

DIVISION OF CEMETERIES

STATE OF NEW YORK
DEPARTMENT OF STATE
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CEMETERY BOARD
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ACTING SECRETARY OF STATE
CHAIR

LETITIA JAMES
ATTORNEY GENERAL
MARY T. BASSETT, M.D., M.P.H.
COMMISSIONER OF HEALTH

**Cemetery Board Minutes
January 18, 2022
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:

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
Robert Vanderbles, Department of State
Leonard Breen, Division of Cemeteries
John Fatato, NYS Department of State
Michael Morris, NYS Department of State
Andrew Hickey, Division of Cemeteries
Cynthia Craig, Division of Cemeteries

GUESTS:

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
Adam Ginsberg, Cedar Grove /Mount Hebron Cemetery
Joseph Dispenza, Forest Lawn group
Richard Moylan, Green-Wood Cemetery
Nate Romagnola, White Haven Memorial Park
Mark Stempa, Mt Carmel Cemetery
Philip Tassi, Ferncliff Cemetery
Annah Geiger, Bruce W. Geiger & Assocs., Inc.
Tom Howryletz, Woodlawn Cemetery
Jay Ivler, Mount Lebanon Cemetery
Anthony Biolsi, New and Old Montefiore Cemeteries
Stefanos Chen, New York Times
Richard Bethel, Pryor Cashman
Richard Freiman, Freiman & Associates
Emily Vaculik, Associate Attorney, NYS Assembly
Dallas Trombley, Assistant Secretary for Program & Policy, NYS Assembly
Matthew Smalls, MirRam Group
Harvey Randall



**Department
of State**

Charles Orlando
Adam Yagelski, Town of East Greenbush
JudieLynn McAvinney, White Haven Memorial Park
Yanni Trittas, Constantinople & Vallone Consulting
Alan Harari

Some “other attendees” and “guests” attended solely via WebEx.

Opening Remarks

Mr. Pattison called the meeting to order.

Mr. Pattison noted that this is an in-person meeting and abiding by the regular rules of order, but we have people online. If you are not speaking, please mute. There will be an opportunity for public comment. Please identify yourself; you must identify yourself if you are a lobbyist.

22-01-A-1 Minutes of Previous Meetings

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

22-01-B-2 Legislation and Regulations

1. Legislation

Mr. Vanderbles referred the Board to his previously-circulated legislative report.

2. Regulations

Mr. Vanderbles stated that he and Mr. Polishook had prepared a report to the Board concerning comments received on the proposed regulations, and suggested that the Board discuss these at the end of the meeting.

After discussion of all other issues, Mr. Vanderbles stated that the Division and he had worked together to review comments from NYSAC and the Association of Towns and thanked them for their comments.

We have reviewed and considered comments received. We have put before the Board our proposed changes in response to those comments plus additional minor changes. We do not consider any of these changes to be a substantial revision to the proposed regulations and ask the Board to authorize us to publish a notice of adoption of the revised regulations.

Mr. Pattison noted that the former Governor had directed us to consider rule making after he vetoed proposed abandonment legislation.

Mr. Polishook stated that in response to NYSAC’s comments, in some cases we made changes at their suggestion, but at others we rejected their proposed changes but clarified our understanding of the meaning of the language.

Mr. Polishook also stated that we considered and rejected the Association of Towns' proposal for a mandatory cooling-off period before abandonment. He noted that in rate cases time might be of the essence and delay might harm towns' interests, but that generally the Division will take the steps described which will provide time before abandonment.

Motion was made, seconded, and unanimously adopted directing the Department to publish a notice of adoption of the regulations in the form presented by the Division.

22-01-C-3 Division Report

Mr. Polishook reported as follows:

1. Staffing: The candidate we offered an Albany Senior Accountant position to declined the position; we are re-canvassing and that canvass closes January 20. We have made a hiring recommendation for a Buffalo-based Investigator position. Mr. Polishook also noted that Bridget Coleman is out on medical leave, wished her the best, and asked that people call the Albany office of the Division, not the New York City office. He added that in general all mail should be sent to the Albany office.
2. Annual Report: the annual mailing has been sent out.
3. Mortuary Affairs: We have resumed weekly mortuary affairs calls. There are some New York City crematories that are backed up 5-7 days. It is helpful if we know about these delays. There are numerous crematories downstate with no delays. Please let us know if you see delays in crematories or cemeteries. Mr. Polishook noted that the only cemetery about which we have heard delays is a Catholic cemetery in the Bronx.

22-01-D-4 Vandalism, Abandonment and Monument Repair or Removal Fund Report

Assistant Director Alicia Young provided the vandalism report.

The final tally for 2021 calendar year vandalism collections were \$611,771.96. Assessment collections were \$320,200. Fiscal year collections from April 1, 2021 are: Vandalism \$179,946.96. Assessment \$77,275.00.

Payments from the \$2,000,000 2021/22 Vandalism Fund appropriation include the first 25% payments and one 75% payment for the 18 applications approved so far this fiscal year and 17 payments for prior years applications totaling \$310,731.69.

There remains \$108,254.84 of funds committed for 2018/19 and 2019/20 applications and \$101,455.75 committed for applications approved in the 2020/21 fiscal year. Currently there are five applications in the pipeline for approval totaling \$148,583.58. Additionally, there are two applications on the agenda for this meeting totaling \$48,811.61.

Summary of Applications Granted FYE 3/31/2022:

• 0	Vandalism applications	-	\$ 0
• 18	Restoration applications	-	\$ 494,655.47
• 0	Abandonment applications	-	<u>\$ 0</u>
			\$ 494,655.47

Mr. Pattison and Ms. Young noted that this information is posted on the website in case any of Ms. Young's report was inaudible.

Mr. Polishook stated that a legal issue had come up a couple of months ago concerning the legal notice before a cemetery works on monuments. Cemeteries are supposed to contact the monument's owner at the last known address and may publish notice if they lack a last known address. Mr. Polishook noted that the Division is

working on a revision to its application to include a checklist to make sure we capture this information. These two applications do not yet reflect that change.

Bay Side Cemetery, No. 45-001 (St. Lawrence), \$11,670.93

Senior Investigator Michael Seelman reported that Bay Side Cemetery is a medium-sized cemetery in the Village of Potsdam, St. Lawrence County. The cemetery has applied for funds to repair 22 hazardous monuments. Mr. Seelman verified that they all appear to be hazardous. The most recent date on one of the 22 monuments was 1915. Mr. Seelman discussed with the cemetery's President the record to check records for monument owners. The President reported that it did not have addresses for these monument owners but posted ads in two papers in St. Lawrence County.

Mr. Vanderbles addressed the issue of published notice. Mr. Vanderbles asked whether the cemetery concluded the owners of these monuments could not be found; Mr. Seelman confirmed this is correct. Mr. Vanderbles also indicated that any approval should be contingent on availability of funds.

Motion was made, seconded, and unanimously adopted approving the application for funds in the amount of \$11,670.93, subject to availability of funds.

Howard Cemetery, No. 51-031 (Steuben), \$37,140.68

Investigator Brendon Stanton reported that this cemetery is located in the Town of Howard, Steuben County. The cemetery has applied for funds to restore 30 hazardous monuments. Mr. Stanton viewed the monuments and agrees they all appear to be hazardous. Mr. Stanton indicated he recommends approval in the amount of the lower estimate. Mr. Stanton noted that the estimate listed removal of soil as a separate line item. Mr. Stanton also stated that the cemetery did not have addresses for the owners of these monuments; the most recent date on any monument is 1926.

Mr. Vanderbles noted that Not-for-Profit Corporation Law section 1510-a requires a 60 day notice period when notice is provided by publication. Notice was published on June 10, but the notice provided for responses only through August 3, a week before the 60 days ended. As with the last application, Mr. Vanderbles asked for confirmation that the cemetery determined the owners couldn't be found. Mr. Vanderbles finally noted that any approval should be conditioned on availability of funds.

In response to a question by Mr. Pattison, Mr. Stanton stated that the cemetery had received no responses to its published notice.

Motion was made, seconded, and unanimously adopted approving the application for funds in the amount of \$37,140.68, subject to availability of funds.

22-01-E-5 03-002 Woodlawn Cemetery—Additional Niches

Mr. Polishook stated that Woodlawn Cemetery has many mausoleum buildings, some of which have a fair amount of unused space. Over the last six or so years, they have been retrofitting these buildings for niches either by adding freestanding glass-front niches or adding granite-front niches to existing walls. The cemetery has added granite niches against one wall on one side of an architectural feature; the current application is to add niches to the wall on the other side of that feature. This project will add income and, if anything, improve the aesthetics of this area of the mausoleum.

Motion was made, seconded and unanimously adopted approving this columbarium application in a cost not to exceed \$119,940.

22-01-F-6 41-007 and 41-011 Mt. Carmel and Mt. Neboh Cemetery—Merger and Major Renovation

Mr. Polishook stated that Mount Neboh and Mount Carmel Cemetery are both in Queens; two sections of Mount Carmel surround Mount Neboh on three sides. A person driving by might think it is all one cemetery. Mt. Carmel has maintained Mount Neboh for about a decade. Mt. Neboh has only one board member in active management; he was the cemetery's attorney and continued as an officer without compensation. He is aging and the cemetery needs new management.

This merger has been under discussion for more than eight years.

There have been various issues at Mount Neboh, mostly involving sales and assignment of graves; most of these have been resolved.

The boards and lot owners of the cemeteries agree that the two cemeteries should merge. Mount Carmel's service charges will apply at Mount Neboh; lot prices may differ because Mount Carmel has different prices for different sections.

The merger will require approval of the New York City Council. The new merger statute (N-PCL section 1506-d) does not apply here because the two cemeteries are contiguous but most of the factors in that statute are met here.

The Division asks that the Board recommend approval of the merger and approve the certificate of merger.

Mount Carmel also seeks conditional approval, after the merger occurs, of the unused office building at Mount Neboh. This major alteration will result in the creation of 200-250 graves. The Division recommends conditional approval, conditioned on:

1. The merger occurring;
2. Receipt of all local permits; and
3. Receipt of stamped plans.

Finally, there is a 1954 court order requiring Mount Neboh to deposit 75 percent of lot sales into its permanent maintenance fund. There also appears to be a Board order requiring the deposit of 50% of profits into the permanent maintenance fund. To comply with these directives, Mount Neboh deposits 85% of sales into its permanent maintenance fund. Mount Carmel seeks a sense of the Board that the Board would look favorably on a post-merger application to vacate this order. The Division believes that, after merger, the combined cemetery will not need to deposit more than the standard 10 percent of lot sales and \$35 per interment into its permanent maintenance fund.

Mr. Vanderbles thanked the president and counsel for Mount Carmel working around his schedule. He agreed that the new statute does not apply here. Mr. Vanderbles referred to the Office of the Attorney General's guidance on mergers. Where a government entity approved a corporation, that entity has to consent to the merger and that approval should be included in the submission to the OAG and the Court, pursuant to sections 404(e) and 909 of the Not-for-Profit Corporation Law. Mr. Vanderbles noted that the proposed certificate of merger, but not the merger agreement, lists the number of members of each corporation.

As to the major renovation, Mr. Vanderbles noted that there is no evidence of approval by lot owners or the cemetery's board, and that the major alteration should also be contingent on receipt of an engineer's report. Ms. Faber asked whether the cemeteries had submitted the proposed merger to the Attorney General yet; Mount Carmel's attorney stated it had not. Ms. Faber also asked whether the Board would have to approve a revised

certificate if the Attorney General asked for changes. Mr. Vanderbles indicated that he believed the Board would have to approve the certificate again.

In response to a question of Mr. Fuller, Mark Stempa for Mount Carmel Cemetery indicated that graves at Mount Carmel sell for between \$6,000 and \$14,000.

Motion was made, seconded, and unanimously adopted recommending approval of the merger of Mount Carmel and Mount Neboh Cemeteries.

Motion was made, seconded, and unanimously adopted approving the certificate of merger.

Motion was made, seconded, and unanimously adopted approving the proposed major alteration conditioned on:

1. Consummation of the merger;
2. Receipt of all local permits;
3. Receipt of Mount Carmel lot owners or board minutes approving the proposal; and
4. Receipt of stamped plans.

Mr. Pattison stated that the Board could not comment on applications not before it but noted that, as to the issue of the court and board orders concerning additional contributions by Mount Neboh into the permanent maintenance fund, he saw no issue, but also noted that we do not know precisely what these orders require.

Ms. Faber indicated that it was premature to address this issue without seeing a proposed new order. Ms. Faber also asked what is required for the Board as to any application to vacate the order. Mr. Vanderbles stated that the Board has to be served with notice of an application to vacate this order. Mr. Polishook said that at times the Board has asked the Attorney General to support an application, and in others the Board merely stated that it has no objection.

22-01-G-7 15-001 Abbot's Corners—Columbarium

Mr. Stanton stated that Abbot's Corners Cemetery in Erie County approved in January 2021 to install a columbarium. Mr. Stanton visited the site in March 2021, June 2021, and August 2021 and found that the cemetery had not posted all required signs; the application was also missing certain information (most notably, a map showing the correct location). When he visited in August, he found that the cemetery had installed the columbarium without cemetery board approval. The Division has issued a notice of non-compliance in connection with this project. The total cost was \$67,220. It appears that the cemetery has sold at least five niches (five are inscribed).

Mr. Vanderbles stated that the alternatives to nunc pro tunc approval could include ordering the cemetery to remove the columbarium or impose a fine of up to \$1,000 after a hearing.

Mr. Polishook stated that the Division will not decide what if any penalty to propose until it reviews the cemetery's response to the Division's notice of non-compliance, but does not recommend that the Board direct the cemetery to remove the columbarium unit.

Ms. Faber stated that the Division should consider a penalty but agreed that removing the columbarium would not make sense.

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

22-01-H-8 28-045 White Haven Memorial Park—Retort Replacement

Mr. Seelman stated that White Haven Memorial Park is a full-service cemetery in Monroe County. The cemetery seeks to replace its 1957 retort with a new model. This is the oldest of their four retorts. It is adjacent to the chapel so it allows for services where families witness placing remains into the retort. DEC regulations will soon render this retort obsolete. The total cost is \$313,022. Mr. Polishook added that this sum will come from its general fund.

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

22-01-I-9 41-012 Mt. Olivet—Notice of Proposed Penalty

Mr. Polishook stated that we had asked this cemetery to get us renewed objections to the proposed penalty in time for this meeting; the cemetery needed more time and states that it is taking additional steps to address the issues raised. We anticipate receiving the cemetery's objection by January 31, 2022. No action was required or taken.

22-01-J-10 42-025 New Rural—Land Sale and Major Renovation

Leonard Breen, Investigator, stated that this cemetery seeks to sell two parcels of land to the Town of East Greenbush. One is for an extension of Tempel lane to connect to Regeneron's facility; the other is to build a pump station to service the East Greenbush community. This sale would require the removal of the current cemetery office building; Regeneron will reimburse the cemetery to build a new office building and entrance.

The cemetery received two appraisals.

This transaction will provide the cemetery with a brand-new office at no cost.

Mr. Vanderbles thanked the cemetery for meeting with the Division and counsel on short notice. Because the land is not used for cemetery purposes, the standard is whether the sale will benefit the cemetery. The sale proceeds, net of necessary costs incurred, must be deposited into the permanent maintenance fund.

The agreement provides that Regeneron will pay closing costs and fees, up to \$697,000 for the new building, and a temporary license for use of land during construction.

As to the major renovation, Mr. Vanderbles questioned whether we have received all engineering plans. Mr. Breen stated that he does not believe we have a complete set of stamped plans.

After discussion, motion was made, seconded, and unanimously adopted approving the land sales and directing the cemetery to deposit \$514,000 in proceeds into its permanent maintenance fund, and approving the major alteration, subject to receipt of stamped plans and all local permits.

22-01-K-12 38-049 West Monroe Cemetery Ass'n—Notice of Proposed Penalty

Mr. Polishook reported that the Division had issued a notice of proposed penalty in connection with the cemetery's purchase of land without Board approval but had received no objection from the cemetery, and would be imposing a penalty of \$500.

Mr. Pattison asked the Division to work with cemeteries, NYSAC, and others to try to ensure that cemeteries are asking for permission and not forgiveness.

Public Comment

David Fleming, Featherstonhaugh, Wiley & Clyne, LLP, for the New York State Association of Cemeteries, stated that NYSAC is happy to work with the Division and Board to publicize the need to get Board approval. With regard to the regulations, these come out of NYSAC's effort to obtain legislation concerning abandonment. The legislation, vetoed by the previous Governor, would have been more far reaching. He thanked the Division and counsel for working with NYSAC on the regulations but stated that NYSAC was not 100 percent satisfied with the final version.

Exempt Portion of the Meeting

Mr. Vanderbles stated that the Board should move into a meeting exempt under to the Public Officers Law for conferring with counsel and receiving advice concerning possible litigation.

Motion was made, seconded, and unanimously adopted moving the meeting into a meeting that is exempt for purposes of conferring with counsel and receiving advice concerning possible litigation.

No action was taken during that portion of the meeting.

Adjournment

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

The meeting adjourned at 12:22p.m.

The next Board meeting is scheduled for February 8, 2022 at 10:30 AM.