

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 June 8, 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
Kathleen Richardson, Division of Cemeteries

GUESTS:

David Fleming, NYSAC, Featherstonhaugh, Wiley & Clyne
Bruce Geiger, Bruce Geiger & Assocs. for Pinelawn Memorial Park
Joseph Dispenza, Forest Lawn Group
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
Mark Stempa, Mt Carmel Cemetery
Audrey Graham
Richard Moylan, Green-Wood Cemetery
Richard Bethel, Pryor Cashman LLP
Peter B. Colgrove, Humes & Wagner LLP
Justin Locke, Pinelawn Cemetery
Kevin Boyd, Ferncliff Cemetery
Josh Doolin
Lisa Vangellow, Airosmith Development
Alex Poulos, Cedar Grove Cemetery



Department
of State

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.

Robert Vanderbles, counsel to the Board and Division of Cemeteries, explained that we are acting pursuant to Executive Order 202, extended through July 5, which modifies Article 7 of the Public Officers Law to allow public bodies to meet and take action 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 given public notice of how to join the meeting, the agenda, and board materials.

We ask but do not require speakers to identify themselves when speaking; lobbyists must identify themselves and the entity they represent.

21-06-A-35 Minutes of Previous Meetings

Motion was made, seconded, and unanimously adopted approving the minutes of the Board's May 12, 2021 meeting with one change (one paragraph incorrectly identified Ms. Faber as the Board member who posed a question, but in fact it was Mr. Fuller).

21-06-B-36 Legislation and Regulations

1. Regulations

Mr. Vanderbles reported that counsel's office is currently reviewing materials required by SAPA.

2. Pending Legislation

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

A.382/S.5535, which would permit natural organic reduction of remains, has advanced to a third reading in the Senate.

A.6302/S.4344, which authorizes a family member or close friend to arrange for burial of a veteran in a state veterans' cemetery, passed the Senate.

A.6740/S.6171, which would amend the grandfather clause of the anti-combination law to allow a crematory to move within a specific locality so long as that locality approves, passed the Senate.

A.6971 and S.6257-A would provide for leasing of lands by cemeteries on notice to and with approval of the cemetery board, has advanced to a third reading in the Senate. As previously reported, it passed the Assembly.

A.7301/S.6521, which would permit electronic signatures on funeral service documents, has passed both houses of the Legislature.

A.7848/S.6842 would create a DEC permit system for the operation of memorial lands facilities for the scattering of cremains, was introduced on May 27 and referred to Corporations and Authorities Committees in both houses.

21-06-C-37 Division Report

We have received 1,207 annual reports. Of that, 440 were submitted on line (36% of the total received).

Mr. Polishook reported as follows:

1. Cemetery disclosures: The Division must make these available on our website by June 14. We have prepared these and they have been formatted; we need to work with our Public Information Office to get them on our website; they will be shared with the Board when done. Disclosures include a general description of public cemetery regulation in New York and specifics about burial arrangements, buying a final resting place, cemetery prices and service charges, final disposition options, outer enclosures, rights of lot owners, and transferring a final resting place, and endowed and perpetual care. All but the general one must be posted in cemetery offices and given out to customers (but they can use a QR code for these instead of paper). Mr. Pattison thanked NYSAC for making it easier for cemeteries to distribute these.
2. Forms: we are working our way through forms and should have the first set done soon; the Division of Administrative Rules is working on them. We should be able to use the mausoleum and columbarium form and PM loan form soon. Mr. Pattison added that the forms are the result of a Lean process the Division went through to standardize and simplify board applications and give cemeteries advance notice of what is needed. Mr. Pattison noted the question of whether this will result in any changes to what the Board will receive.
3. We have discontinued collecting cremation data; we are unaware of any delays in cremation in any region of the State.
4. The Division has received a letter from David Fleming on behalf of Forest Lawn Group. Forest Lawn had sought to merge with several cemeteries. These mergers were put on hold as a result of the Board's denial, based on an opinion of counsel, that cemeteries could not acquire non-adjacent land. Legislation was enacted to allow combinations of non-adjacent cemeteries. When two not-for-profit corporations merge, they must have meetings of their members and mail notices. Not-for-profits with more than 500 members can give notice by publication, but the statute for cemetery mergers states that notice from the non-surviving cemetery cannot be by publication unless it is unduly burdensome to do it by other means. Mr. Fleming's letter details that in 10 or so proposed mergers the cemetery does not have good addresses for members and mailing notices would be costly. We are not prepared to recommend that the Board act on this request. The Division views this request as premature and it is not clear if we have sufficient information. Instead, we suggest that the Board consider proposed mergers contingent on the lot owners subsequently voting to approve a merger. The plan of merger would, if the cemetery desires, include a request for a finding that notice by means other than publication would be unduly burdensome. If the Board makes its recommendation before the lot owners meet, that would save the time and expense of having a lot owners meeting.

Mr. Pattison asked whether the question of undue burden would be done on each consolidation. Mr. Polishook agreed, but noted that these mergers may involve more than two cemeteries at once.

Mr. Vanderbles confirmed that the special requirements of not using notice by publication applies only to non-surviving cemeteries and cemeteries with more than 500 members. Mr. Vanderbles also noted that the Board would make a recommendation. The lot owners and either the Attorney General or Supreme Court would also have to approve. Mr. Vanderbles noted that one of the cemeteries in the letter has fewer than 500 members; Mr. Polishook noted that a cemetery with fewer than 500 burials could still have 500 lot owners. Mr. Vanderbles also added that cemeteries should include their articles of incorporation and bylaws with the application so the Board can review whether these address the method of giving notice.

Mr. Polishook noted that the statute allows rule making and that at some point in the future we could consider rule making to address certain instances in which notice by means other than publication would be deemed unduly burdensome. He added that the plan of merger could specify that certain lot owners (such as recent purchasers) be given notice by mail even though notice would otherwise go by means other than publication.

Ms. Faber stated that the Board will consider the merger in advance of the lot owners' meeting and notice and that there is still another backstop—AG or Court approval—after the Board review and lot owners' meeting. This process should result in more predictability for cemeteries.

David Fleming noted that these proposed mergers involve struggling cemeteries. One of the examples in his letter is a cemetery for which the cost of mailing would be 333% of its operating revenue.

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

21-06-D-38 Vandalism, Abandonment and Monument Repair or Removal Fund Report

Assistant Director Alicia Young provided the vandalism report.

Alicia Young provided the vandalism report:

Calendar year collections for the vandalism fund are \$542,953; \$305,172 for the assessment.

Fiscal year collections total \$111,128 for vandalism and \$62,247 for assessment.

Of the \$17,088.61 has been paid on this fiscal year's claims, \$114,18.28 remains unpaid on claims from fiscal years 2018-19 and 2019-20, and \$247,470.79 remains unpaid on claims from fiscal year 2020-21.

There is one application in the pipeline for potential approval for \$32,319.33.

There are three applications on the agenda for this meeting, totaling \$127,026.43.

Two applications have been approved in this fiscal year, both for restoration of hazardous monuments, totaling \$68,557.43

Ouleout Valley Cemetery, No. 13-034 (Delaware), \$45,700.60

Brendon Stanton, Investigator with the Division of Cemeteries, stated that this cemetery has applied for funds for the repair of hazardous monuments. Mr. Stanton stated that the cemetery identified monuments last year; this is another round. This is a large cemetery with many older monuments.

Motion was made, seconded, and unanimously adopted approving the application in the amount of \$45,700.60, subject to availability of funds.

Marion Cemetery, No. 59-023 (Wayne), \$69,811.50

Michael Seelman, Senior Investigator, presented this application for restoration of hazardous monuments. This cemetery in the Village of Marion has requested funds to restore 33 hazardous monuments. Mr. Seelman verified that the monuments were hazardous; many are very large. The cemetery actually advertised nine times, not merely three times, as required, but still received no responses.

Mr. Fuller asked why the low bid here came to \$2,106 per monument, 2.25 times higher than the previous application, and the next application has a low bid of only \$498 per monument.

Mr. Seelman responded that these monuments are quite large. The monuments in the next application are small to medium sized; Mr. Seelman did not know the size of the monuments in Ouleout. The low bidder provided a signed statement that it had no affiliation to the other bidder. Also, this cemetery is in a different region from the other two cemeteries.

Mr. Pattison expressed his appreciation for Mr. Seelman taking the extra steps he described.

Motion was made, seconded, and unanimously adopted approving the application subject to availability of funds.

Constantia Center Cemetery, No. 38-007 (Oswego), \$11,514.33

Mr. Seelman stated that this small rural cemetery in Oswego County has previously received funds and made appropriate repairs. In this case, the cemetery seeks funds to repair or replace 23 monuments. Mr. Seelman verified that the 23 monuments are all hazardous. Mr. Seelman noted that the low bidder intends to replace 11 of these monuments. Many of these monuments were level and straight on their foundation but the material holding them to the foundation has deteriorated and there were gaps in sections between the monuments. 12 monuments will be re-sealed but no new foundations will be poured. 11 new foundations will be poured. Mr. Seelman noted that the legal ad ran in 2019 and the cemetery received no responses. The cemetery did not list lot numbers (they also did not do that in their previous application). The cemetery has agreed that it will re-run the ad with the lot numbers if requested.

Mr. Seelman recommends approval without running another ad.

Ms. Faber asked the cost of running a new ad. Mr. Seelman stated that the ad cost \$59.33 in 2019. Mr. Pattison asked what the basis for including lot numbers is (statute, regulation, or other). Mr. Seelman stated that the statute and regulations do not require lot numbers; Mr. Vanderbles provided the statutory language.

Ms. Faber stated that she believes the cemetery should be required to run the ad again.

Mr. Polishook added that we have not required that in the past, and that we have approved applications where the legal notice lacked lot numbers.

Ms. Faber asked whether the ad identified names; Mr. Seelman confirms it did.

Mr. Polishook stated that we almost never receive responses to ads and that people would not, if they read an ad, identify the grave by lot; the name is more likely to be a basis for identification. Mr. Polishook suggested that the Division should consider reviewing the draft ad before it runs. Ms. Faber suggested that the Division should clarify its requirements. Mr. Pattison agreed, and asked the Division to discuss consistency in what we request and make a recommendation to the board.

After discussion, motion was made, seconded, and unanimously adopted approving the application in the amount of \$11,514.33, subject to availability of funds.

21-06-E-39 White Haven Memorial Park (Monroe) – Major Renovation – Cell Tower Modification

Mr. Seelman stated that this cemetery has a 114-foot cell tower to the rear of the cemetery, approved in 2015. Verizon wishes to replace the 12 existing antennas with 12 new antennas. There is no financial impact on the cemetery. The modification to the equipment will not increase the size, height, or visual impact of the cell tower. They are requesting approval as required by the terms of the original lease.

The Division recommends approval.

Nate Romagnola, Vice President of White Haven Memorial Park, added that the cemetery seeks approval of these minor upgrades. This will not change the footprint or tower at all, and Verizon's local representatives are available to answer any technical questions.

Motion was made, seconded, and unanimously adopted approving the application.

21-06-F-40 51-028 Hope Cemetery (Chemung) – Columbarium

Mr. Stanton stated that Hope Cemetery is a medium sized cemetery located in the City and Town of Corning in Steuben County. The cemetery seeks approval of its first columbarium unit, a 24-niche unit. Based on speaking with funeral directors and potential customers, the cemetery believes that there is demand for this type of unit. No non-denominational cemetery in eastern Chemung County has a columbarium. Cremation rates are increasing there as in the rest of the state. The unit is pre-fabricated. The cemetery is paying for the columbarium out of general funds.

Motion was made, seconded, and unanimously adopted approving the application.

21-06-G-41 60-006 Ferncliff Cemetery (Westchester) – Lawn Crypt

Mr. Polishook stated that the Board reviewed and did not object to an application to add lawn crypts last year. This application is an amendment to that application. The cemetery proposes to add more lawn crypts closer to the border of the cemetery and replace the trees and fence separating the cemetery from its neighbors.

The cemetery contacted 36 neighbors for a meeting to explain this change; only four attended and none of them had any concern with this application (the neighbors were more concerned with their views of the cemetery's mausoleum buildings, which will not change as a result of the amended application).

Mr. Vanderbles confirmed that the regulations direct the board to object or not object rather than approve or deny the application.

Mr. Fleming, speaking for Ferncliff, added that the amendment will add \$2 million in (gross) sales and extend the life of the project by several years.

Motion was made, seconded, and unanimously adopted stating that the Board does not object to these changes to the previously-approved lawn crypt project.

21-06-H-42 41-008 Cedar Grove (Queens) – Columbarium and Cremation Garden

Cedar Grove Cemetery has two sections, Cedar Grove, which is non-sectarian, and Mount Hebron, which is Jewish. Mount Hebron has a columbarium, Cedar Grove does not. This project seeks to use a small corner of land to create a cremation section including a columbarium and in-ground options. The total cost is \$140,000, with anticipated revenue of over \$1 million. Additionally, the cemetery believes it is desirable to offer this option in addition to in-ground burial options.

Cedar Grove is generally well run and profitable.

The cemetery reports there are no related parties involved in these transactions.

Motion was made, seconded, and unanimously adopted approving the application concerning a columbarium and cremation garden.

21-06-I-43 04-045 City Cremations (Broome) – Report on Non-Compliance

Mr. Stanton stated that the Division had presented the Board with a report on potential violations and non-compliance by this crematory. The violations include failure to be available for inspection, failure to pay vandalism and assessment fees for six years, failure to file annual reports for seven years, failure to file the audit report required for non-traditional cemeteries for five years, and also incomplete cremation authorization forms. This is compounded by the crematory's failure to respond in timely fashion to notices of non-compliance and, when they have responded, failure to take corrective action.

There are also instances where the crematory may not have had a certified operator on premises during cremations.

Mr. Polishook added that the issue of unavailability for inspection goes back at least to 2014.

Mr. Pattison moved to go into executive session to discuss legal issues and non-compliance concerning City Cremations and (at Mr. Vanderbles's suggestion) possible litigation.

Motion was made, seconded, and adopted to go into executive session.

Motion was made, seconded and unanimously adopted exiting executive session.

After exiting executive session, Mr. Polishook informed the Board of the following violations by City Cremations:

Accepting cremations without properly completed cremation authorization forms as required by 19 NYCRR section 203.13

Failing to file annual reports for 2013-present, as required by N-PCL section 1508(a)

Failing to file audited financials for 2016-present, as required by 19 NYCRR section 200.4

Failing to remit vandalism and assessment fees for 2012 and 2016-20

Failure to make records available and allow us to inspect the crematory as required by 19 NYCRR section 203.13(e).

Mr. Pattison stated that these violations will result in preliminary proposed penalties totaling \$22,000 plus \$100 per day which will continue to accrue.

Mr. Vanderbles clarified that the \$100 per day was for failure to file reports.

Mr. Pattison stated that the Board has been appraised and agrees that those are legitimate violations and understands and approves that the Division issue a preliminary letter to City Cremations.

Motion was made, seconded, and unanimously adopted to refer this matter to the Attorney General for investigation and compliance.

Motion was made, seconded, and unanimously adopted authorizing the Division to issue a letter concerning the proposed penalties described in open session.

21-06-J-44 41012 Mt. Olivet (Queens) – Request for Waiver of Proposed Penalty

Mr. Polishook stated that the Division has issued a notice of violation because Mount Olivet is delinquent in submitting annual report forms and vandalism and assessment payments and briefly prevented us from reviewing requested documents. The Division has also opened an inquiry as to certain transactions and record-keeping. The Division and cemetery had a productive meeting last week and intend to meet again next week to further discuss a possible mechanism for a third party to explore these issues and make recommendations. We ask that the Board extend until July 31, 2021 the cemetery's time to pay or further protest its penalties.

Ms. Faber asked whether we are staying the time. Mr. Polishook stated that as of now we merely seek to stay the deadline and penalties, but not waive the penalties.

Public Comment

Mr. Fleming thanked the Board for working with NYSAC on several issues relating to disclosures and other matters to try to make compliance easier.

Mr. Fleming agreed with Ms. Faber and Mr. Pattison that it would be helpful to have a form document and clear expectations as to what is needed for vandalism fund applications.

Motion made, seconded, and unanimously adopted to adjourn the meeting at 12:24 p.m.

The next Board meeting is scheduled for July 13, 2021 at 10:30 AM.