

DIVISION OF CEMETERIES

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ACTING COMMISSIONER OF HEALTH

TO: NEW YORK STATE CEMETERY BOARD

FROM: LEWIS A. POLISHOOK, Director

CC: ROBERT VANDERBLES, Office of General Counsel

SUBJECT: REPORT ON AT-RISK CEMETERIES

DATE: JANUARY 6, 2023

The Board's 2022 abandonment regulations provide that the Division of Cemeteries (the Division) "may at any time determine that a cemetery is at risk of abandonment and, together with the cemetery, take the following steps, as appropriate, to avoid abandonment" (19 NYCRR § 202.3(a)), and list various steps, including meeting with the cemetery's board and lot owners, local officials, and other cemeteries, and performing audits and inspections, to help avoid abandonment. The regulations also provide that, "[a]t least quarterly, the division shall report to the board any actions taken pursuant" to that section. Id. § 202.3(g).

This is the Division's first report in 2023 pursuant to those rules. As it did last year, the Division has included both cemeteries at imminent risk of not having a board or sufficient funds to operate and those where the Division has, in essence, performed an early intervention to lessen the risk of future abandonment during 2022; we will eliminate cemeteries "saved" in 2022 from our next report. The inclusion of a cemetery in this list does not necessarily mean that it will shortly run out of funds or have no board members.

Cemeteries At Risk of Abandonment

Pleasant Valley, No. 05-035 (Craig/ Forezzi)

We facilitated a board meeting of this cemetery on August 24, 2021, to elect new board members pending a lot owners' meeting, and worked with the Town to achieve that result. After having no success in reorganization or adding new people to the board, the cemetery held a properly-advertised special meeting of lot owners on October 29, 2021. Several board members resigned, and the rest expressed unwillingness to continue operations. We began drafting a determination that the cemetery is abandoned but discovered previously unknown bank accounts and loans. We have prepared a draft report on the cemetery's finances and counsel is reviewing it to determine whether the cemetery meets the legal definition in Town Law section 291. The Town has sought abandonment funds for the cemetery and we are reviewing those requests so that, if the cemetery is deemed to fall under Town Law 291, we will be able to act quickly in determining which of the items constitute compensable "maintenance" within the meaning of N-PCL section 1507(h).

Willow Brook Park, No. 07-061 (Craig)

This cemetery is located in the City of Dunkirk and is 17 acres. The Superintendent, who currently does everything at the cemetery, has indicated that he is close to retirement. The board is concerned about their ability to continue after he retires. We have put them in touch with city officials and have recommended that they speak with solvent cemeteries in the general area about a possible combination. The board members still have not followed up on our suggestions (we have been working with the same board since 2015 concerning these matters).

East Portville (05-008) (Stanton & Seelman)

We worked with this cemetery to elect new board members in 2020. However, in early 2022 one board member reported that there are issues between the board members. Division staff responded to reports of dysfunction on the board and advised all parties of the proper method of noticing board meetings. To date the Division has received no further complaints from the board.

Sandusky (05-038 (Catena/ Crane)

This cemetery's Secretary/ Treasurer called Michael Catena and informed him that the cemetery does not have sufficient funds to cover expense for the coming year and would like to resign. The officer states that the cemetery has not approached the town about municipal assistance but indicates that the town is willing to take over the cemetery. The cemetery has noticed a special lot owners meeting for January 21, 2023.

Afton Glenwood, No. 09-001 (Stanton)

A cemetery employee contacted the Division in March 2022, stating that the cemetery could not meet its payroll and was in danger of abandonment. We spoke with the cemetery's treasurer, who stated that they had cut back on their maintenance but were not in imminent danger of abandonment. Division accountants will continue provide technical assistance to the cemetery on managing expenses and evaluate whether wages and stipends are appropriate.

Union Cemetery of Hyde Park, No. 14-038 (Breen/ Forezzi)

The Town of Hyde Park voted to accept the conveyance of this cemetery in March 2021, but it is unclear whether the cemetery's own board voted to convey the cemetery to the town. Neither the Town nor the cemetery was able to identify new potential board members. We initially thought this was a voluntary conveyance, but now that the town seeks abandonment funds we are reviewing the transaction to see whether we can determine that the cemetery was abandoned or conveyed. We are still reviewing records provided by the Town and previous cemetery officials.

Mount Hope (Ebenezer), No. 15-018 (Craig)

On April 25, 2022, the Vice President of Ebenezer Cemetery in the town of West Seneca contacted the Division. The board is wondering what the next steps are when the Eiss family—members of which have served on the board and as superintendent for many years--retire. Additionally, the cemetery is running out of money.

Division staff met with the cemetery board on June 21, 2022, and answered their questions regarding identifying and electing new board members, the superintendent, and the assistant superintendent. They also sought guidance on updating their by-laws. The cemetery has funds to operate for at most six months.

We contacted the town of West Seneca Supervisor to advise of the situation and asked two local funeral directors for assistance in finding board members. Both funeral directors contacted Forest Lawn in Buffalo and Craig Wolcott, its Interim President, who advised that Forest Lawn are interested in discussing the possibility of a merger with the cemetery board. One of the funeral directors found an additional three people willing to sit on the board and is himself willing to serve as a board member.

The current board met with the Town Supervisor of West Seneca and Division staff. The cemetery board requested assistance from the Town under General Municipal Law 165-a. The supervisor was amenable to aiding and working with this board and the new members until they can get on their feet or complete a merger.

Maplecrest Cemetery, No. 20-033 (Breen/ LoBiondo)

This cemetery has not filed annual reports in several years. When we called them in December 2022 about the status of their filings, a board member stated that the cemetery had been turned over to the Town several years ago. We never determined that the cemetery is abandoned. We are preparing an audit report and seeing if a special lot owners meeting is possible.

Temple Hill, No. 26-029 (Craig)

This cemetery is struggling financially. We held a zoom call on April 14, 2021, with the town supervisor and cemetery board members to seek assistance under General Municipal Law section 165-a. The cemetery has an outstanding PM deficit, and the cemetery board feels that if this deficit could be forgiven, the cemetery can continue to operate. The Town agreed to assign the Town Attorney to work on the application. At the end of 2021, the cemetery reported that it had raised \$20,000 in its annual fund drive. The application for the PM forgiveness is in the hands of the Town Attorney; so far, there is no progress on it.

Sandy Creek, No. 37-013 (Craig)

This Cemetery asked the Division for assistance in reorganizing (identifying new board members and/ or sources of funds) in September 2020. We contacted the Supervisor of the Town of Murray to notify him of the situation and ask for assistance in finding people to serve on the cemetery board. With the Division's assistance the cemetery held a successful lot owners' meeting on January 14, 2021 and elected new directors. The cemetery held its annual meeting on April 19, 2021, and elected new directors. On July 11, 2022, the cemetery's board president notified the Division that two of the cemetery's three board members would resign as of December 31, 2022, leaving only the Town Clerk, who is the treasurer. After speaking with the board president and the Town Supervisor, the cemetery will hold another special lot owners' meeting to try to elect new board members again.

Transit Rural, No 37-015 (Craig)

On March 25, 2022, we received an email from the cemetery treasurer that the cemetery is running out of funds and wants to turn the cemetery over to the Town of Murray. We explained that the cemetery should first try to seek new board members and sources of funds. We reached out to the Town Supervisor and explained the need for a special meeting and the possibility of continued operation. To date, the cemetery's board members have neither resigned nor noticed a special meeting of lot owners to elect directors.

Kelly, No. 40-007 (Young)

The cemetery has very little activity and limited funds (≈\$45,000 of which \$25,000 is restricted PM). The cemetery operates at a \$4,000-\$5,000 loss each year. The cemetery has been in communication with the Town of Carmel regarding the eventuality of the cemetery becoming the

responsibility of the Town since 2009. The town has resisted, stating there is an issue with the property's title as a portion of the land is held by an adjacent church. The cemetery is working on scheduling a meeting with the town.

Arcade Rural, No. 61-001 (Catena)

On January 4, 2022, a small retaining wall within the cemetery collapsed. The cemetery is concerned that graves could be at risk, but when we visited the cemetery on January 5 that did not appear to be the case. The Town Engineer will look at the site on January 7; the Town may be willing to offer assistance.

A special lot owners meeting is scheduled for January 26, 2023.

Warsaw, No. 61-033 (Catena)

Warsaw Cemetery is thirty acres and is located in the Town of Warsaw, Wyoming County. In 2020, the cemetery reported eighteen interments, seven being cremains. Forest Lawn in Buffalo approached this cemetery about a possible merger, but the Warsaw board decided not to merge. The Board intends to resign effective December 31, 2022. The cemetery lacks unrestricted operating funds; it reports having taken \$34,000 from its permanent maintenance fund to pay for mowing, without first seeking court approval. The cemetery has scheduled a special lot owners meeting for September 28th, 2022, to elect new directors. Unfortunately, no lot owners other than cemetery board members in one town Council person attended the meeting. It should be noted that the entire town board did attend the meeting. This current board has been serving for seven years after volunteering at previous special lot owners meeting to attempt to save the cemetery. Despite of their efforts there was no improvement need ability to gain volunteers or improve the financial outlook of the cemetery. There were five lot owners in attendance owning a total of six deeds the vote to abandon was 6-0.

Cemeteries Where Division Intervention Has Avoided Abandonment

Canaseraga, No. 02-008 (Catena)

Without first contacting the Division, this cemetery handed the Town a resolution stating its intent to abandon the cemetery to the Town. The Town is willing to take over the cemetery. The cemetery reported as of May 16, 2022, that it is down to only \$2,777.64 in general funds and the board wants to retire. We worked with the cemetery and the town to help the cemetery scheduled a lot owners meeting on August 9, 2022, to see whether it is possible to identify additional trustees and resources to allow for continued operation. The cemetery was reorganized successfully adding three new board members and with the President Vice President and a Trustee from the current board willing to stay on. The three people who agreed to join the board were alerted by a family member, living in Denver, who saw a social media post about the possible abandonment cemetery and contacted local family members. The plan is over the winter for the Division to provide training as needed for the new board members. Cindi Craig, Charles Crane, and Michael Catena had a follow up meeting/Cemetery 101 with the new board on November 28, 2022, the new board seems to be coming together well and the Division will continue to provide support as needed. Next goal is to try and get a good turnout at the next annual meeting to recruit additional board members.

Liberty Park, No. 05-021 (Catena)

This cemetery has reached out to the Division about the possibility of the Town assuming responsibility for the cemetery, either by conveyance or abandonment. After the Division informed the Cemetery's board that they should schedule a lot owners' meeting to consider

alternatives to abandonment, the cemetery's board reconsidered and will continue operating as an independent public not-for-profit cemetery.

Alden Union 15-064 (Craig)

We worked with this cemetery board to elect new board members at a meeting on October 20, 2020. The person who sells and lays out the graves needs to be replaced as she can no longer get to the cemetery during the winter months; the cemetery is searching for a person to fill that position.

Reformed Church, No. 22-032 (Seelman)

The sole remaining board member notified the Division that the president and caretaker had both died in the previous year and that she could not operate the cemetery by herself. She stated that she intended to turn the cemetery over to the Town of Columbia. The Division asked her to notice a lot owners meeting to see if there was interest in reorganizing the cemetery. A lot owners' meeting was held at the Town of Columbia offices and was attended by 21 lot owners. Five new trustees were elected; they came up with a plan to continue operations. The board member who had initially notified the Division decided to remain in the board as long as she had a full board to assist in operating the cemetery.

Bear Ridge, No. 32-002 (Catena)

This cemetery reached out to the Town of Pendleton about the Town taking over operations; the Town in turn contacted the Division on June 6, 2022. Bear Ridge has been unable to find new board members and the current board cannot continue because of their age and health issues. The Town is receptive to taking over the Cemetery but does not wish to do so voluntarily and wants Bear Ridge to go through the legal process of attempting to avoid abandonment. We attended a special lot owner meeting on October 8, 2022; the lot owners elected new directors and the cemetery is at least for now continuing to operate as a public not-for-profit cemetery.

Hartland Central, No. 32-010 (Levin, Catena)

The cemetery board held a meeting with members of the Division to help identify ways to reduce its spending to avoid abandonment to the town. The board acted upon the suggestions made by the Division to successfully reduce spending and eliminate expenses to avoid abandonment to the town due to lack of funds. The division plans to work with the cemetery over the winter preparing for the spring annual meeting with the goal of increasing attendance in securing new board members.

Kirkland, No. 33-029 (Seelman)

The cemetery is low on funds and has not been successful in getting assistance from the Town of Kirkland. We attended a lot owners' meeting in June 2022 and discussed ways to increase funds and reduce expenses; the board and lot owners want to keep the cemetery operating as a public not-for-profit cemetery.

New Forest, No. 33-036 (Polishook/ Seelman/ Forezzi)

This cemetery has struggled financially for a long time. In early 2020, its active board members announced their retirement. With technical assistance from the Division, the cemetery held a lot owners' meeting on July 2, 2020, and elected a new board. This board concluded that the only way forward for the cemetery was merger with Forest Lawn in Buffalo. Forest Lawn, in turn, refused to consider a merger unless it was able to get abandonment funds for the merger and

wipe out New Forest's PM deficit. This year Assemblywoman Buttenschon introduced legislation to allow for both things but it did not pass both houses in identical form before the end of session. We met with community leaders and groups and local officials on July 12. The outgoing noticed a meeting for August 5 to elect a new board. We facilitated this meeting, at which the lot owners elected six new board members who are anxious to improve cemetery operations. We continue to monitor the situation.

Pompey Hill, No. 34-041

This cemetery was down to one trustee who could not continue. Meeting was advertised and well attended, the lot owners elected seven trustees to operate the cemetery and the Town of Pompey offered to assist in getting this cemetery back up running. Michael Seelman, Michael Catena, and Cynthia Craig met with the cemetery's president and superintendent on December 13, 2022, and spoke with the president and superintendent. We discovered that cemetery had not filed burial permits with the local registrar and explained what the cemetery is supposed to do with respect to completing and filing permits and issuing body delivery receipts.

Port Gibson Rural, No. 35-027 (Catena)

On May 5, 2022, the Division received a fax from the Secretary of Port Gibson Rural Cemetery, looking for guidance on the steps to "dissolve" the Cemetery. Port Gibson is a three-acre rural cemetery located in the Town of Port Gibson, Ontario County with around a half-acre unsold. Port Gibson reports that in 2021 it had eleven interments, seven of those being cremains. Port Gibson's caretaker has retired, and the cemetery is having problems hiring a replacement. The Town has at times assisted with mowing. All board members plan to retire soon as they feel they are no longer able to perform their duties because of their age. The Cemetery was resistant to having a lot owners meeting to try to elect a new board. However, after several conversations, the cemetery agreed to schedule a lot owners' meeting for August 13, 2022, to discuss the cemetery's future and, hopefully, elect a new board. The Town Supervisor is supposed to attend the meeting. The special lot owners meeting was very successful getting lot owners to turnout. The current board put in a good effort to drive attendance by placing flyers around town and making social media posts. Your hard work was rewarded with 13 new potential board members with two current board members staying on. The current Treasurer Annette Yost has agreed to stay on as well in an advisory role to the new treasure.

Maple Grove of North Lawrence, No. 45-040

Cemetery was down to three trustees that are all related and experiencing health problems, president and treasurer are going to step down in spring. Meeting was coordinated with the Town of Lawrence and Seelman attended remotely due to weather. Lot owners voted to reorganize the cemetery with the assistance of the Town. The annual lot owner's meeting will be held in April and an election will take place then.

Corinth Rural, No. 46-008 (Young, Breen)

The remaining board members resigned at the end of July 2022. The town has been taking care of the cemetery since. The town has been providing significant financial support to the cemetery for many years. We attended a meeting in October with the town and prospective new board members. The new board members are working on getting the paperwork in order and continues to work with the town to ensure continued operations. We continue to provide guidance and anticipate another meeting with the new treasurer early in 2023.

Ridge Road, No. 50-012 (Seelman)

This cemetery had no activity and limited funds (~\$23,000, of which ~\$21,000 is restricted). The president reached out to the Division for assistance, stating that the cemetery only had two

board members remaining and had stopped selling graves in 2000. The Division met with the president and discovered that no annual meeting had been held for several years. The board noticed and held a meeting; the lot owners elected two additional board members. The cemetery has since identified vacant areas where graves could be sold, revised its by-laws and rules and regulations, and continues to hold trustee meetings.

Coopers Chapel Knoll, No. 51-055 (Stanton)

Several board members at this cemetery did not want to continue in their current positions; we provided technical assistance during a lot owners' meeting in June 2022 and the cemetery elected new board members, thereby avoiding abandonment.

West Middlebury, No. 61-034 (Craig)

Two longstanding board members of this cemetery resigned and moved to Florida. The Division intervened and worked with the remaining board members to set up a special meeting in June 2021. The lot owners elected a new Board; the cemetery continues to operate as a public not-for-profit cemetery. On June 27, 2022, Michael Catena and Cynthia Craig provided a Cemetery 101 session to the board members.