

**APPROVED**

**Cemetery Board Minutes**

**November 20, 2019  
One Commerce Plaza  
99 Washington Ave, Albany, NY 12231**

**BOARD MEMBERS PRESENT:**

Mark Pattison, Department of State, Chair  
Thomas Fuller, Department of Health

**OTHER ATTENDEES**

Lewis Polishook, Division of Cemeteries  
Antonio Milillo, Dep't of State, Counsel  
Alicia Young, Division of Cemeteries  
Michael Seelman, Division of  
Cemeteries

David Jacobson, Division of Cemeteries

**GUESTS:**

David Fleming, NYSAC, FWC  
Brendon Boyle, NYSAC, FWC  
Bruce Geiger, Bruce Geiger & Assocs. for Pinelawn Memorial Park  
Louisa Knooren

**Opening Remarks**

**19-11-A-71 Minutes of Previous Meeting**

Motion adopted approving as submitted the minutes of the Board's October 8, 2019 meeting.

**19-11-B-72 Legislation and Regulation**

Mr. Milillo states that, as previously reported, two bills were previously passed in both chambers. The bills have been delivered to the Governor. One bill concerns the abandonment of cemeteries to towns; among other things, it allows towns to return to the Board after 25 years for a second request for abandonment funds and seek a receiver paid by the vandalism fund. The bill was vetoed; the Governor's veto message addresses the impact of the bill on the vandalism/ abandonment fund, which the Governor noted was already distressed. However, the Governor directed the Department of State to "evaluate the efficacy of conducting an administrative rulemaking to address the objectives identified in the bill that can be adopted without legislation."

The second bill, concerning the merger of two cemeteries in Suffolk County, was just delivered to the Governor for action.

## 19-11-C-73 Division Report

### 1. Annual Reports

Mr. Polishook reports the Division is at 27% online filing of their annual reports. Approximately 18% of regulated cemeteries—307 cemeteries—have not filed their annual reports. The previously reported numbers were inflated as software was incorrectly including abandoned cemeteries in the non-compliant numbers.

### 2. Annual Report Mailing

Mr. Polishook states that the Division will begin preparing January's annual mailing and asks for any suggestions or requests for subjects that should be covered.

## 19-11-D-74 Vandalism, Abandonment and Monument Repair or Removal Fund Report

Of the \$2,000,000 appropriation for Fiscal Year 2019/20 \$1,053,931.29 has been paid out for applications approved in 2018/19, and \$799,941.38 has been committed to pay previously approved applications. This year the board has approved applications totaling \$516,762.15, of which \$45,896.79 has been paid, \$76,992.70 is committed from this year's funds but not yet paid, and \$393,872.66 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 vandalism application contingent on the availability of funds:

Name	Amount	County	ID No.
Cold Springs Cemetery Association	\$ 1,031.00	Niagara	32-004

## 19-11-E-75 Nassau Cemetery (30-006) – Land Purchase

Nassau Cemetery requests approval to purchase an adjoining parcel of land for \$500,000 which contains a home that will be demolished. The sale is a private sale between the cemetery and the current owner, who is not a related party. There was extensive discussion of the two appraisals provided by the cemetery, both of which were updated with no change in appraised value just before the meeting. The Division noted that current owner closed on the home for \$400,000 in March 2019. The appraisals diverged in value, one valuing the property at \$575,000 and the other valuing the property at \$410,000. The Division also noted that Nassau County's assessed value for the property was \$612,000. James Galante, on behalf of the cemetery, states that the owner is looking for a 20% return on investment and the second appraiser found a parcel that recently sold for \$550,000. Counsel noted that he found the lower appraisal more reliable because of the lack of adjustments to the value of comparable sales used in the higher appraisal. The board discussed the wide range in the appraisals and requested a third appraisal from an independent party. A motion was made, seconded, and adopted tabling the application until the December 2019 meeting to permit the applicant to obtain and provide such an appraisal.

## 19-11-F-76 Waterville Cemetery (33-068) – Major Renovation, Additional Retort

Waterville Cemetery is requesting approval to add an additional retort to the existing two. The cemetery is concerned that if one machine were to go down they would be unable to meet the needs of the clientele. The additional retort would help to avoid a service interruption. There is only one crematory in Oneida county that serves 4 counties. The third retort would increase capacity for when repairs are needed as well as to reduce the wear and tear on the existing machines which are currently running close to capacity. The Division recommends approval. Counsel states a concern that Oakwood Cemetery in Syracuse might be impacted by the increased capacity, as it has already lost market share to Woodlawn Cemetery in Syracuse. The Division found that there was no likely overlap between the two markets. Counsel also discussed the relative efficiency of the additional retort against the oldest retort (from 2012) and suggested that that it would be more beneficial

to primarily use the two newer units. Motion made, seconded and unanimously adopted approving the application.

### **19-11-G-77 Boughton Hill Cemetery (35-002) – Columbarium**

Boughton Hill Cemetery is requesting approval to install a 120-niche columbarium at the cemetery's exit. Both the Division accountant and investigator recommend approval. In response to a question by counsel, the cemetery clarified that it had complied with the posting requirement by reposting signs after it initially posted a sign in the wrong location and posted signs that lacked end dates for the comment period. The remaining issue was that the cemetery received a response and the Division received a complaint from a next-door neighbor, Louisa Knooren, concerning the placement of the columbarium near (40 feet from) her house. Ms. Kathy Boughton, treasurer of the cemetery, attended by telephone and stated the cemetery is aware of Ms. Knooren's concern with the columbarium location. The cemetery initially considered placing the unit near the entrance road. Due to the presence of graves and headstones nearby and other concerns, the cemetery decided to place the columbarium near the exit road and Ms. Knooren's property. The cemetery does not need any permits to complete the project. Counsel questions how visitors will be parking. Ms. Boughton states there is a plan for four to six parking spots to be placed for people to visit the columbarium. Ms. Knooren states that the workers who poured foundation for the columbarium were leaning on trees which were on her property. The cemetery asserted that it has the right to use its property for cemetery purposes and a columbarium is a cemetery purpose, but Counsel pointed out that Cemetery Board regulation specifically requires public notice and an opportunity to comment on and object to a proposed columbarium. Ms. Knooren was present and provided additional information and photographs, stating she believes that the columbarium will lower her property value and will infringe on her privacy. She states that she is trying to mitigate future problems as the cemetery will potentially add more units. Ms. Knooren mentions a rise on the left side of the exit road which would make it difficult for visitors to the cemetery to park and that she wishes for a row of hedges to be installed to allow more privacy. Ms. Boughton responded stating that tombstones being laid in the same area would be closer than the columbarium, that the mentioned rise will be leveled off to allow for easier parking, the cemetery has existed for 200 years and is looking to ensure forward movement, and to avoid running out of space. Motion made, seconded, and adopted tabling the application to allow for a meeting between Division staff, the cemetery, and the complainant prior to the next board meeting. Division staff, cemetery representative and Ms. Knooren tentatively agree to meet on November 27, 2019 to discuss a potential compromise.

### **19-11-I-79 Rockland Cemetery (44-008) – Correction to Land Purchase Agreement**

Rockland Cemetery was previously approved to purchase land. One condition the board imposed was to remove an existing deed restriction. Contrary to information previously provided to the Division, there does not appear to be a deed restriction, rather there is a contractual agreement between the previous seller and the Art Students League that currently owns the property that includes restrictions. The Board members in attendance agreed with the recommendation of counsel that instead of the board amending its decision, counsel will send a letter clarifying what the board intended when it approved the purchase with the condition that the "deed restriction on property be removed."

### **19-11-H-78 Long Island Cremation (52-068) – Retort Replacement**

Long Island Cremation is a standalone crematory near the western border of Suffolk County. The crematory has always had three retorts. All three were very old units. They have replaced two of the three retorts and now seek approval to replace a third. The new retort will be further back in the existing crematory building which will allow for a major renovation application to expand their chapel in the future. The old retort is on its last legs. It should be able to handle 3-5 cases per day but is unable to due its age and the inability of the crematory to get parts. Because this was a pre-existing funeral home/cemetery combination that was grandfathered under the Anti-Combination Law, the Division addressed the funeral director status of officers/directors of Long Island Cremation. Both Linda Hogan-Florenzie and Frank Caccioppoli are currently licensed as funeral directors but assert that they are no longer affiliated with any funeral home or provide funeral director services. Department of Health (DOH) records show Ms. Hogan-Florenzie working for Roslyn

Heights Funeral Home and 25 hours of funeral service a week. Upon speaking to Linda and the funeral home, that was found to not be the case. Both stated that there were a couple of instances where a friend or family member asked her to handle the arrangements. DOH records do not contradict that Mr. Caccioppoli has not been actively using his license. Long Island Cremation is located 35 miles from three other crematories, two of which are cemetery-based and the third is Fresh Pond Crematory. Nassau Suffolk is the only closer crematory at approximately 20 miles—it is a traditional grandfathered standalone affiliated with a funeral home.

Eastern Nassau and Western Suffolk communities rely on Long Island Cremation. The Division believes a third retort is needed. Counsel brought up some concerns that were discussed: clarifying the grandfathered status of the crematory; unusual entries in the cemetery's annual report and audit; some related-party transactions; and a concern about how the crematory handles the receipt, cremation and delivery after cremation of fetal remains. The discussion of these issues led the Division to suggest that an audit of the cemetery would be appropriate; the last Division audit was in 2010. The Board discussed whether the additional retort would increase capacity. As the current unit is firing below capacity, there will be no material increase. A new retort will assist in returning the crematory to its former capacity. Motion made, seconded, and unanimously adopted approving the application.

### **Public Comment**

David Fleming of NYSAC states that NYSAC welcomes comments on rule-making as suggested by the Governor in his veto of the abandonment legislation. There is a crisis situation in the number of cemeteries being abandoned to localities that is needed to be addressed quickly.

Mr. Fleming also expressed concern arising from the Boughton Hill Cemetery application. He is concerned about municipalities and neighbors preventing cemeteries from engaging in cemetery business and the negative impact such restrictions have on cemeteries.

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

Motion made, seconded and unanimously adopted to exit executive session and adjourn the meeting, no actions having been taken during executive session.

The next meeting was tentatively scheduled for December 9, 2019 at 99 Washington Avenue, Albany, NY 12231. Note: after the meeting, the meeting date was changed to December 13, 2019.