

# DIVISION OF CEMETERIES

STATE OF NEW YORK  
DEPARTMENT OF STATE  
ONE COMMERCE PLAZA  
99 WASHINGTON AVENUE  
ALBANY, NY 12231-0001  
TELEPHONE: (518) 474-6226  
FAX: (518) 473-0876  
WWW.DOS.NY.GOV

KATHY HOCHUL  
GOVERNOR

CEMETERY BOARD  
ROBERT J. RODRIGUEZ  
ACTING SECRETARY OF STATE  
CHAIR

LETITIA JAMES  
ATTORNEY GENERAL

MARY T. BASSETT, M.D., M.P.H.  
COMMISSIONER OF HEALTH

## Cemetery Board Minutes December 14, 2021 One Commerce Plaza 99 Washington Ave, Albany, NY 12231

### BOARD MEMBERS PRESENT:

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

### OTHER ATTENDEES:

John Fatato, Department of State  
Kerry Forezzi, Division of Cemeteries  
Lewis Polishook, Division of Cemeteries  
Michael Seelman, Division of Cemeteries  
Brendon Stanton, Division of Cemeteries  
Alicia Young, Division of Cemeteries  
Joseph Ball, Department of State  
Robert Vanderbles, Department of State  
Cynthia Craig, Division of Cemeteries  
Leonard Breen, Division of Cemeteries  
Michael Morris, Department of State

### GUESTS:

Anthony Biolsi, New and Old Montefiore Cemeteries  
Brendan Boyle, Featherstonhaugh, Wiley & Clyne, LLP, for New York State 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  
Jay Ivler, Mount Lebanon Cemetery  
Richard Moylan, Green-Wood Cemetery  
Nate Romagnola, White Haven Memorial Park  
Mark Stempa, Mt Carmel Cemetery  
Nicholas Pisano, Montefiores Cemeteries  
Annah Geiger, Bruce W. Geiger & Assocs., Inc.  
Allen L. Weingarten, United Hebrew Community of Lake Placid Cemetery  
Philip Tassi, Ferncliff Cemetery

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

### Opening Remarks

Mr. Pattison called the meeting to order.



Department  
of State

Mr. Pattison noted that all three board members were present in person and that this is the last meeting of the year.

Mr. Pattison noted that he believes we have done remarkably well given all that has happened and thanked staff and cemeterians who had kept their heads above water during the pandemic.

### **21-12-A-81 Minutes of Previous Meetings**

Motion was made, seconded, and unanimously adopted approving the minutes of the Board's November 9, 2021 meeting, without change.

### **21-12-B-82 Legislation and Regulations**

#### 1. Legislation

No legislation to report.

#### 2. Regulations

Mr. Vanderbles stated that the comment period on the proposed rules closed on November 29. We did receive comments which we are reviewing with the Division, which we hope to report on to the Board in January.

### **21-12-C-83 Division Report**

Mr. Polishook reported as follows:

1. Staffing: We have hired a Senior Accountant who starts January 6; we are waiting on Civil Service approval to hire another Senior Accountant. We are canvassing for a Buffalo-based Investigator position; the canvass closes December 22 and we anticipate interviewing candidates in the new year.
2. Annual Report Season: the annual report season is approaching for cemeteries whose fiscal year ends December 31. Cemeteries also have to send us vandalism and assessment payments and updated trustee lists in the first quarter. The Division encourages cemeteries to file electronically.

Assistant Director Alicia Young reported that we have received 1,340 annual reports, 508 of which were submitted online (38% of the total applications received).

### **21-12-D-84 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 \$571,718. Assessment collections are \$320,167. Fiscal year collections from April 1, 2021 are: Vandalism \$139,893; Assessment \$77,242.

Payments from the \$2,000,000 2021/22 Vandalism Fund appropriation include the first 25% payments and one 75% payment for the 15 applications approved so far this fiscal year and 13 payments for prior years applications totaling \$252,759.42.

There remains \$108,254.84 of funds committed for 2018/19 and 2019/20 applications and \$141,690.66 committed for applications approved in the 2020/21 fiscal year. Currently there are seven applications in the pipeline for approval totaling \$214,546.26. Additionally, there is one application on the agenda for this meeting totaling \$19,573.40.

There is one application this month, from Fly Creek Valley Cemetery, totaling \$19,573.40

Mr. Pattison noted that, unlike in previous years, this year we have few applications compared to funds available either because of a lack of workers or the pandemic.

Fly Creek Valley Cemetery, No. 39-011 (Otsego), \$19,573.40

Investigator Brendon Seelman reported that this cemetery has submitted an application for 26 hazardous. This is the cemetery's fourth application for restoration of hazardous monuments. Mr. Stanton visited the cemetery and verified that they are in fact hazardous. The cemetery received two estimates, the lower of which plus the cost of the required legal notice was \$19,573.40. Mr. Stanton stated that the most recent monument was from 1909; the cemetery did not make any additional attempts beyond publishing notice to contact anyone.

Mr. Polishook added that, pending adoption of a policy concerning efforts to contact individuals as required by statute, the Division is checking whether the monuments are recent or very old and what if any efforts the cemetery has made to get in touch with lot owners.

Mr. Ball stated that the statute requires that there be an effort to find the monument owner. In this case, it sounds like the determination could be that the cemetery has no information that would even allow it to try to contact the monument owner. Mr. Ball also noted that the published notice mentioned the name but not the lot number of the lots. Ideally, the published notice should include the lot but including the name is a good way to identify people with an interest. In the future, Mr. Ball recommended that the notice include both the name and the lot number.

Mr. Pattison stated that this issue has been presented for a couple months and ought to be tightened up. Division and counsel are tasked with coming up with guidelines for the Board to say whether the application complies with the statute.

Ms. Faber asked whether the cemetery either made an effort to contact the owner or articulate why it couldn't.

Mr. Pattison stated that it had done neither.

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

**21-12-E-85 16-023 United Hebrew Community Cemetery of Lake Placid – Consent to Amendment to Certificate of Incorporation**

Mr. Polishook explained that this cemetery seeks to make two minor changes to its certificate of incorporation: increasing the maximum number of board members to 15 and allow the cemetery to set its annual meeting at a time other than 10 a.m. on the date provided for in the certificate of incorporation.

Mr. Ball stated that the certificate of amendment of the certificate of incorporation requires board consent before filing.

Mr. Weingarten, attorney for the cemetery, thanked Mr. Ball for working with the cemetery on this matter.

Motion was made, seconded, and unanimously adopted consenting to the filing of the certificate of amendment.

**21-12-G-86 41-007 and 41-011 Mt. Carmel and Mt. Neboh Cemetery—Merger**

Mr. Polishook that the cemeteries had asked that this matter be tabled to the board's next meeting.

Motion was made, seconded, and unanimously adopted tabling this matter.

## 21-12-H-87 58-020 Woodlands Cemetery—Land/House Sale

Investigator Leonard Breen explained that this cemetery in Cambridge, New York seeks to sell an old caretaker house that has fallen into disrepair to avoid the burden of keeping up the property. The sale includes a large barn behind the house. The cemetery has received an offer to buy the property for \$145,000 cash.

The sale price is at the higher appraised value.

Mr. Pattison noted that the sale proceeds would go into the cemetery's permanent maintenance fund.

Assistant Director Alicia Young stated that the net proceeds would go into the permanent maintenance fund. She explained that there is a chapel next to the barn; the cemetery intends to keep a chapel building next to the barn, and that the chapel and barn currently share electrical, water, and sewer service.

Mr. Polishook stated that, to the extent that the electrical, water, and sewer separation are a major alteration, those will be the subject of a separate application.

Mr. Fuller stated that the photos indicate that the cemetery is currently storing equipment in the barn and asked what its plan is for storage going forward.

Ms. Young stated that the original proposal asked for \$11,000 from the sale to go to building a storage shed. We did not think that was appropriate. Mr. Breen stated that the purchaser had agreed to let the cemetery use the barn for storage for a year from the sale, and that the cemetery has very little equipment.

Mr. Polishook added that the cemetery has not provided a survey but that the survey is a condition of closing. Robert Wright, for the cemetery, indicated that the surveyor is currently working on the survey.

Mr. Ball stated that one of the two purchasers of the house has a contract to maintain the cemetery and is currently working on restoration of dangerous monuments. Mr. Ball recommended that the cemetery confirm that this purchaser is not a "key person" as defined under the Not-for-Profit Corporation Law, because a key person need not be an employee and can be anyone who manages a substantial portion of the corporation.

Mr. Wright stated that the purchaser mows the grass but does not have anything to do with the board or participate in board meetings.

Mr. Pattison asked what confirmation of this would look like?

Mr. Ball asked that the cemetery's attorney provide a letter stating that the purchaser is not a key person as defined in the statute.

Ms. Faber asked whether "key person" is defined. Mr. Ball read the definition contained in section 102 of the Not-for-Profit Corporation Law.

Mr. Ball also asked about the new toilet and well and asked whether the Board should require the cemetery to obtain all approvals needed for this work before closing. Mr. Ball stated his concern that the cemetery could be unable to do this work after closing.

Mr. Wright stated that the chapel is not used by the public. No permits are required for the well and he does not believe a permit is required for a gas toilet or that the chapel even has to have water service or a toilet.

Ms. Faber agreed that the possibly permitted work should not hold up closing because the work is not necessary to make the chapel usable.

Motion was made, seconded, and unanimously adopted approving the sale, subject to confirmation from the cemetery that the purchaser is not a “key person” or that the cemetery go through the related party process before closing.

**21-12-I-88 32-014 Niagara Falls Memorial Park—New Retort and PM Loan**

Senior Investigator Michael Seelman stated that this cemetery’s cremation retort is from 1981. The cemetery seeks to replace this retort with a new Power Pak II unit at a total cost of \$209,000. DEC regulations will render the current retort unusable. From the investigative side, this application meets the requirements for a major alteration

Mr. Polishook stated that the cemetery does not have sufficient unrestricted funds to purchase the retort and that the cemetery had already gone to court to seek approval of a permanent maintenance fund loan. Assistant Attorney General Mike Russo is representing the Board in court. We have negotiated a proposal whereby the Board would recommend approval of a PM loan of \$171,000, to be repaid in monthly installments (no interest) of \$1,320 (the last payment is smaller). Apparently, at some point there was an erroneous transfer of funds leaving a deficit of \$9,896.91 in the PM fund; we ask that the court not approve the loan until this deficit is repaid. We also propose that the order include quarterly reporting to the Division of loan repayments and PM allocations.

Subject to these terms, we recommend approval.

Mr. Ball proposed the following language for a motion:

With respect to Niagara Falls Memorial Park Cemetery Association, Inc. (the Cemetery), I move that the Cemetery Board consent to the Supreme Court making an order approving a loan in the amount of \$171,000 from the Cemetery’s Permanent Maintenance Fund on the following terms:

1. before the loan is taken, the Cemetery shall transfer \$ 9,896.91 from its general fund to its Permanent Maintenance Fund and shall provide the Division of Cemeteries with documentation of that transfer;
2. the loan proceeds shall be used for payment of the removal of the Cemetery’s old retort and the purchase and installation of the new retort;

(3) the loan shall be repaid in 129 monthly installments of \$1,320 each, the first such installment to be paid six months after the Court Order approving the loan is signed, and one final installment of \$720;

(4) the monthly installments shall be deposited into the Cemetery’s Permanent Maintenance Fund; and

(5) the Cemetery shall provide the Division with quarterly statements confirming that the monthly installments are being paid and deposited into the Cemetery’s Permanent Maintenance Fund and that 10% of the gross proceeds of each lot sale and \$35 for each interment are also being deposited into the Cemetery’s Permanent Maintenance Fund.

Ms. Faber asked for confirmation that these conditions will be included in the proposed order.

Mr. Polishook stated that these conditions already are in the proposed order.

Motion was made, seconded and unanimously adopted approving the motion as proposed by Mr. Ball, above.

Motion was made, seconded, and unanimously adopted approving the major alteration.

**21-12-J-89 33-063 Utica Cemetery Association (Forest Hill) – PM Loan repayment  
Schedule modification**

This is the third time this matter is before the Board. The Board approved a new crematory at this cemetery at the Board's May 12, 2021 meeting. Then, a month or two ago, the Board modified that approval to remove a condition. Now, the cemetery seeks approval of a repayment plan in connection with the cemetery's application for court approval of the PM loan needed to fund the crematory.

The cemetery still proposes to take out a PM loan but defer repayment to allow completion of the crematory first.

The recommendation is that the Board consent to the filing of a proposed order in the form attached, providing that:

1. The cemetery may borrow funds in installments, in a total not to exceed \$757,712.12;
2. Interest at two percent will begin to run 14 months after borrowing the first installment;
3. The cemetery will begin repaying the loan in equal monthly payments of \$6,971.97 15 months after borrowing the first installment.

Motion was made, seconded, and unanimously adopted consenting to the filing of an order as described by Mr. Polishook.

**21-12-J-90 41-012 Mt Olivet – Notice of Proposed Penalty**

Mr. Polishook stated that the Division received the forensic auditor's report late yesterday and is reviewing it.

Mr. Polishook reported that the cemetery has terminated Dan Giglio's employment and is negotiating separation, given that he lives on premises. Frank Giglio has resigned from the cemetery's board. Finally, the cemetery has withdrawn the objection the cemetery previously submitted in response to the Division's letter proposing penalties and asks to be given until January 31, 2022 to respond to that report.

Ms. Faber expressed concern that the amount of time will not allow the Board to consider this matter at the January 2022 meeting.

Motion was made, seconded, and unanimously adopted extending Mount Olivet's time to respond to the notice of proposed penalties until January 31, 2022, with the understanding that the Division would encourage the cemetery to submit it sooner.

**Public Comment**

David Fleming, Featherstonhaugh, Wiley & Clyne, LLP, for the New York State Association of Cemeteries, offered up the willingness of NYSAC to work with the Board on the issue of any changes in policy concerning dangerous monuments and possible legislative changes if needed.

Mr. Pattison ended the meeting by congratulating and thanking the staff for their work this year while substantially understaffed, and thanked the people who work in cemeteries and NYSAC for their contributions.

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

The meeting adjourned at 11:39 a.m.

The next Board meeting is scheduled for January 11, 2022 at 10:30 AM.