

DIVISION OF CEMETERIES

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CEMETERY BOARD

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CHAIR

LETITIA JAMES
ATTORNEY GENERAL

DR. HOWARD A. ZUCKER
COMMISSIONER OF HEALTH

DRAFT

Cemetery Board Minutes May 12, 2021 Via WebEx

BOARD MEMBERS PRESENT:

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

OTHER ATTENDEES:

Joshua Beams, Dep't of State
David Jacobson, Dep't of State
Andrew Hickey, Division of Cemeteries
Lewis Polishook, Division of Cemeteries
Michael Seelman, Division of Cemeteries
Brendon Stanton, Division of Cemeteries
Robert Vanderbles, Dep't of State, Counsel
Alicia Young, Division of Cemeteries
Vince Gimondo, Division of Cemeteries

GUESTS:

David Fleming, NYSAC, Featherstonhaugh, Wiley & Clyne
Bruce Geiger, Bruce Geiger & Assocs. for Pinelawn Memorial Park
Richard Freiman, Freiman & Associates
Joseph Dispenza, Forest Lawn Group
Anthony Biolsi, Montefiore Cemetery
Adam Ginsberg, Cedar Grove Cemetery
Nate Romagnola, White Haven Memorial Park
Ashton Matyi, Ostroff Associates
Kathleen Orlan
Brendan Boyle, NYSAC, FWC
Philip Tassi, Ferncliff Cemetery

Opening Remarks

Mr. Pattison gave an overview of how the meeting would proceed via WebEx. Mr. Pattison noted that people should identify themselves when speaking.

Mr. Pattison introduced Robert Vanderbles, who will be acting as counsel to the Board.

Mr. Vanderbles explained that we are acting to Executive Order 202, extended through June 9, which modifies Article 7 of the Public Officers Law to allow meetings without in-person public access so long as the public can view and participate in meetings and that the meeting is subsequently transcribed. We have shared notice of how to join the meeting, the agenda, and board materials.



**Department
of State**

Speakers are encouraged to identify themselves; must identify themselves and the entity they represent.

21-05-A-24 Minutes of Previous Meetings

Motion was made, seconded, and unanimously adopted approving the minutes of the Board's April 13, 2021 meeting

21-05-B-25 Legislation and Regulations

1. Pending Legislation

Mr. Vanderbles reported on activity on pending legislation as follows:

S.5535, which would permit cemeteries to appropriate a portion of principal under certain circumstances, passed the Senate.

S.1645, prohibiting the sale of certain veterans' markers and memorabilia, has advanced to a third reading.

S.4344, which authorizes a family member or close friend to arrange for burial of a veteran in a veterans' cemetery, advanced to a third reading.

S.6171, was introduced as a "same as" to A.6740; this bill would allow a grandfathered standalone crematory to move.

A.6861 and S.6010 would create uniform standards for missing persons. It would require "pauper cemeteries" to maintain computerized data on all unidentified bodies but provides no definition of "pauper cemetery." Each house has referred its bill to committee.

A.6971 and S.6257-A would provide for leasing of lands by cemeteries with approval of the cemetery board; it passed the Assembly.

A.7301 and S.6521 would permit electronic signatures on funeral-related documents; both are in committee.

2. Rules and Regulations

Mr. Pattison stated that the Governor previously vetoed a bill concerning cemetery abandonment but asked the Division to identify ways by which we could accompany some of these goals by rule making. We have worked with NYSAC to draft regulations; they have been shared with Board members and posted on the Division's website.

Mr. Polishook provided an overview of the regulations. The portion of the vetoed legislation for which the Governor wanted us to consider rule making would have given towns advance notice of abandonment.

Broadly speaking, the regulations would:

1. Clarify the definition of abandonment;
2. Provide a procedure led by the Division, in consultation with stakeholders (the cemetery, local officials, and other local cemeteries) to try to prevent abandonment (codifying existing Division practice);
3. Clarify that the Cemetery Board determines whether a cemetery is abandoned, preventing abandonment without notice and ensuring that cemeteries that are in fact abandoned will become abandoned; and
4. Providing a clear process for cemetery-to-cemetery abandonment.

NYSAC has already commented on the draft; if they or others have comments, they should submit those during the notice and comment period.

Ms. Faber asked about the procedure for discussions between stakeholders and whether the Division would provide a report. Mr. Polishook responded that the draft regulations require a written determination where it believes a cemetery is abandoned; that determination goes to the cemetery, the local officials, and the Cemetery Board.

Mr. Fuller commented that he believes the draft looks very thorough.

Mr. Vanderbles stated that the appropriate motion was for the Board to approve the Division to proceed to rule making.

Motion was made by Mr. Pattison, seconded, and adopted approving the Division to proceed to rule making based on these draft rules.

21-05-C-26 Division Report

Mr. Polishook reported as follows

1. Staffing: Karen DeYoung has left the Division so that leaves us with four accounts out of a total of nine positions, of whom one works a slightly reduced schedule so that's obviously problematic. We have Department approval to fill three of these accounting vacancies, along with an investigator vacancy in Western New York. These are now pending with the Division of the Budget. Cindi Craig, who has worked for us part time-post retirement, will be increasing her hours with us starting in June.
2. We have a new website. The website has been completely redesigned. There is no forwarding link from our old links to the new website, which is dos.ny.gov/cemeteries (plural). dos.ny.gov/cmtty no longer works. If you go to the Department of State website, scroll down to the bottom and there's a tab to hit for cemeteries. The Division is also under the local government tab in the middle of the home page. The new website is largely divided into items that are geared for cemetery operators and items more appropriate for lot owners and visitors.
3. The cremation statistics were not ready for reporting at the time of the meeting but they have been within a range of 14% to 22% above since March (two weeks ago there was a noticeable uptick to 22%), with the trend appearing to be a slow decline. There are no delays in booking a cremation in any region in the state.

Ms. Young reported that, as of May 11, we had received 1,122 annual reports, of which 410 were filed online, representing 37 percent of all forms or reports filed. 456 reports are listed as overdue. We have been calling cemeteries that are overdue in their reporting to try to help them come into compliance. Mr. Polishook added that we are about 1/5 to 1/6 of the way through that list. Mr. Polishook also added that the Division has found that there are cemeteries that are also behind on their vandalism and assessment payments and obviously that is a significant concern to us

21-05-D-27 Vandalism, Abandonment and Monument Repair or Removal Fund Report

Assistant Director Alicia Young provided the vandalism report. So far in the 2021 calendar year the Division has collected \$541,398 in vandalism funds. Assessment collections total \$304,746. In the current fiscal year, we have collected \$109,573 and \$61,821.

To date we have made no payments out of the vandalism appropriation for the fiscal year 2021-22.

There remains \$114,187.28 of funds committed for the 2018-19 fiscal year and \$247,470.79 committed for applications approved in the 2019-20. There are four applications in the pipeline for approval totaling \$158,773.33 and there are two applications for restoration of hazardous monuments on the agenda today totaling \$68,354.43.

Mettowee Valley Cemetery, No. 58-011 (Washington County), \$33,702.43

Leonard Breen, Investigator with the Division of Cemeteries, stated that Mettowee Valley Cemetery is in Granville, in Washington County. The cemetery has applied for funds for the repair of hazardous monuments. Originally it sought restoration of 47 monuments. When Mr. Breen visited the cemetery, he found that only 37 of the 47 were eligible for repair (five were already down, three were too small, and he could not locate two more and the cemetery's President also could not locate those monuments). After deducting the total which came to \$8,800, the correct total was \$33,702.43.

Discussion ensued concerning a discrepancy in the application of approximately \$200 dollars.

After discussion, motion was made, seconded, and unanimously adopted approving the application in the amount of #33,702.43, subject to availability of funds.

Woodlands Cemetery, No. 58-020 (Washington County), \$34,652

Mr. Breen also presented this application for restoration of hazardous monuments. Woodlands Cemetery, a medium-sized cemetery located in the Village of Cambridge in Washington County, seeks funds to restore 20 hazardous monuments. Mr. Breen confirmed by going to the cemetery that all 20 monuments were leaning dangerously; most of them are large.

Mr. Pattison asked for comments from counsel. Mr. Vanderbles responded that not-for-profit corporation law 1510-a requires a 60-day notice period that begins after the third publication of notice, which occurred here on March 25. So 60 days after that would be May 24. However, the bid indicates that no work would begin before May 31. Mr. Vanderbles recommended that if the Board approves the application, the approval be made contingent upon no owner coming forward to repair or remove the monument prior to May 24th.

Motion was made, seconded, and unanimously adopted approving the application subject to availability of funds, provided that no owner comes before the cemetery before May 24th

21-05-E-28 29-010 Glen Village Cemetery (Montgomery) – Land Purchase

Mr. Breen stated that Glen Village is a very small cemetery in Montgomery County in the Village of Glen. It is 1.5 acres, of which it has 35 lots remaining for sale. The cemetery is looking to purchase an additional 1.69 acres which will double its capacity and allow them to remain viable for an indefinite amount of time in the future. This is a good opportunity for the cemetery especially since it is purchasing land at well below market value; the farmer that currently owns the land is giving them a great price on this parcel and it has 50 foot of road frontage. It is currently used to grow corn so there will be little to no development costs.

Mr. Vanderbles emphasized that this is adjoining land so a recent addition to Not-for-Profit Corporation Law section 1506 regarding non-adjoining land does not apply. Mr. Vanderbles added that the Board may consider the method by which the purchase price is paid. Here, this will be paid through general funds. Mr. Vanderbles highlighted that the cemetery's board is considering \$2,282.50 as a donation to the cemetery association but that in any event the purchase price is be well below the fair and reasonable market value.

Motion made, seconded and unanimously adopted approving the purchase.

21-05-F-29 33-063 Utica Cemetery (Forest Hill) (Oneida) – New Crematory

Mr. Seelman stated that Utica Cemetery, also known as Forest Hill Cemetery, is a large full service cemetery in the City of Utica, Oneida County. It has requested approval to establish a crematory and install two cremation retorts in an existing building on the property, a chapel annex originally used as a receiving vault. Currently, this space is used for equipment storage. It's a rather gothic looking stone building so it will make an attractive crematory. The plans are to renovate the building to include a temporary storage area, a small office, a viewing area for families to watch the cremation if they desire, and room for three cremation units. The current plan is to install two cremation units. The total estimated price is \$757,012. The cemetery has posted signs at the entrance to the cemetery and at the location of the major renovation; they have not received any negative comment that we've been made aware of.

The Division looked at crematories in the surrounding area. There is only one other crematory in Oneida County located in Waterville, at a traditional cemetery that is 15 miles away. We also considered Chenango Valley Crematory, a standalone crematory located 33 miles away. After that, the next closest crematory is Woodlawn Cemetery in Syracuse. The cremation rate increased dramatically in the Central New York region in 2020, but even prior to that it had been increasing at approximately three percent a year. Utica Cemetery does not feel that the new crematory will have a negative impact on existing crematories in the area and feels that it will be able to develop clientele based on just the natural increase in cremation in the area.

Mr. Polishook added that the cemetery states that it does not need any further planning or local zoning approvals and that it can do this project as of right and has confirmed that with the City of Utica. The cemetery still needs a building permit. The statute states that no crematory shall be approved until other approvals or permits have been obtained. We have interpreted that in the past to say we will not put a matter before the board unless they have zoning or planning approval or the equivalent to that but we are willing to recommend conditional approval if the cemetery is still waiting for things like a building permit or Department of Environmental Conservation approval for the retorts. Our recommendation of approval is contingent on receipt of those permits. The second issue which counsel may have more to say about is the survey. The last two crematories the Board approved were in existing cemeteries and the cemeteries did not have a certified survey. Nevertheless, the statute specifically says an application has to have a certified survey. At most, the Division would recommend that approval be conditioned on receiving that survey and that the survey be limited to the area involving the crematory, which represents a small corner of the cemetery and will be in an existing building.

Mr. Pattison asked how the cemetery intends to pay for the crematory.

Mr. Polishook noted that there are actually two separate applications, one for approval of the crematory and one for a recommendation that Supreme Court approve a loan from the cemetery's permanent maintenance fund, and that the Division recommends that the Board's approval of the crematory should be contingent on approval of the loan from their permanent maintenance fund. The amount of the proposed loan is \$757,712.30, which the cemetery proposes to pay back with two percent interest over 10 years. Mr. Polishook added that the Division's accountant's report refers to a perpetual care fund but that this money is not true perpetual care, but, rather, is money paid by individual lot owners before 1949 for maintenance of the cemetery. The proposed loan is approximately 10 percent of the cemetery's combined permanent maintenance fund. We think the loan is worth it because we think the crematory is going to pay for itself. Cremation rates continue to increase and there is no crematory in the City of Utica.

Mr. Pattison asked Mr. Vanderbles about the issue of the survey.

Mr. Vanderbles stated that Not-for-Profit Corporation Law section 1507 provides authority to permit a loan from the permanent maintenance fund with Supreme Court approval and that approval of the crematory could be made contingent upon receiving that approval. Not-for-Profit Corporation Law 1505-a requires a certified survey. The division stated that the cemetery did not include a certified survey but instead included maps.

Referring to the statute, Mr. Vanderbles stated that it does require that no crematory shall be approved until

such other approvals or permits have been obtained. Any board approval of the crematory should be so conditioned. The report indicates that a building permit from the City of Utica and an emissions permit from the DEC need to be obtained and approval if given could be made contingent upon obtaining those permits.

Mr. Pattison asked whether someone from the cemetery wishes to address the Board.

David Fleming spoke on behalf of the cemetery. First, Mr. Fleming observed that the commissioner of buildings for the City of Utica has indicated that there is no further approval required for the crematory other than a ministerial building permit, and the DEC permit, which typically would not come until later in the process. Second, Mr. Fleming stated that this Board has routinely allowed for existing properties with existing buildings to move forward with applications absent a survey. In this case, as Mr. Seelman pointed out, the crematory will be in an existing building. The building is 116 years old so there is no question that the cemetery owns the property. Existing maps of the cemetery show the proposed site of the crematory. The section of law is particularly concerned about new construction of crematories off of cemetery grounds or on property that was not currently utilized for cemetery purposes, although, as counsel points out, the language does not state that. A survey of this entire this property would be incredibly expensive and given our position unnecessary

Mr. Pattison indicated that he did not recall the Board previously considering this issue and that his concern is that the statute says a survey is required. Mr. Pattison queried whether the cemetery could limit the scope of the survey to a site that includes the building relative to the boundaries.

Ms. Faber stated that she understands there isn't any question about the ownership of that existing structure but the statute is clear. She asked if the cemetery has a survey done for another purpose that would document.

Mr. Fleming responded that to his knowledge there has never been a survey but that the clear intent of the requirement seems to be met here.

Mr. Fuller stated that if there was any room in the statute for the Cemetery Board to waive that aspect, he would support it.

Mr. Pattison questioned whether the Board can waive a requirement of the statute but indicated that the Board can make a reasonable determination as to whether the statute is met.

Mr. Vanderbles stated that the statute is quite clear. It uses the term must and then enumerates the things to be included in the application. As to the breadth of the survey, the statute does say a certified survey of the site and location within the county where it will be situated. He reads this to mean not the entire cemetery but the site of the proposed crematory.

Motion was made, seconded, and unanimously adopted approving the application of Utica Cemetery contingent on receipt of building permits and DEC permits and approval of the Court of the loan from the permanent maintenance fund and receipt of a survey of the site where the building is located (not necessarily the entire parcel).

21-05-G-30 34-053 Woodlawn Cemetery (Onondaga) – Mausoleum

Mr. Seelman provided background on this application. Woodlawn Cemetery is a 150 acre cemetery in Onondaga County located partially in the City of Syracuse. The cemetery is requesting approval to construct a 244 crypt addition to an existing mausoleum within the cemetery. The cemetery has five mausoleum complexes totaling over 8,000 crypts. Currently only 347 crypts remain available. In 2020, the cemetery sold 242 crypts. The cemetery will also, as part of this application, replace the roof of the existing mausoleum. The total cost is 799,352, financed from the general fund. Currently, the general fund has over \$15 million.

Mr. Seelman added that when he visited the site he saw notices posted both at the entrance and at the site. At his request, the cemetery actually sent letters to lot owners in the area. The cemetery has received no negative comments about this project.

Mr. Polishook added that there have been several similar additions at other cemeteries and they have been successful.

In response to a question from Ms. Faber, David Fleming, speaking for the cemetery, indicated that the cemetery had 253 in-ground burials and 242 crypt sales in 2020, and that these were not duplicative.

Motion was made, seconded, and unanimously adopted approving the application of Woodlawn Cemetery for an addition to its mausoleum, to be financed out of its general fund.

21-05-H-31 52-033 Mount Pleasant Cemetery (Suffolk) – Land Purchase

Mr. Polishook explained that Mount Pleasant Cemetery purchased a parcel of land without Board or court approval in 2014. The land adjoins the cemetery; the town had used it years ago as a garage and maintenance area. There had been an underground storage tank for fuel that has been removed. Essentially, the town approached the cemetery and offered it the land. The cemetery acquired it because it was contiguous. There really is no good reason for why the cemetery didn't previously seek approval but now the cemetery seeks to come into compliance by getting retroactive approval. The cemetery bought the land before the 2015 change in law that allows the Board to approve land purchases and sales without court approval; it will seek judicial approval nunc pro tunc. The sale price was \$110,000, with another \$10,000 in closing costs. That is below the appraised value even as of 2014. Per a broker's price opinion, the land is probably worth five times that now. Looking at the map of the cemetery the acquisition makes sense—it squares off the edge of the cemetery property. During the height of the Covid pandemic the cemetery used this area for additional storage. Had the cemetery come to us in 2014 we would have recommended approval. Now that we've seen what they've done with it and how land prices have increased, we certainly recommend retroactive approval now. Because of the former fuel tank there were a phase one and phase two environmental study done. Those are included separately along with a short write-up and an update from one of the cemetery's two appraisers saying that the environmental concerns do not change the valuation; the cemetery was unable to reach the other appraiser for an update. The phase two study gave the parcel as clean a bill of health as really one could expect. Finally, Mr. Polishook noted that Mount Pleasant almost doubled its cremation capacity during the height of the pandemic and its extra capacity was absolutely critical in meeting the downstate demand for cremations last May and June.

Mr. Vanderbles emphasized that the application is nunc pro tunc and involves adjoining land.

Motion was made, seconded and unanimously adopted to approve this nunc pro tunc application for a purchase of adjoining land.

21-05-I-32 52-044 Pinelawn Memorial Park – Major Renovation

Mr. Polishook explained that this application was barely a major renovation, and was presented solely because it required local permits. Pinelawn Memorial Park is essentially divided into four parcels, one to the west of Wellwood Avenue, the remaining three east of Wellwood Avenue. One of these three is north of the Long Island Rail Road; another is south of the Long Island Rail Road. The final parcel is across another major thoroughfare and is undeveloped. This application concerns the part of the cemetery south of the Long Island Rail Road. It is the only portion of the cemetery that allows for upright monuments; the rest of it is a memorial park. All developed parts of the cemetery but this one have well water. This part is on the municipal water system. The cemetery proposes to dig a tunnel under the Long Island Rail Road and Long Island Avenue to connect the water system in this piece with wells north of the rail road. The cemetery is estimating savings from eliminating municipal water usage but the Division's recommendation does not take those savings into account because \$450,000—the total cost of the project—is a minimal sum for this cemetery and we agree that it makes sense for the cemetery to operate using exclusively well water. The only caveat is that

the cemetery needs a final license from the Long Island Rail Road and the Division recommends that approval be contingent on the cemetery receiving that. The cemetery leases land adjacent to the part to be linked to the well water to a golf course; the Board approved this lease in 1992. The Division questioned, and the cemetery confirmed, that the irrigation tunnel would not be used to serve the golf course, which already has its own well system.

Mr. Fleming, representing Pinelawn, noted that the tunnel will provide easier maintenance for the cemetery by leaving it with one water system.

Motion was made, seconded, and unanimously adopted approving the application from Pinelawn cemetery for a major renovation involving connecting the existing well and irrigation system to an adjacent parcel of land currently served by municipal water, contingent on the receipt of a license from the Long Island Rail Road, with the recognition of their assurance that this does not benefit the golf course.

21-05-J-33 52-044 Pinelawn Memorial Park – Lawn Crypt

Mr. Polishook stated that Pinelawn Memorial Park is seeking to expand its lawn crypt sections. It has been very successful in installing and selling lawn crypts. Unfortunately, as a result of the pandemic, it been selling them more quickly than usual. It proposes to install a new section of lawn crypts immediately adjacent to another section of lawn crypts reviewed by the Board in August 2020. Technically, under our regulations the Board doesn't approve lawn crypt applications but states that it has no objection.

The cemetery anticipates that the project will be very profitable. They anticipate installing 2,000 lawn crypts this year and 2,000 more lawn crypts early next year. The total estimated cost is \$1.5 million and the cemetery expects to sell them for \$12 million. There are several very technical calculations that are required for lawn crypt applications those calculations are included in the packet. These are unchanged from the calculations that were made back in August. There is a full accounting write-up in the Division's recommendation. Mr. Polishook also commented that lawn crypts are essentially graves with a built-in vault or grave liner but look from the surface like a conventional grave. Finally, Mr. Polishook noted that unlike the lawn crypts at Ferncliff Cemetery, these lawn crypts do not have any landscaping or features associated with them.

Motion was made, seconded, and unanimously adopted stating that the Board does not object to the application.

21-05-K-34 41-012 Mt. Olivet – Request for Waiver of Proposed Penalty

Mr. Polishook stated that the Division has inquired into various transactions and records at this cemetery and is still reviewing financial information. In the course of the Division's review, the Division discovered that the cemetery had not filed vandalism and assessment payments for 2017 through 2020 and had not filed their required annual reports. The Division was also somewhat briefly denied access to certain cemetery records which we have now since obtained. The Division proposed penalties as a result and wrote to the cemetery proposing the penalties and giving it 30 days to seek a waiver from the Board. The cemetery has in fact sought that waiver. We ask that the matter be tabled and that the cemetery's time to object to any obligation they would have to pay be extended through the end of June with the idea that this would be presented at the Board's June 8 meeting

Motion was made, seconded, and unanimously adopted extending the period of time for Mount Olivet Cemetery to respond, request a waiver, or pay until June 30.

Public Comment

David Fleming, on behalf of the New York State Association of Cemeteries, stated that NYSAC will most likely have some additional technical requested changes to the proposed abandonment regulations and looks forward to offering those during the comment period and to reach out to the (New York State) Association of

Towns so that they are aware of the regulations. NYSAC is concerned about the Board's charge under article 15 to prevent abandonment and appreciates the ongoing dialogue with those who wish to work to prevent that.

Motion made, seconded, and unanimously adopted to adjourn the meeting at 11:58 a.m.

The next Board meeting is scheduled for June 8, 2021 at 10:30 AM, (presumably) via Webex.