion was made, seconded, and unanimously adopted denying the application without prejudice to submission of an application for a third retort.

19-05-G-36 Chenango Valley Cemetery (04-003) and Forest Lawn (15-027)- Merger

Chairman Pattison stated that the Board's legal analysis is not complete. The Board is fully cognizant of the circumstances, and that Chenango Valley is at risk for abandonment. Counsel is reviewing to ensure that the current proposal meets standards set by the statute. Mr. Fleming from Forest Lawn stated that both cemeteries' points have been explained, Chenango Valley has expressed deep concern on their ability to continue to operate, and that multiple cemeteries have approached Forest Lawn regarding potential mergers, of which two are in imminent danger of abandonment. Mr. Fleming stated that Forest Lawn is available to answer questions and supply further information.

Public Comments:

Mr. Fleming of NYSAC spoke regarding concerns with the current lack of an abandonment process. He believes that A1605A/S1876A addresses many of those concerns. He stated that the bill does not require a receivership, but that the receivership may be used as a last resort.

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

The Board exited executive session

After exiting executive session, the Board reported that counsel had been directed to write to the Court in the matter of the St. Matthews disinterments and ask for an opportunity for the Division to be heard.

Motion to adjourn meeting made, seconded, and unanimously carried.

The next Cemetery Board meeting is to be held on July 9th, 2019 at 10:30 AM, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231.