

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

KATHY HOCHUL
GOVERNOR

CEMETERY BOARD

ROSSANA ROSADO
SECRETARY OF STATE
CHAIR

LETITIA JAMES
ATTORNEY GENERAL

DR. HOWARD A. ZUCKER
COMMISSIONER OF HEALTH

**Cemetery Board Minutes
October 12, 2021
One Commerce Plaza
99 Washington Ave, Albany, NY 12231**

BOARD MEMBERS PRESENT:

Mark Pattison, Department of State, Chair
Thomas Fuller, Department of Health

OTHER ATTENDEES:

Vince Gimondo, Division of Cemeteries
Alicia Young, Division of Cemeteries
Lewis Polishook, Division of Cemeteries
Michael Seelman, Division of Cemeteries
Brendon Stanton, Division of Cemeteries
Robert Vanderbles, Department of State

GUESTS:

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
Anna Geiger, Bruce W. Geiger & Assocs., Inc.,
Adam Ginsberg, Cedar Grove/ Mount Hebron Cemetery
Jay Ivler, Mount Lebanon Cemetery
Richard Moylan, Green-Wood Cemetery
Emily Sischo, Ostroff Associates
Philip Tassi, Fernclif Cemetery
Justin Locke, Pinelawn Cemetery
Wallace Sheffer, Warren Cemetery
Diane Hoag, Warren Cemetery
Tony DiMaggio, Warren Cemetery
Lisa Bryk, Warren Cemetery

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

Opening Remarks

Mr. Pattison stated that Jill Faber, the Attorney General's representative on the Board, was unable to attend, but that the Board still had a quorum.

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.



Department
of State

Robert Vanderbles, counsel to the Division and Board, noted that we are operating in person 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.

21-10-A-63 Minutes of Previous Meetings

Motion was made, seconded, and unanimously adopted approving the minutes of the Board's September 14, 2021 meeting, without change.

21-10-B-64 Legislation and Regulations

1. Legislation

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

2. Regulations

Notice of the proposed abandonment rule-making was published in the September 29 or October 13 State Register. There is a 60-day public comment period, after which the Department will review any comments received.

Mr. Pattison congratulated Mr. Vanderbles on the expected birth of a second child and noted that we will not see him until December.

21-10-C-65 Division Report

Mr. Polishook reported as follows:

1. Forms: Forms for the following items are now on our website: applications for mausoleum and columbarium approval, major alterations, and recommendations of approval of permanent maintenance loans. There are also three supporting schedules: Schedule A (income, expenses, and fund balances), Schedule B (return on investment for mausoleum, columbarium, and major alteration applications), and Schedule C (related party transactions).
2. Staffing: We completed interviews for Associate Accountant and Administrative Assistant in Albany and have selected two candidates who are scheduled to start on October 28. We are soliciting candidates for two Senior Accountant positions; the canvass closes mid-October.

Mr. Pattison added that the forms are the result of a Lean process designed to simplify business process and make applications more predictable.

Assistant Director Alicia Young reported that we have received 1,418 annual reports, 502 of which were submitted online (36% of the total applications received).

21-10-D-66 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 \$120,726.44, representing 10 initial payments of 25% of the total of each of those applications and one 75% final payment on applications approved this fiscal year. These 10 applications total \$381,798.46 (including funds already paid out)

There remains approximately \$108,254.84 in funds committed for applications approved in fiscal years 2018/19 and 2019/20. There is approximately \$165,471.23 committed for applications approved in the 2020/21 fiscal year.

There are five applications in the pipeline for approval \$162,130.95; there is one application to presented today totaling \$9,357.98.

Pierrepont Hill Cemetery Ass'n, No. 45-047 (St. Lawrence), \$9,357.98

Mr. Seelman reported that Pierrepont Hill Cemetery submitted an application for 19 hazardous monuments, and that he verified that they are in fact hazardous. The cemetery received two estimates, the lower of which was \$9,248. An interesting aspect of this application is that the lower estimate includes precast concrete foundations. Mr. Seelman recommends approval.

Mr. Fuller asked why the second estimate was more than double the first estimate; Mr. Seelman explained that the precast foundations are apparently more efficient.

Motion was made, seconded, and unanimously adopted approving the application in the amount of \$9,357.98, subject to the availability of funds.

21-10-E-67 52-044 Pinelawn Memorial Park – Major Renovation Amendment

Mr. Polishook stated that the Board approved road renovations (curb work and repaving) at Pinelawn in August 2020. Pinelawn presents the current application as an amendment to that application. Pinelawn now seeks approval for expansion of a parking area adjacent to that road. The cost of this project is \$22,000.

Motion was made, seconded, and unanimously adopted approving an amendment to its previous application to expand its parking area for a cost of \$22,000, subject to receipt of any required permits.

21-10-F-68 52-044 Pinelawn Memorial Park – Wash Down Station

Mr. Polishook stated that the cemetery wishes to install a closed-loop wash down station for cemetery vehicles and digging equipment, which will recapture water used in washing the cemetery, saving money and protecting the water table. This station will be located in the cemetery's maintenance area and invisible to lot owners. \$97,140.

Mr. Vanderbles noted that the wash down station requires a building permit that the cemetery has not yet obtained.

Motion was made, seconded, and unanimously adopted approving the application of Pinelawn for a major renovation for a wash down station in an amount not to exceed \$97,140, subject to receipt of any required permits.

21-10-G-69 42-035 Warren Cemetery – Land Purchase

Leonard Breen stated that Warren Cemetery is a small, rural cemetery in Rensselaer County consisting of 2.51 acres. It seeks approval to purchase another 3.29 acres, more than doubling its size. The cemetery reports that

it is out of new lots to sell. The land is fairly level and clear and there are no development costs anticipated. Mr. Breen noted that the land is surveyed but that the cemetery appears to have paid for a survey of the seller's entire property, not just the property to be acquired, that increased costs significantly—the survey cost almost as much as the land. Mr. Breen also questioned the demand for lots and suggested that the cemetery might be able to provide more information about demand.

Ms. Young stated that initially it was unclear whether the cemetery has enough money to make the transaction. The cemetery has a special trust of \$97,000; only the income may be used for the betterment of the cemetery. After review, we located \$12,000 in additional unrestricted funds that could be used for the purchase. The cemetery has already paid for two appraisals and a survey; after these costs, and after the purchase, the cemetery would be left with only approximately \$3,000 in unrestricted funds. Ms. Young also expressed concern that the cemetery consistently runs a deficit.

Mr. Vanderbles added that the contract makes the purchase contingent on board approval, and also noted that the price is slightly greater than the appraised value.

Wallace Sheffer, President of the cemetery's board, addressed the Board. He indicated that the seller requested the survey but did not anticipate the entire area being surveyed. He added that the cemetery does receive inquiries about lots but has none to sell. The cemetery further indicated that it was concerned that absent a land purchase the cemetery would be abandoned to the town and the town would not maintain it as well. Mr. _____ added that it does send a fundraising letter annually.

Lisa Bright, Secretary of the cemetery, states that the surveyor provided a letter on August 26 indicating that the survey covered only the parcel to be purchased; Ms. Young stated that the letter was unclear as to what was surveyed.

Lisa Bryk, another board member, added that the only municipal assistance that might be likely or useful would be help with trees and brush.

Mr. Pattison thanked the board members for their volunteer service to the cemetery, and that we shared the cemetery's goal of avoiding abandonment to the town.

Motion was made, seconded, and unanimously adopted approving the land acquisition for a purchase price of \$8,225, for a total cost of \$15,820.50 (including legal fees, appraisals, and survey), to be expended from general fund.

21-10-H-70 04-045 City Cremations – Report on Non-Compliance

Mr. Polishook reported that on July 21, 2021, the Division proposed to impose a penalty of \$22,000 plus \$100 per day for failing to file required reports. City Cremations responded with a letter we received on August 8, saying, essentially, that the crematory had asked its accountant to file reports and that the Division should call before inspections. The Division regards this as non-responsive. The Division also sent a letter on September 2 asking for information about the crematory's accountant and attorney who had allegedly failed to submit reports; the deadline for response expired on September 17 and the Division has received no response. The requests in this letter were made pursuant to N-PCL section 1508(b), so failure to respond carries a penalty of \$100 per day. In sum, the crematory has largely failed to make required filings for seven years. Since we sent our July 21 letter, the Division succeeded in inspecting the crematory, finding approximately 10 percent of cremation authorizations were not properly completed (a slightly worse ratio than average).

There were discussions to resolve the matter about a month ago but the Division has heard nothing since.

The Division requests that the Board schedule an administrative hearing on the proposed penalties.

Mr. Vanderbles stated that the timing of the hearing would be set by the Office of Administrative Hearings and that the hearing should be limited solely to the first (July 21) letter.

Motion was made, seconded, and unanimously adopted referring that proposed penalty to the Department of State's Office of Administrative Hearings to schedule a hearing.

21-10-I-71 41-012 Mt Olivet – Notice of Proposed Penalty

Mr. Polishook noted that this item was not included in the agenda. The Division found that this cemetery had failed to file reports and that there were questionable financial transactions. The cemetery provided a response and also retained an auditor to review the questionable transactions.

Mr. Polishook asked that the Board extend the cemetery's time to supplement its objection to its notice of proposed penalty.

Motion was made, seconded, and unanimously adopted adding this item to the agenda for this meeting.

Motion was made, seconded, and unanimously adopted extending the time to object to the proposed penalties until November 30, 2021.

Discussion was had about the possibility of an additional meeting in October; Mr. Polishook indicated that initially he had hoped to present applications concerning Forest Lawn mergers with other Western New York cemeteries to the Board at a special meeting but that the timing was unlikely to work.

Public Comment

David Fleming, Featherstonhaugh, Wiley & Clyne, LLP, for the New York State Association of Cemeteries, thanked the Division for developing forms and being open to altering them, and noted that the Division was working with NYSAC on the crematory operator certification course today. Mr. Fleming also added that NYSAC agrees with the Board Chair that cemeteries should be operated by cemeteries.

Motion made, seconded, and unanimously adopted adjourning the meeting at 11:25 a.m..

The next Board meeting is scheduled for November 9, 2021 at 10:30 AM.