

DIVISION OF CEMETERIES

STATE OF NEW YORK
DEPARTMENT OF STATE
123 WILLIAM STREET
NEW YORK, NY 10038
TELEPHONE: (212) 417-5708
FAX: (212) 417-2322
WWW.DOS.NY.GOV

ANDREW M. CUOMO
GOVERNOR

CEMETERY BOARD

ROSSANA ROSADO
SECRETARY OF STATE
CHAIR

LETITIA JAMES
ATTORNEY GENERAL

DR. HOWARD A. ZUCKER
COMMISSIONER OF HEALTH

DRAFT
Cemetery Board Minutes
August 10, 2021
One Commerce Plaza
99 Washington Ave, Albany, NY 12231

44 South Broadway
White Plains, NY 10601

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, Department of State
Cynthia Craig, Division of Cemeteries
John Fatato, Department of State
Vince Gimondo, Division of Cemeteries
Andrew Hickey, Division of Cemeteries
Lewis Polishook, Division of Cemeteries
Michael Seelman, Division of Cemeteries
Brendon Stanton, Division of Cemeteries
Robert Vanderbles, Department of State

GUESTS:

Eric Barna, Green-Wood Cemetery
Brendan Boyle, Featherstonhaugh, Wiley & Clyne, LLP, for NYS Ass'n of Cemeteries
David F. Fleming, Featherstonhaugh, Wiley & Clyne, LLP, for NYS Ass'n of Cemeteries
Bruce W. Geiger, Bruce W. Geiger & Assocs., Inc., for Pinelawn Memorial Park
Adam Ginsberg, Cedar Grove/ Mount Hebron Cemetery
Ashton Matyi, Ostroff & Associates, for New York State Monument Builders Ass'n
Kathleen Orlan, Bruce W. Geiger & Assocs., Inc., for Pinelawn Memorial Park
Nate Romagnola, White Haven Memorial Park

Some "other attendees" and "guests" attended solely via WebEx.

Opening Remarks

Mr. Pattison opened the meeting by noting that this was the Board's second in-person meeting. He added that Ms. Faber was participating at another location that was previously noticed. Mr. Pattison stated that those joining the meeting by phone should identify themselves when they speak; lobbyists must identify themselves. Mr. Pattison stated that there would be an opportunity for public comments. Finally, Mr. Pattison stated that the Board will go into executive session but keep the WebEx meeting open for when we exit executive session.



**Department
of State**

21-08-A-50 Minutes of Previous Meetings

fs

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

21-08-B-51 Legislation and Regulations

1. Legislation

Mr. Vanderbles reported that the Legislature has closed out its session and that there were therefore no changes.

2. Regulations

We still await completion of the Regulatory Review Unit's review of our proposed abandonment regulations. Once that is complete we will be able to publish a notice of proposed rulemaking for the abandonment regulations.

21-08-C-52 Division Report

Mr. Polishook reported as follows:

1. Forms: We anticipate having the following forms ready to be used before the next Board meeting: applications for mausoleum and columbarium approval, applications concerning permanent maintenance loans, and supporting schedules. We also have in progress forms for applications for major alterations and retort replacement.
2. Electronic signatures: On July 30, 2021 we issued guidance on witnessing of electronic signatures on the cremation authorization. We have received one question concerning our recommendation that funeral directors verify, especially in cases of remote witnessing, the identity of the person signing the cremation authorization. The specific question is whether a funeral director should include a copy of the ID documents with the cremation authorization. The answer is no—it is not a good idea to share documents with personal identifying information unnecessarily.
3. Oakwood (Troy) No. 42-034 Net Appreciation: Also on July 30, the Division approved an application for appropriation of a portion of net appreciation by Troy Cemetery Association (Oakwood) for \$56,723 for funds to purchase a badly-needed backhoe. The Division has indicated, pursuant to authority delegated to it by the Board, that it does not object to the application.
4. Willow Brook Park Cemetery Ass'n, No. 07-061: This cemetery is located in the City of Dunkirk. Division Senior Accountant Kathleen Richardson and Investigator Cindi Craig recently met with the cemetery's board. The cemetery's superintendent intends to retire soon and the board does not want to continue for more than two years; the board is concerned about recruiting new board members. We have been in contact with the City to try to ensure this cemetery's continued operations (it reports that it operates at a profit).
5. Return of Karen DeYoung: Mr. Polishook reported that Karen DeYoung has rejoined the Division of Cemeteries and welcomed her back.

Mr. Pattison added that the forms are part of a Lean effort to streamline and simplify how we do business. The result of that was to develop forms to make sure cemeteries are clear as to what they need to do to seek approval.

Mr. Polishook added that the forms had not been shared with the New York State Association of Cemeteries but that the Division welcomes feedback as the forms are implemented and anticipates making changes to them as needed.

To date in calendar year 2021, we have received 1,346 annual reports. We have contacted just under half of cemeteries that are delinquent in filing annual reports.

21-08-D-53 Vandalism, Abandonment and Monument Repair or Removal Fund Report

Mr. Polishook provided the vandalism report.

Calendar year collections for the vandalism fund are \$566,563. Assessment collections are \$318,036. Fiscal year collections from April 1, 2021 are: Vandalism \$134,738; Assessment \$75,111.56.

There remains approximately \$114,000 in funds (Mr. Polishook erroneously stated \$119,000) committed for applications approved in fiscal years 2018/19 and 2019/20. There is approximately \$194,000 committed for applications approved in the 2020/21 fiscal year; it is normal for work to continue through the summer.

This means that approximately \$1.5 million of the Division's appropriation for the vandalism, abandonment and monument repair or removal fund remains available. The Division encourages cemeteries with hazardous monuments to apply for funds.

There is one application on the agenda for this meeting from Troy Cemetery Association (Oakwood Cemetery), No. 42-034.

Troy Cemetery Association (Oakwood Cemetery), No. 42-034 (Rensselaer), \$67,247.97

Leonard Breen, Investigator with the Division of Cemeteries, stated that this cemetery has applied for funds for the repair of dangerous monuments. Mr. Breen noted that the cemetery repairs smaller hazardous monuments on its own and seeks funds only for larger monuments. Mr. Breen visited the cemetery on June 21 and has confirmed that all 75 monuments are hazardous.

Mr. Vanderbles added that if the application is approved by the Board it should be subject to availability of funds.

Motion was made, seconded, and unanimously adopted approving the application in the amount of \$67,247.97, subject to availability of funds.

21-08-E-54 41012 Mt. Olivet (Queens) – Request for Waiver of Proposed Penalty

Mr. Polishook stated that the Division had a progress call with the cemetery's outside auditors concerning issues identified by the Division.

Mr. Polishook confirmed that the cemetery has retained an outside firm to review issues raised by the Division concerning cemetery finances. The Division states that the auditors are wrapping up their field work this week and will provide the cemetery with a draft report by the week of September 7, and anticipates releasing a final report by September 30. The auditors noted that everyone at the cemetery appears to be fully cooperative.

In light of this timing, the Division requests that the Board extend the Cemetery's time to further respond to the Division's proposed notice of penalty through October 31, 2021, pending receipt of the report of their forensic auditor.

Motion was made, seconded, and unanimously adopted extending Mount Olivet's time to respond to the notice of penalty until October 31, 2021.

Public Comment

David Fleming, Featherstonhaugh, Wiley & Clyne, LLP, spoke on behalf of the New York State Association of Cemeteries.

First, Mr. Fleming thanked Oakwood Cemetery for its work in restoring that cemetery.

Second, Mr. Fleming thanked the Division for working with it on the issue of electronic signatures.

Third, Mr. Fleming stated that the process for seeking to use net appreciation is too complicated for most cemeteries, so the Division and counsel should reconsider that process.

Finally, Mr. Fleming noted that it is urgent for the abandonment regulations to move forward.

Motion made, seconded, and unanimously adopted to enter executive session for investigative and litigation matters.

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

Motion made, seconded, and unanimously adopted to adjourn the meeting at 11:19 a.m.

The next Board meeting is scheduled for September 14, 2021 at 10:30 AM.