

DIVISION OF CEMETERIES

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CEMETERY BOARD

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SECRETARY OF STATE
CHAIR

LETITIA JAMES
ATTORNEY GENERAL

DR. HOWARD A. ZUCKER
COMMISSIONER OF HEALTH

DRAFT
Cemetery Board Minutes
September 14, 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
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:

Anthony Biolsi, New and Old Montefiore Cemeteries
Brendan Boyle, Featherstonhaugh, Wiley & Clyne, LLP, for NYS Ass'n of Cemeteries
Mary Evans, North Ridge Cemetery
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
Jay Ivler, Mount Lebanon Cemetery
Ashton Matyi, Ostroff & Associates, for New York State Monument Builders Ass'n
Richard Moylan, Green-Wood Cemetery
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 noted that, in accordance with the new law, this meeting will be conducted both in person and via videoconference, and that two board members were present in person. Mr. Pattison stated that there would be an opportunity for public comments. Those speaking should identify themselves. Finally, Mr. Pattison stated

that the Board might go into executive session. If it does, it will keep the WebEx meeting open for when it exits executive session.

Mr. Vanderbles, counsel to the Division and Board, noted that we are operating pursuant to Chapter 417 of the laws of 2021, which allows for meetings in whole or part by videoconference. Mr. Vanderbles noted that the meeting will be recorded and transcribed.

21-09-A-55 Minutes of Previous Meetings

Motion was made, seconded, and unanimously adopted approving the minutes of the Board's August 10, 2021 meeting.

21-09-B-56 Legislation and Regulations

1. Legislation

Mr. Vanderbles reported that there was no relevant legislative activity in the last month.

2. Regulations

We have received approval to publish the notice of proposed rulemaking and hope to publish it in the September 29 or October 13 State Register. Once that occurs, there will be a 60-day public comment period.

Mr. Pattison added that this rule making was in response to the then-Governor's veto of abandonment legislation, in which he directed the Division to consider rule making to address those aspects of the vetoed bill that could be addressed by rule making.

21-09-C-57 Division Report

Mr. Polishook reported as follows:

1. Forms: Forms for the following items are all but done, save for correction of a couple of typographical errors: applications for mausoleum and columbarium approval, applications concerning permanent maintenance loans, and supporting schedules. These should be posted before our next meeting.
2. Staffing: We are completing interviews for Associate Accountant and Administrative Assistant in Albany and hope to make recommendations for hiring soon. The goal is to fill these positions by early November. We are waiting for Division of Budget approval on three other positions.
3. Office consolidation: We are consolidating administrative functions in our Albany office. Please communicate with the Division via email to any staff member or to cemeteryreports@dos.ny.gov. Please do not send multiple copies of documents, please do not send hard copies by FedEx, and please send all hard copies to the Albany office. Our longer-term goal is to have an electronic portal for submissions in addition to the one for annual reports but this is unlikely to happen any time soon.
4. Covid: The Division is unaware of any stress on the death care industry as a result of the pandemic.
5. Crematory Maintenance: If a crematory must close down for maintenance, please let the Division know.
6. City Cremations, No. 04-045: We sent a request for additional information to City Cremations on September 2 and have not yet received a response. We anticipate asking the Board to schedule a hearing before an ALJ on previously-proposed penalties.
7. Mount Olivet Cemetery, No. 41-012: The auditors have been delayed by several weeks in finishing their report.

21-09-D-58 Vandalism, Abandonment and Monument Repair or Removal Fund Report

Assistant Director Alicia Young provided the vandalism report.

Calendar year collections for the vandalism fund are \$567,908. Assessment collections are \$318,361. Fiscal year collections from April 1, 2021 are: Vandalism \$136,083; Assessment \$75,436.

Payments from the \$2 million vandalism fund appropriation are as follows:

We have made an initial payment of \$73,737.04 (representing 25% of the total) on seven applications approved this fiscal year. This year's approved applications total \$294,948 (including the funds already spent).

There remains approximately \$108,254.84 in funds committed for applications approved in fiscal years 2018/19 and 2019/20. There is approximately \$178,029.35 committed for applications approved in the 2020/21 fiscal year.

There are five applications in the pipeline for approval \$90,189.88; there are three applications presented today totaling \$86,832.30.

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.

Black River Cemetery, No. 23-002 (Jefferson), \$28,653.20

Mr. Seelman reported that Black River Cemetery submitted an application for 30 hazardous monuments, and that he verified that they are in fact hazardous. The cemetery received two bids, the lesser of which was \$28,425. The bid listed "landscaping." The cemetery clarified was that this is to restore any damage done to the grounds because of the repairs. The low bidder listed this as a separate item; the other bidder did not. The legal notice was run properly, but the 60-day period expires September 26. The cemetery has been notified to let the Division know if it receives any response to the legal notice.

Mr. Vanderbles asked whether the grading and reseeded is generally performed in repairing hazardous monuments. Mr. Polishook confirmed that.

Mr. Vanderbles suggested that the Board's approval be contingent on no one coming forward in response to the legal notice within the 60-day period.

Motion was made, seconded, and unanimously adopted approving the application in the amount of \$28,653.20, contingent on the fact that no lot owner comes forward during the comment period to repair the monuments.

Grove Cemetery, No. 51-023 (Steuben), \$32,833.00

Grove Cemetery in the Town and Village of Bath has previously received funds for repair of hazardous monuments. Mr. Stanton inspected the monuments and found that they are in fact hazardous.

Motion was made, seconded, and unanimously adopted approving the application in the amount of \$32,833.

Riverside Cemetery, No. 08-009 (Chemung), \$25,346.10

Mr. Stanton stated that Riverside Cemetery is located in the Town of Chemung, and has also previously repaired hazardous monuments. Mr. Stanton confirmed that the monuments identified appear hazardous.

Motion was made, seconded, and unanimously adopted approving the application in the amount of \$25,346.10.

21-09-E-59 32-015 North Ridge Cemetery – Columbarium

Michael Seelman stated that this is a 38-acre cemetery in Niagara County. The cemetery has a 48-niche columbarium with only 11 spaces remaining. They seek approval of installation of a 48-niche columbarium next to the existing one at the rear of the cemetery. The cemetery has made appropriate postings and received no negative comments. The total cost is \$22,250. From the investigative perspective, the cemetery has met the requirements of the regulations.

Mr. Polishook stated that the cemetery will need to raise its prices for niches; Ms. Young added that Ms. Richardson's ROI nets out the permanent maintenance contribution from return on investment. Ms. Young pointed out that while this has been traditional Division practice it makes the PM contribution look like an expense, which it is not.

Mary Evans spoke for the cemetery and indicated that the cemetery had increased niche prices. Ms. Evans added that the cemetery has a sizable permanent maintenance fund so the PM fund does generate income for current maintenance.

Mr. Vanderbles asked what it would cost to maintain the columbarium. Ms. Evans stated that she was unaware whether the cemetery has power washed the columbarium but if it was done there was no expense associated with it.

Ms. Faber asked whether the Division's report is based on previous pricing. Mr. Polishook indicated that he believed the projections in the Division's report took into account the new prices.

Motion was made, seconded, and unanimously adopted approving the application, the total cost of the columbarium not to exceed \$21,500.

21-09-F-60 15-071 Woodlawn Cemetery – Nunc Pro Tunc Columbarium

Michael Seelman indicated that Woodlawn Cemetery, a 46-acre cemetery in Erie County, has a combined mausoleum and columbarium that is becoming full, with only 10 niches remaining. In 2019, the cemetery's board approved the installation of a new 48-niche columbarium. The cemetery installed the columbarium at a cost of \$23,676 without Division approval. The cemetery's board has stated that it is unaware that approval is required. The cemetery has sold 12 niches and recouped the cost of installation. The cemetery did not post signs as required.

Mr. Polishook asked Mr. Seelman to elaborate on the location; Mr. Seelman added that the columbarium does not appear to encroach on any existing graves.

Mr. Vanderbles asked about a 1996 project in which they built a mausoleum without board approval. Some discussion ensued as to whether any 1996 board members were still on the board in 2019; Mr. Polishook stated he believed there were not.

Mr. Vanderbles added that the Board could impose a civil penalty of \$1,000 after a hearing or order the cemetery to comply with the provisions of the statute.

Mr. Polishook suggested that the cemetery should send representatives to the next training opportunity the Division provides in Western New York but opposed requiring the cemetery to attend such a training because none is currently scheduled.

Ms. Faber asked whether we could condition approval on cemetery board members attending training.

Mr. Polishook reiterated that no training is scheduled.

Mr. Pattison recommended that the Board approve the application and direct the Division to notify the cemetery of upcoming training opportunities.

Motion was made, seconded, and unanimously adopted approving the application nunc pro tunc and directing the Division to notify the cemetery of the next upcoming training and ask them to attend or find another way to ensure that the cemetery's board is trained in the Division's regulations.

21-09-G-61 38-049 West Monroe Cemetery – Nunc Pro Tunc Land Purchase

Mr. Seelman stated that West Monroe Cemetery is a four-acre rural cemetery in Oswego County. The cemetery's board realized that it had only two graves left to sell. They had been pursuing the only adjoining land to the existing cemetery, directly behind and to the west, as well as a 20-foot strip to the east. The cemetery submitted an application for approval to purchase this land but closed shortly after that before the Division reviewed the application.

The cemetery paid \$20,000 for 1.55 acres. The cemetery received one appraisal for \$19,000, but was unsuccessful in trying to obtain a second appraisal because this occurred at the beginning of the pandemic.

This is the only undeveloped property abutting the cemetery.

The parcel purchased is a hay field so it will not require extensive development to be used for burial. There have been no burials yet in this area. On average, the cemetery sells 13 graves a year.

Mr. Seelman indicated that the current board is the same board that purchased this parcel.

Mr. Vanderbles stated his understanding that longstanding practice was for the board to ask for two appraisals. Mr. Vanderbles indicated that possible courses of action included a financial penalty of \$1,000 or ordering the cemetery to take action to come into compliance with the statute which could include sale of the land.

Mr. Pattison noted that appraisals typically establish a range and not a precise number. Mr. Polishook noted that this appraiser did not provide a range but only provided a bottom-line number but noted that we have previously discussed the fact that appraisals establish a range.

Mr. Polishook noted that for purchases of land for small amounts of money the Board has approved purchases or sales based on a single appraisal.

Mr. Pattison noted that this application is nunc pro tunc and that we could require a second appraisal.

Mr. Polishook also stated that the Board could require court approval.

Ms. Faber noted that the cemetery did file with us and presumably used an attorney, and wondered whether there was miscommunication between the cemetery and the attorney.

Mr. Seelman stated that they closed without approval because they finally had agreement on a purchase and they were down to two graves in the early stages of the pandemic.

Mr. Seelman noted that the graves in the newly-acquired land will sell for \$739,000.

Finally, Mr. Seelman noted that the cemetery did not look to the appraisal for the price; the appraisal was because of regulatory requirements.

Mr. Polishook added that typically cemeteries do not base the price on an appraisal, and that appraisals are usually after the fact.

Mr. Polishook suggested that the Board approve the purchase but defer action on any violation until the Division provides the Board with more information.

Mr. Pattison recommends that the Board approve the transaction and consider imposition of a fine.

Ms. Faber stated that the cemetery simply decided to proceed with the transaction and agrees that the Board should approve and impose a fine. The cemetery did not come to the Division and state that it was under the gun and ask for expedited action.

Mr. Pattison and Mr. Vanderbles stated that any notice of proposed fine would be subject to a hearing.

Motion was made, seconded, and unanimously adopted approving the purchase nunc pro tunc and directing the Division to issue a notice of violation and proposed penalty of up to \$1,000 subject to administrative review.

21-09-H-62 56-022 New Paltz Rural Cemetery – Easement and Cemetery Renovation

Mr. Stanton stated that New Paltz Rural Cemetery operates a veterans section for Ulster County; Ulster County provides payment for graves and burials for veterans in that section. The section is almost full. The county now wants to develop a more comprehensive veterans cemetery within New Paltz Rural Cemetery and continue contracting with the cemetery for graves and interments.

At present, the cemetery seeks approval of an easement for the county and a major renovation for the construction of a building, drainage, and roadways necessary for the veterans' section, all at no cost to the cemetery.

The cemetery had 87 burials last year; about 35% are veterans paid for by Ulster County.

Mr. Vanderbles noted that this matter was discussed before the Board in February 2021. The proposed MOU and easement has been updated to address concerns about ownership of the columbarium to be constructed.

Mr. Vanderbles also noted that the revised documents are not a management agreement, but, rather, are provision of services under General Municipal Law section 165-a. Finally, counsel highlighted that the county is still seeking several other approvals: the County Legislature, Town, Village, and New York State Historic Preservation Office. Finally, Mr. Vanderbles stated that although the cemetery is contemplating the construction of a columbarium, that is not included in this application.

Motion was made, seconded, and unanimously adopted approving the application of New Paltz Rural Cemetery subject to obtaining all other required approvals, but does not include approval of other, future projects.

Public Comment

Richard Moylan from Green-Wood Cemetery commented on the pricing discussion concerning North Ridge Cemetery. Mr. Moylan said that a good rule of thumb for pricing structures is three or 3.5 times cost.

Cemeteries are a not-for-profit, not a charity. Mr. Moylan also suggested increasing prices by 20 percent when the cemetery sells 20 percent of the units in a row.

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

First, Mr. Fleming commented that it can be difficult to get multiple appraisals for properties. One of the biggest issues faced is that sometimes the value of the property adjacent to the cemetery is worth more to the cemetery than anyone else so the seller can demand a higher price.

Second, Mr. Fleming stated that many smaller cemeteries with volunteer boards do not view smaller columbariums as a structure requiring Board approval.

Finally, on New Paltz Rural, Mr. Fleming stated that about 15 years ago NYSAC secured legislation allowing for co-location of veterans cemeteries in existing cemeteries, and General Municipal Law section 165-a was also an initiative of NYSAC.

Ms. Faber agreed with Mr. Fleming's points concerning appraisals and fair market value and that we should further discuss this issue.

Motion made, seconded, and unanimously adopted adjourning the meeting.

The next Board meeting is scheduled for October 12, 2021 at 10:30 AM.