

DIVISION OF CEMETERIES

STATE OF NEW YORK
DEPARTMENT OF STATE
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ANDREW M. CUOMO
GOVERNOR

CEMETERY BOARD

ROSSANA ROSADO
SECRETARY OF STATE
CHAIR

LETITIA JAMES
ATTORNEY GENERAL

DR. HOWARD A. ZUCKER
COMMISSIONER OF HEALTH

Cemetery Board Minutes

August 19, 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
Kathleen Richardson, Division of
Cemeteries

David Jacobson, Division of Cemeteries
Joshua Beams, Department of State
Michael Seelman, Division of Cemeteries
Brendon Stanton, Division of Cemeteries

GUESTS:

David Fleming, FWC/NYSAC
Bruce Geiger, Pinelawn
Linda Feuz, Esperance Cemetery
Tom Slater, Esperance Cemetery

Kirtland Feuz, Esperance Cemetery
Scott Henderson, NYSFDA
Ken Jones, Esperance Cemetery

Opening Remarks

19-08-A-43 Minutes of Previous Meetings

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

19-08-B-44 Legislation and Regulation

1. Pending Legislation

Mr. Milillo stated there was nothing new to report with respect to pending legislation.

19-08-C-45 Division Report

1. Annual Reports

Mr. Polishook reports there have been few changes in the statistics reported to the Board in August, but compliance rate has improved from approximately 75% to roughly 80%.

2. Vandalism Applications

The Board discussed the issue of long-time lapses in between payments that have been made on Vandalism and Dangerous Monument applications in the past. Mr. Polishook reports one confirmed situation where the vendor has now stated it will not complete the project at the previously agreed price and now charges a higher amount. Mr. Polishook states that the Town of Oswegatchie has lost its vendor for their mausoleum repairs, which will result in a revised application being presented to the Board at the September meeting. The Town was able to rebid the job and keep it within the previously approved budget. However, it is the Division of Cemeteries' understanding that the Department of State's Bureau of Fiscal Management requires the Board's review and approval of all budget items prior to payment, and that material changes in the amounts allocated to different aspects of the projects might require further board action. The Board and counsel discussed past history approving total approved amounts paid and the possible need for another conversation with Fiscal. There was also discussion of encouraging contractors to specify how long their bids would be good for.

3. St Matthews upcoming court dates

Mr. Polishook states the issue was heard in court. The judge reserved decision with another court date set for August 28, 2019 where the judge indicated he will have a decision.

4. Division-Wide Meeting

Mr. Polishook reports that the Division-wide meeting occurred on August 8, 2019 in Syracuse. The Division concluded that there is a need for more outreach to cemeteries. Alicia Young is also working on contacting the Association of Towns to include a Division presentation on the abandonment process to assist the towns and presenting at local government conferences throughout the state.

19-08-D-46 Vandalism, Abandonment and Monument Repair or Removal Fund Report

Mr. Polishook reports that the Division has collected \$459,336. The Board has granted \$265,372.91 in applications; \$43,858.00 in applications remain pending. Of the \$2,000,000 appropriation for Fiscal Year 2019/20, \$478,258.77 has been paid out, and \$1,990,080.54 is committed to pay previously-approved applications. \$193,053.17 has been committed to be paid from the 2020/21 appropriation.

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

10-012 and 10-021 Town of Mooers- \$43,858

19-08-E-47 Rockland Cemetery (48-008)- Land Purchase

Rockland Cemetery wishes to purchase land next from a not-for-profit art students league. The location has ceased functioning at that specific location and approached the cemetery about selling the land for \$450,000. The cemetery has 32 acres that are usable. There are 4 acres that are

developed and unsold. The school building on the property would provide the cemetery with a functioning office building. The Attorney General's office has to approve the sale of the property. The cemetery may need approval from the zoning board in order to use the new property as cemetery property. The existing cemetery appears to be in a slightly different zoning district from the land looking to be purchased. The Board discussed the possibility of the existing cemetery being outside the bounds of the current allowable size of cemetery land per local zoning. The cemetery has a conflict of interest policy in effect and no related parties are involved in this transaction. A motion was made, seconded, and unanimously adopted approving the application contingent on (1) the AG's approval of the sale, (2) removal of the deed restriction on the property; (3) zoning board approval including the consideration of what the purchase might do to the existing cemetery use as well as use of the parcel; and (4) documentation of the cemetery's board minutes approving the decision to purchase the land.

19-08-F-48 Mount Pleasant Cemetery (52-033)- Major Renovation, Chapel Expansion

Mount Pleasant Cemetery currently has an operational chapel which is used regularly. The cemetery wishes to expand the chapel because of its inability to fit everyone in attendance for committal ceremonies. The cemetery has a conflict of interest policy in place and no related parties are involved in this transaction. The cemetery's board is made up of volunteers. The cemetery has adequate general funds to complete the project. The cemetery's board meeting minutes showed that the chapel expansion was discussed, but do not clearly reflect approval. A resolution was submitted by the president of the cemetery's board. A motion was made, seconded and adopted to approve the application for up to \$75,000 contingent on counsel's receipt of the board members' consents to adoption of a resolution approving the transaction, receipt by the Division of a complete set of stamped plans, and the cemetery's obtaining all the required local permits.

19-08-G-49 Greensprings Natural Cemetery (55-034)- Major Renovation, Removal of Trailer

Greensprings Natural Cemetery currently has a dilapidated mobile home on the property. The mobile home is a single wide with a collapsed roof. It is in unlivable condition. The demolition and removal will cost around \$5,000. A motion was made, seconded, and adopted approving the application for up to \$5,000 contingent on obtaining all required local permits. Counsel asked that the Division advise the cemetery as to potential liability in its use of volunteers to remove the trailer.

19-08-H-50 Frederick Douglas Memorial Park (52-033)- Clarify the Board's action on 3/12/2019 (no new funds requested/approved)

The Board previously approved a Permanent Maintenance grant of \$97,569.53 at its March 12, 2019 meeting. \$47,200 was prospective and the remaining \$50,369.53 was nunc pro tunc, meaning it had already been withdrawn to pay bills. However, the Division recently learned that \$369,53 of that sum came out of the general fund and the use of the permanent maintenance funds was \$50,000. The matter has been presented to Supreme Court, Richmond County for approval. The Court orally approved the grant but has asked the Attorney General and the cemetery to agree on an order. During the drafting of the order, the mistake was recognized. The Attorney General also wishes to clarify to the Court that part of the grant was nunc pro tunc. The Board discussed clarifying that the prior approval was partially nunc pro tunc with a reduced approved amount. The Division recommends the following language to clarify the board's action on 3/12/2019: "Having found that the cemetery lacks sufficient funds to make repayment, the Board recommends that the Court approve nunc pro tunc a \$50,000 grant from the cemetery's Permanent Maintenance fund expended on time sensitive repairs and payroll and further approve a grant \$47,200 to settle a ruling in favor of the Worker's Compensation Board and to pay an outstanding invoice from the cemetery's accountant." A motion was made seconded and unanimously adopted approving this clarification of the Board's previous recommendation at its March 12, 2019 reflecting the specific language stated above.

19-08-I-51 Esperance Cemetery (48-008)- Land Purchase

Esperance Cemetery would like to purchase a house on 5 acres of land including an out building. The intent is to use an approximately 2.3-acre portion of the land to develop and continue selling graves. The remaining 2.7 acres including the house would then be sold. The Division and counsel recommended that the Board deny the application. One issue is that the cemetery has invested its permanent maintenance and general funds together, making it difficult to determine how much money is available in general fund and how much is restricted. Ken Jones, President of Esperance Cemetery, addressed the Board stating that the cemetery has been investing for 40 years and has a record of success. Mr. Jones proffered said records and states that the cemetery has 1.3 million in investment funds. The cemetery has 10 plots, each with multiple graves, to sell. Mr. Jones states that this opportunity will not come up again as the cemetery's location makes adjoining usable land difficult. The proposed purchase price is \$205,000. The cemetery seeks to spend the funds to purchase land to continue selling lots as surrounding cemeteries are running out of graves. The cemetery is seeking to meet a need for future burials. The Division recommends denial of the request as the previous lot sales are not indicative of a need for more land for burials and the transaction, as structured, places the cemetery at risk should the house prove difficult to sell. The Board discussed the need for more information before it could vote on the proposal: 1) evidence of future demand for burial space in the village/town and whether other cemeteries would be unable to meet that demand; 2) Evidence of the market value of the house and 3) an analysis of this cemetery's funds (general funds and permanent maintenance) and ability to purchase the land. A motion was made, seconded, and adopted to table the application until the September 10th, 2019 meeting to allow the cemetery to obtain the information.

19-08-J-52 Chenango Valley Cemetery (04-003 Broome)- Merger

Chairman Pattinson states that the Board is not able to take action. The request is still an active application and the Board is doing its best to come to a legal understanding. The Board is cognizant of the stress that the cemeteries under. David Fleming, representing Forest Lawn, addressed the Board stating the situation is increasingly problematic. The cemeteries are hopeful for a resolution quickly as possible.

Public Comments:

Mr. Fleming representing NYSAC addressed the Board in reference to the above Esperance application, stating that he has seen many real property transactions, and states that the Board has historically taking into account whether the cemetery is hemmed in by its borders. Mr. Fleming states there is a concern that as cemeteries run out of land, there is a long-term negative impact on the cemetery and its future operation.

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

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

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