

Cemetery Board Minutes
December 13, 2019
One Commerce Plaza
99 Washington Ave, Albany, NY 12231

BOARD MEMBERS PRESENT:

Mark Pattison, Department of State, Chair
Jill Faber, Office of Attorney General
Thomas Fuller, Department of Health

OTHER ATTENDEES

Lewis Polishook, Division of Cemeteries
Joseph Ball, Dep't of State, Counsel
Alicia Young, Division of Cemeteries
Michael Seelman, Division of
Cemeteries

David Jacobson, Division of Cemeteries
Brendon Stanton, Division of Cemeteries
Joseph Ambrose, Division of Cemeteries
Joshua Beams, Department of State

GUESTS:

David Fleming, NYSAC, Featherstonhaugh, Wiley & Clyne
Brendon Boyle, NYSAC, FWC
Bruce Geiger, Bruce Geiger & Assocs. for Pinelawn Memorial Park

Opening Remarks

19-12-A-80 Minutes of Previous Meeting

Motion made, seconded, and unanimously adopted approving as submitted the minutes of the Board's November 20, 2019 meeting.

19-12-B-81 Legislation and Regulation

1. Pending Legislation

Mr. Ball states that the bill allowing two cemeteries in Suffolk County to merge was signed by the Governor.

2. Rules and Regulations

Mr. Polishook reports that the Division has begun the process of discussing possible rule making on abandonment. The comment period for the DEC's regulatory updates regarding crematories closed on December 11, 2019.

19-12-C-82 Division Report

1. Reorganization – Rush Cemetery

Mr. Polishook reports that Mr. Seelman and Mrs. DeYoung had a successful reorganization meeting with the North Rush Cemetery. Seven trustees to serve on its board where there was previously only one.

2. Division Wide Meeting

Mr. Polishook reports that the Division will hold its bi-annual Division wide meeting on December 18, 2019 where, among other things, Division staff will discuss models for various types of Board applications to ensure future standardization.

19-12-D-83 Vandalism, Abandonment and Monument Repair or Removal Fund Report

Of the \$2,000,000 appropriation for Fiscal Year 2019/20 \$1,102,422.10 has been paid out for applications approved in 2018/19, and \$751,407.57 has been committed but not yet paid for applications from that fiscal year. This year the Board has approved applications totaling \$517,793.15 of which \$109,436.10 has been paid, \$13,453.39 is committed from this year's funds but not yet paid, and \$394,903.66 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).

On January 8, 2018, the Board approved an application for funds for the restoration of dangerous monuments at Workmen's Circle Cemetery, No. 15-072 (Erie County), in the amount of \$37,424.50. Since then, the lowest bidder informed the cemetery that its costs had increased and that it would need \$2,762.00 more to complete the work. After discussion, the Board approved the following amendment to the cemetery's previous application for funds for restoration of dangerous monuments, contingent on the availability of funds:

Name	Additional Amount	County	ID No.
Workmen's Circle	\$ 2,762.00	Erie	15-072

19-12-E-84 Nassau Cemetery (30-006) – Land Purchase

The cemetery is attempting to purchase an adjacent parcel of land. The application was first discussed at the November meeting, at which the Board requested that the cemetery obtain a third appraisal because of the wide divergence of valuations between the two previous appraisals. The Board discussed the fact that the property is being purchased by a not for profit cemetery and the fact that the property was recently sold for \$400,000. A question was raised as to why the appraisals now show the value to be \$100,000 more. The cemetery's response to the Division's inquiry on that subject was that the previous owner was interested in unloading the property quickly, did not market the property, and sold it to an acquaintance. All three appraisers reviewed comparable sales data and the properties came up with a higher number. The house next door to the property sold for \$435,000. Real estate websites show values for the property of between \$389,000 and \$582,000. Counsel states that the highest appraisal is a "Restricted Appraisal Report" which states (on page 1) that it is an appraisal report of "a vacant parcel of land" and (on page 3) that additional supporting documentation is retained in the appraiser's work file, that the appraiser's opinions and conclusions may not be understood properly without additional information in the appraiser's work file; counsel also notes that this appraisal appears to determine the value of the subject property in terms of dollars per square foot of the lot, based the dollars per square foot of the lots of the comparables, with no apparent adjustment for the condition of the improvements, if any, on the comparables. The Board also discussed the fact that there were now two appraisals that appeared to be divergent of the highest. After further discussion, the Board concluded that the cemetery's appraisals had not established a fair market value of \$500,000. A motion was made, seconded, and unanimously adopted approving the application provided that the cemetery acquire the property at a price of no more than \$485,000, provided, further, however, that the Cemetery may come back to the Board with additional information to justify a purchase price of \$500,000.

19-12-F-85 Leatherstocking Crematory (39-050) – New Retort

Mr. Milillo was unable to attend this month's meeting due to a scheduling conflict and had some concerns about this application. In light of those concerns, and to allow for discussion of legal issues in executive session, a motion was made, seconded, and unanimously adopted to table the application until the January meeting.

19-12-G-86 Boughton Hill Cemetery (35-002) – Columbarium

Boughton Hill Cemetery is requesting approval to install a 120-niche columbarium at the cemetery's exit. The application was reviewed at the November meeting. A neighbor of the cemetery expressed concerns regarding the project. The project has been found to meet all requirements sent by town ordinances. The neighbor as well as Division staff met with 5 out of 6 cemetery board trustees. The meeting was held at the town hall for one hour and forty-two minutes. Both parties were able to express their positions. The parties ultimately agreed to take a "wait and see" approach and work in good faith to address any remaining issues after installation of the columbarium. A motion was made, seconded, and unanimously adopted approving the application.

19-1-H-87 Mt. Eden Cemetery (60-012) – Long Term Lease

Mt. Eden is seeking a fourth amendment to their current lease for a cell tower. The first three amendments were not submitted to the Board for approval. The amendment will allow for an expanded installation at the pad of the cell tower to add capacity. The site is off the side of the cemetery. The cemetery stated that it is not presently seeking approval of any work, but only approval of the amended lease. The Division found that the cemetery has been splitting the lease proceeds between a capital improvements fund and the permanent maintenance fund; the history of this split is unclear. The Cemetery understand that any additional funds from the amended lease will go into the permanent maintenance fund. The Division will continue to review the split of existing lease proceeds. A motion was made seconded and unanimously adopted approving the application.

Public Comment

David Fleming of NYSAC remains concerned since the Board's September decision to put restriction on cemeteries' ability to purchase property. Mr. Fleming states that Nassau Cemetery effectively supplied 5 appraisals and believes that there should be some type of standardization so the applicants can know what to come back to the board with.

Mr. Fleming also states that NYSAC has participated in two of the three DEC public comment regulation periods. NYSAC is concerned that stakeholder meetings were held that did not include crematory operators. Penalty provisions in the new regulations are included regarding incinerating something other than the casket and human remains. Mr. Fleming states it is impossible for operators to know what is in the casket as it is a sealed container. The DEC refused to provided information on who attended the stakeholder meetings, stating that would need a FOIL request.

Motion made, seconded, and unanimously adopted to adjourn the meeting, with no executive session needed.

The next meeting will be January 17th, 2020 at 99 Washington Avenue, Albany, NY 12231, at 10:30 a.m.