

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

Cemetery Board Minutes

September 10, 2019
One Commerce Plaza
99 Washington Avenue, 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
Cassie Orlan, Bruce Geiger & Assoc.
Linda Feuz, Esperance Cemetery
Thomas Slater, Esperance Cemetery
Kirtland Feuz, Esperance Cemetery
Ken Jones, Esperance Cemetery

Bernard McEvoy, MD, Vale Cemetery
Gordon N. Zuckerman, Vale Cemetery

Opening Remarks

19-09-A-53 Minutes of Previous Meetings

Motion made, seconded and unanimously adopted approving the minutes of the August 19, 2019 meeting as amended.

19-09-B-54 Legislation and Regulation

1. Pending Legislation

Mr. Milillo states there is nothing new to report with respect to pending legislation

19-09-C-55 Division Report

Mr. Polishook reports that the Attorney General's Office has filed a suit against the All Faiths Lutheran Cemetery in New York City. The Division referred the case to the AG after finding that the previous president

had effectively taken the cemetery's general fund as a lump sum upon retirement. The AG identified other issues concerning the management of the cemetery including self-dealing and other wrongdoing. The Division's current role is to assist the new cemetery president in stabilizing the cemetery's operations and restoring the public's confidence.

1. Annual Reports

82% of the cemeteries have filed with the Division. 18% have not filed. These numbers are an improvement on previous years filing statistics. 28% have been filed electronically.

2. St. Matthews Disinterments

There has been no update since the Court's decision.

3. Rockland Cemetery

The Board approved the purchase of a parcel of land by the Rockland Cemetery at the August 19, 2019 meeting, subject to various conditions. The Board did not explicitly state that the Rockland County Legislature also has to approve the purchase. The Division will send a letter to the cemetery advising of this requirement.

19-09-D-56 Vandalism, Abandonment and Monument Repair or Removal Fund Report

Year to date vandalism collections are \$468,402; assessment collections are \$251,018. Fiscal year collections from April 1, 2019 are: Vandalism- \$121,749 and Assessment- \$62,330.

Of the \$2,000,000 appropriation for Fiscal Year 2019/20, \$759,005.38 has been paid out and \$1,157,353.41 has been committed to pay previously approved applications. \$272,033.26 has been committed subject to availability of funds, in all likelihood from the 2020/21 appropriation.

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

11-029 Stuyvesant Falls - \$33,357.33
38-021 New Haven Rural- \$23,562.64

19-09-E-57 Vale Cemetery and Crematory (47-011) – Expansion of the crematory

Vale Cemetery is seeking to add a retort and expand the crematory building. The cemetery is based in the City of Schenectady and is sustained almost completely by revenue derived from cremation services. Both Vale and neighboring Parkview Cemetery are currently at capacity for cremations. The capital region is in need of additional cremation capacity. The Division believes the project to be a good idea for both the area and cemetery.

There is one financial concern as the transaction involves a loan from a related party. The cemetery made an initial attempt to obtain bank financing but failed. A community foundation offered a loan at 5.5% interest but required additional \$15,000 quarterly payments of principal, making the loan terms unaffordable. One trustee offered to loan the money at the same rate with two differences. No additional payment would be made to the principal balance. For the first two years of repayment, payments would be interest only.

The Division noted that the cemetery had begun preparatory work without prior Division approval and was advised to cease such work until the New York State Cemetery Board approved the project. To date, the cemetery had spent \$229,000 on such work.

After extended discussion, a motion was made, seconded, and unanimously adopted approving the application, subject to receipt of all required local permits, for a total expenditure of \$488,000 which includes a loan from a trustee in the amount of \$225,000 and includes funds already expended.

19-09-F-58 Wappingers Falls Cemetery (14-041) – Sale of House

The cemetery owns a building across the street. It wishes to sell the house with all proceeds going into the PM fund. There is no related party involved with the transaction. The price is \$188,000, several thousand dollars lower than the appraised value. The cemetery explained that the house's roof needs repairs and the appraisers did not adequately take this into account. The property was listed with and marketed by a real estate broker, and no related parties are involved. The board accepted the offered price as proof of market value even though it was below the appraised value because the property was properly marketed, the proposed purchaser is not a related party, and the transaction appears to be arms-length. The sale is not to a funeral entity

A motion was made, seconded, and unanimously adopted approving the application with net proceeds to be deposited to the cemetery's permanent maintenance fund.

19-09-G-59 Esperance Cemetery (48-008) – Land Purchase

Esperance Cemetery is seeking to buy an adjoining parcel of land which has a home on it. Four broad areas of concern were found causing the application to be tabled at the August 19, 2019 to allow time for information to be received. One concern is whether the cemetery needs additional land. The cemetery has provided additional information. Three funeral directors believe there will be need in the future for burials. Several nearby cemeteries are unable to acquire additional new land where space is also running out. The cemetery is attempting to keep the cemetery available for burials. The Division feels the need for land is better substantiated based on this information.

Another concern is whether the cemetery has adequate unrestricted funds to purchase the property. The cemetery appears to have two accounts, one checking and one investment. Many small cemeteries keep their entire general fund in the cemetery's checking account and the permanent maintenance fund in an investment account, but in this case, after extensive review of 20 years of financial records, the Division's accountants now believe that investment account contains funds that are properly treated as general funds sufficient to purchase the property. Counsel has concerns about the proper treatment of the cemetery's funds and Division's change of position from how it historically treated the funds that need to be discussed in executive session.

The purchase price is also an area of concern as it is at the higher appraised value. Counsel believes that the lower appraisal has a more detailed analysis with a deduction due to the home being in a flood zone where 9 feet of water flooded the home. The Division is not comfortable recommending approval of a sale at a price in excess of the lower appraised price.

The Board also discussed the fact that the land being requested is in the 500 year flood plain. The Division believes this issue would be addressed in local review and approval of rezoning of the property, but the cemetery is willing to restrict burials to the portion of the property outside the 500 year flood plain.

Ken Jones from Esperance addressed the board stating the home was sold in 2013 after the flood. He states that the current owner of the property paid a certain amount and wants to make a profit. The cemetery has not pushed burials as few lots are available.

Counsel asked that the matter be discussed further in executive session.

19-09-H-60 Cold Spring Cemetery (32-004) – Columbarium

Cold Spring Cemetery has had compliance issues in the past. The cemetery poured foundation without approval and fell behind on annual reports and vandalism payments. A notice of non-compliance was issued. The cemetery is now in compliance. The cemetery wishes to install a fourth columbarium. There is a proven track record of selling these spaces. It is a pre-fab unit. There are no related parties involved. The cemetery has left space for a fifth unit that is not on the agenda at today's meeting. There are no other outstanding

violations. The Division recommends approval. A motion was made, seconded, and unanimously adopted approving the application at a price not to exceed \$25,584.00.

19-09-I-61 Yaphank Cemetery (52-062) – Sale of Vacant Land

Yaphank Cemetery wishes to sell a small parcel of land that will not be used to another person who promises to not use the land in the future for \$6,000. The payment would go into the permanent maintenance fund. The Division recommended that the cemetery seek to agree to a deed restriction on the strip of land to prevent development, but development of this piece of land is unlikely. There are no related parties involved in this transaction. Division asked and the Board agreed to waive the usual requirement of two appraisals because the amount of land and consideration to be paid is very minor and the transaction is an arms-length transaction not involving a related party. A motion was made, seconded, and adopted approving the application without any deed restriction, and with net proceeds to be deposited in the PM fund. The Division is also to confirm the sale is not to a funeral entity as required by statute.

19-09-J-62 Chenango Valley Cemetery (04-003 Broome) – Merger

Chairman Pattison states the Board needs to go to Executive session to apprise members of Counsel’s memo. The Board will open the meeting back up after.

A motion was made seconded and approved entering Executive Session.

A motion was made seconded and approved exiting Executive Session.

19-09-G-59 Esperance Cemetery (48-008) – Land Purchase

After exiting Executive session, a motion was made, seconded, and adopted disapproving the application for Esperance Cemetery without prejudice to reapply. The Board is not persuaded that the higher appraisal meets the fair market value. As the property exists currently, it is no zoned for cemetery use creating a risk for the cemetery to not be able to use the land for burials. That and other issues would need to be addressed prior to Board approval. The applicant can work with the Division on all issues before reapplying should they choose to.

19-09-J-62 Chenango Valley Cemetery (04-003 Broome) – Merger

After exiting executive session, the Board also discussed the merger application between the Chenango Valley Cemetery and Forest Lawn. Counsel states that Not-for-Profit Corporation Law section 1506(h) provides limitations on a cemetery acquiring property by eminent domain and has concluded that these limitations—on cemetery size and acquisition of non-adjacent property—apply to any acquisition of property. The Board approved making counsel’s memorandum on the issue available to the public.

The Board understands that prior acquisitions have been approved that do not follow the restrictions. An agency when previously incorrect, has the duty to correct itself, but need not apply the corrected decision retroactively when, among other things, retroactive application would create hardship.

Counsel recommended and the board agreed that the revised interpretation be applied prospectively only and not be applied to previous acquisitions of property.

The Division states that existing cemetery law does not provide adequate tools to help prevent abandonment and will discuss potential changes to the law with interested stakeholders.

A motion was made, seconded, and adopted disapproving the proposed certificate of merger on the basis that lands held by the cemeteries proposed to merge do not adjoin.

Dave Fleming, representing Forest Lawn, states he disagrees with the Board's decision and hopes a solution can be found by working together.

Mr. Polishook states the Division is willing to meeting with any cemeteries in jeopardy of abandonment to find a short-term solution pending possible legislative fixes.

Public Comment

David Fleming of NYSAC states there is a crematory training program being offered in Albany on October 9, 2019 and there will be two additional dates of October 16, 2019 in Oneonta and October 17, 2019 in Queensbury.

A motion was made, seconded, and adopted to adjourn the meeting.

The next meeting will be October 8, 2019 at 10:30 A.M.