

**APPROVED**

**Cemetery Board Minutes**

**October 8, 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  
Leonard Breen, Division of  
Cemeteries

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

**GUESTS:**

David Fleming, NYSAC, FWC  
Brendon Boyle, NYSAC, FWC  
Bruce Geiger, Pinelawn

**Opening Remarks**

**19-10-B-64 Minutes of Previous Meeting**

**19-10-C-65 Legislation and Regulation**

Mr. Milillo states there is nothing new to report.

**19-10-D-66 Division Report**

1. Follow Up Concerning Non-Contiguous Cemetery Property

Mr. Polishook reports that the Division is currently in the process of reaching out the stakeholders in the matter raised by the board's disapproval of the merger certificate for Forest Lawn and Chenango Valley and the prohibition of cemetery acquisition of non-contiguous land.

2. Division Outreach

The Division will participate in two NYSAC regional meetings, in Oneonta on October 16, 2019 and Queensbury on October 17, 2019. The Division will also have a booth at the Local Government Innovation Conference on October 18, 2019 at the Empire State Plaza.

### 3. Annual Reports

Mr. Polishook reports that the Division has received 1,427 annual reports. The non-compliance is still 19%. The online filing is down to 26%, because most recent filings have been paper.

### 4. Annual Reports

Mr. Seelman reports that the Division investigators are in the process of coming up with a standard formula for determining what is considered a dangerous monument. Once one is created, it will be presented to the Board.

### 5. Quarterly Report on Delegated Duties.

The Division has received 10 rate applications in the last quarter and has approved 39. Three rules and regulations amendments were received; one was approved. One society reclamation application has been received and remains under review.

### **19-10-A-63 Reappointment of the Director**

A motion was made, seconded, and unanimously adopted appointing Lewis Polishook as Director of the Division of Cemeteries for a second six-year term commencing November 12, 2019.

### **19-10-E-67 Vandalism, Abandonment and Monument Repair or Removal Fund Report**

Of the \$2,000,000 appropriation for Fiscal Year 2019/20 \$885,356.63 has been paid out for applications approved in 2018/19, and \$969,433.13 has been committed to pay previously approved applications. This year the board has approved applications totaling \$395,422.75, of which \$30,947.37 has been paid, \$92,542.12 is committed from this year's funds but not yet paid, and \$232,033.26 has been approved subject to the availability of funds (but we do not anticipate being able to pay these applications out of this year's funds).

The Board approved the following 5 dangerous monument applications and one abandonment application contingent on the availability of funds:

Name	Amount	County	ID No.
Riverside Cemetery	\$ 16,058.81	Broome	04-028
East Pembroke Hillside Cemetery	\$ 15,437.08	Genesee	19-008
Westford Cemetery	\$ 23,666.24	Otsego	39-046
Stillwater Cemetery	\$ 10,348.00	Saratoga	46-030
Asbury Cemetery	\$ 23,793.33	Tompkins	55-001
Town of Red Hook / Red Church Cemetery	<u>\$ 32,535.94</u>	Dutchess	14-025
Total	\$ 121,839.40		

Mr. Seelman states that the Town of Oswegatchie went \$68 dollars over their approved amount for the truck they purchased. However, they were under the approved amount for power equipment by \$161.92. The Board approved the change in spending provided that the town stays within the total approved amount.

### **19-10-F-68 Pinelawn Cemetery (52-044) – Columbarium**

Pinelawn Cemetery is seeking approval for the installation of a columbarium within the atrium area of an existing mausoleum. Pinelawn has a consistent track record of selling above-ground-space inventory.

At counsel's request, the cemetery provided the board with additional disclosures concerning the owners of land share certificates and the amount to be paid to certificate holders. A motion was made, seconded, and unanimously adopted approving the application.

### **19-10-G-69 Ferncliff Cemetery (60-006) – Long Term Lease – Solar Panels**

Ferncliff Cemetery is requesting approval of leasing space on the rooftops of two existing mausoleum buildings for solar panels that will be part of a community solar project. The project does not provide electricity to the cemetery. The energy will go into a solar farm for the community. The cemetery will receive funds as rent and has agreed to deposit those funds into its PM fund. The Board discussed some questions with the cemetery's complex method of accounting and that a Division audit was completed on the cemetery in 2016 with no exceptional findings. Counsel asked that he be provided a copy of the audit. A motion was made, seconded, and unanimously adopted approving the application.

### **19-10-H-70 Parkview Cemetery (47-009) – Additional Retorts/Major Renovation**

Parkview Cemetery is requesting approval to install an additional retort. The Board discussed the need for more cremation capacity around the Capital Region. The project costs \$252,108.00. The cemetery is also in the process of converting to natural gas from propane. The installation of the retorts is proposed to be completed by a company owned by an officer of the cemetery. A letter was submitted to the Division stating a bid was received from an unrelated entity that was significantly higher than the related-party bid. But the second bid was received after the cemetery's board had approved hiring the related party entity (board members with an interest in the bidder did not vote). The cemetery reported that its board considered the second bid and still approved hiring the related party through email exchanges, but no supporting documents were provided.

The Board discussed the issue that Vale Cemetery which is also in Schenectady County was approved to increase its capacity last month and whether allowing both cemeteries to increase capacity would harm the cemeteries and drive down revenue. The Division clarified that it found that there is a need for additional retorts at both cemeteries and anticipated that the increased capacity would be a benefit, not a detriment. The Board also discussed N-PCL §715(b) which requires that, for any related party transaction involving a charitable corporation where a party has a substantial financial interest, the board of such corporation shall prior to entering, consider alternative transactions and document in writing the basis of its decision. Here, no evidence of compliance was submitted.

After further discussion, a motion was made, seconded, and unanimously adopted approving the application conditioned on the receipt of minutes of a board meeting that demonstrate compliance with N-PCL section 715(b) by showing, in writing, that the cemetery considered alternatives to the related party transaction and why it chose to enter into the related party contract.

### **19-10-I-71 Oakwood Cemetery (60-016) – Amendment to Solar Lease/Major Renovation**

Oakwood's initial application for installation of a solar farm was approved in 2018. Counsel reviewed the lease and the cemetery has received all local approvals. Subsequently the solar provider decided to install onsite batteries. They will be lower than the fence that the lessee has agreed to provide. The project will not be readily visible from developed areas of the cemetery and is in an area not used for interments. The cemetery will receive slightly more rent (all of which will go to PM) and the locality has approved of the changes. The amendment requires 800 square feet of additional space. Reports have been received from Tesla, the manufacturer of the batteries, explaining the safety of them. Counsel reported that changes to the lease were minimal and did not require changes to the rider. The following documents were included in the board packet and reviewed on this application: (LIST DOCUMENTS). A motion was made, seconded and unanimously adopted approving the amendment to the solar lease and the application for major renovation.

### **Public Comment**

David Fleming of NYSAC requests the Division engage NYSAC regarding the standard being developed for the dangerous monument applications. He also suggested that the Division contact the Association of Gravestone Studies when developing the standard. Mr. Fleming spoke on the issue of abandonment and town takeovers. Many times, the first year after abandonment involves a lot of fundraising, and may not be indicative of how things will fare over time.

The Department of Environmental Conservation has released proposed regulations related to crematory relations for the second time. Mr. Fleming believes that DEC did not include Department of State or the Cemetery Board in the development. According to Mr. Fleming, the proposal will prohibit the operation of 33% of the retorts in New York

State. He stated that cemeteries, unlike other operators of incinerators, cannot increase prices to make up for the cost of compliance. Mr. Fleming requests the Board and Division be engaged in the process, as it directly affects those under the Division's jurisdiction.

Mr. Fleming also states that an order was signed to extend the receivership of Whispering Maples to December 31, 2019 when it will expire and that the towns will operate their portions of the cemetery through an inter-municipal agreement.

Motion made, seconded and unanimously adopted to enter executive session.

Prior to entering executive session, the next meeting was tentatively scheduled for November 19, 2019 at 99 Washington Avenue, Albany, NY 12231. (Note that after the meeting the date of the next meeting was changed to November 20, 2019, in Room 505 at the same address.)

Motion made, seconded and unanimously adopted to exit executive session and adjourn the meeting.