

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
SECRETARY OF STATE
CHAIR

LETITIA JAMES
ATTORNEY GENERAL

JAMES V. McDONALD, M.D., M.P.H.
ACTING COMMISSIONER OF HEALTH

February 7, 2023

By Email

Hon. Annette Parker
Supervisor, Town of Olean
2634 Route 16 North
Olean, New York 14760

Re: Pleasant Valley Cemetery, No. 05-035: Determination of Abandonment

Dear Supervisor Parker:

As is explained in greater detail below, Pleasant Valley Cemetery Association (the Cemetery) in the Town of Olean, Cattaraugus County, is no longer controlled by a board and there exists no special fund or endowment sufficient for its care. Consequently, pursuant to 19 NYCRR § 202.5, the Division of Cemeteries (the Division) has determined that the Cemetery is abandoned within the meaning of Town Law section 291.

ANALYSIS UNDER 19 NYCRR Part 202

The name and address of the cemetery corporation and contact information for directors and officers of the cemetery corporation (19 NYCRR § 202.5(b)(1)):

Pleasant Valley Cemetery Association is located at 2871 New York Route 16 North, Olean, New York 14760. The names and contact information for the officers and directors appears in Exhibit A to this memorandum; we will redact the contact information from the publicly-shared version to protect personal information.

A description of the standard for determining that a cemetery is deemed abandoned (19 NYCRR § 202.5(b)(2)):

Town Law section 291 provides that:

the town board of any town must also provide for the removal of grass and weeds from all cemeteries, other than private burial grounds, which are abandoned or not controlled by any existing board or body and for the care of which there exists no special fund or endowment.

A description of the factors that led to the determination of abandonment (19 NYCRR § 202.5(b)(3)):

Despite multiple special lot owners' meetings and repeated efforts, coordinated with officials of the Town of Olean, it has proven impossible to identify officers or directors willing to continue operating the Cemetery, and its officers and directors have informally or de facto resigned (see below).

The Cemetery also lacks a sufficient "special fund or endowment" from which to fund operations. Based solely on unrestricted funds (general fund and income on its permanent maintenance fund) available to the Cemetery, and assuming no new grave sales or interment or foundation revenue

(and also assuming no new selling, interment, or foundation-related expenses), the Division has calculated (Exhibit B) how long the Cemetery could continue operations. Based on three-year averages for the period from 2018-20 (the Cemetery never filed an annual report for 2021, and the Town operated it for all of 2022), we believe the Cemetery would run out of operating funds in approximately two years.

A description of any efforts taken to avoid abandonment and the results of those efforts (19 NYCRR § 202.5(b)(4)):

We first learned that the Cemetery was at risk of abandonment in June 2021, when its then-President, Brad Spink (a funeral director who also operates a grandfathered standalone crematory in the City of Olean) contacted Investigator Cynthia Craig and informed her that the active members of the current board no longer wanted to continue to serve. Mr. Spink discussed various options—merger with another cemetery, recruitment of new board members, and the Town taking responsibility for the maintenance of the Cemetery, either via conveyance or because the Cemetery might become abandoned. Only one person other than board members had attended the June 7, 2021, annual lot owners meeting.

Following up on this call, Division staff met with the Cemetery's board (only three out of seven of whom—Deborah Mohr, Lisa Oakes, and Brad Spink—attended) and the Town of Olean Supervisor Highway Superintendent on August 24, 2021. A former Board member also attended. The board members who had done most of the work running the Cemetery all indicated that they wanted to resign; Ms. Oakes and Mr. Spink indicated that they were willing to stay on as officers only to facilitate a transition to Town maintenance of the Cemetery; Ms. Mohr was unwilling to remain on the board.

At the August 24, 2021, meeting, it was decided that the board would write an educational article for the local newspaper and call for people interested to come forward to serve on the board; the Town officials also agreed to post this article on the Town website. The Town officials said they would talk to some community people to see if they can generate some interest (note that this effort occurred before the adoption of 19 NYCRR § 202.3, spelling out steps for giving notice to interested parties and attempting to identify new trustees). The Town indicated that its preference was to identify new board members and would provide assistance to the new board, as needed.

The Cemetery noticed and held a special lot owners' meeting on October 29, 2021. Thirty-three people attended this meeting. Of the attendees, five of the eight board members—Mark Brooks, Susan Dutton, Dana Oakes, Lisa Oakes, and Brad Spink—were there, along with 15 lot owners and 13 individuals who are not lot owners (including Division staff and a Town official). The meeting was properly noticed. After discussion, the board members indicated that they intended to resign after the conclusion of the meeting (we do not have any formal letters of resignation from them or from Mr. King, Ms. Mohr, or Erica Oakes, who did not attend any of the meetings with the Division); only two board members—Ms. Oakes and Mr. Spink—were willing to continue to serve as officers or directors for a short period of time to facilitate a transition to Town maintenance.

Because there were no individuals present who were willing to stand for election as directors, and the existing board members and the representatives from the Town stated they had been unable to find persons so interested, and because all board members had effectively resigned, informally (in the case of the board members in attendance and Ms. Mohr) or de facto (in the case of the remaining two board members), there was no longer a controlling board at the conclusion of this meeting. Consequently, the consensus among attendees was that the Town would assume Cemetery operations. There was neither a vote to convey the Cemetery to the Town nor a determination that the Cemetery was abandoned. Instead, those present at the meeting purported to vote to abandon the Cemetery to the Town, after which all officers and directors present at the meeting informally resigned. We do not have written resignations from anyone.

A list of financial accounts showing the name of the entity with whom the account is maintained; the type of account; the account number; and the last known balance (19 NYCRR § 202.5(b)(5)):

The following table lists the balances on the Cemetery's various funds and the dates as of which the values were accurate. Because the Cemetery did not prepare a final annual report for independent operations for 2021, the dates are not all consistent. However, we do not believe there is significant variation in the balances of the restricted funds.

	<u>Market</u>	<u>Cost</u>	<u>As Of</u>
Permanent Maintenance	124,157.55	124,157.55	10/20/2022
Special Trusts	10,413.92	9,785.68	5/3/2022
General Fund	<u>48,673.29</u>	<u>48,673.29</u>	6/1/2022
TOTAL	183,244.76	182,616.52	
Loan Balance (for purchase of lawn equipment)	<u>(17,106.48)</u>	<u>(17,106.48)</u>	6/1/2022
Total after Liability	166,138.28	165,510.04	

A breakdown of these accounts by type of account and account number can be found at Exhibit C to this memorandum.

A statement that the funds in the account are the property of the town, unless the determination of abandonment is overturned, and that the town should seek guidance from the Office of the New York State Comptroller regarding the use of such funds (19 NYCRR § 205(b)(6)):

Upon abandonment, the funds in the Cemetery's general and permanent maintenance funds will be the property of the Town (unless the Board's determination is overturned). The Division does not regulate municipalities' use of cemetery funds. The Town should consult the Office of the New York State Comptroller concerning the permissible uses of these funds. See also 1963 Opinions of the State Comptroller No. 63-0374.

A description of the other assets and liabilities of the cemetery (19 NYCRR § 202.5(b)(7)):

The Cemetery has approximately four acres remaining that are developed and unsold. There is also a building on the Cemetery's grounds, with various hand tools, a Husqvarna tractor and lawn mower; foundation forms, weed trimmer, computer, filing cabinet, time clock, and a fuel tank. The computer and a filing cabinet have already been moved to the Town Hall.

A statement that the town is not obligated to take title to the real property of the abandoned cemetery (19 NYCRR § 202.5(b)(8)):

The Town of Olean is not obligated to take title to the real property of the Cemetery.

OTHER INFORMATION

Financial Position

As Exhibit D demonstrates, if it were possible to identify people willing to serve as officers and directors and thereby continue cemetery operations as a public not-for-profit cemetery, the Cemetery would clearly be viable. At market, its total assets increased by nine percent from 2017-21.

Ongoing Operations

The Town has continued operating the Cemetery, including selling graves and performing grave openings.

Conclusion

Despite diligent efforts by the Division, local officials, and the Cemetery's own board, it has not been possible to identify people who would continue to operate the Cemetery actively to replace the directors who had, informally or de facto, resigned. In the last couple of years, most of the work of cemetery operations were done by two or three of the board members, none of whom were willing to continue. Likewise, as shown above, the Cemetery lacks unrestricted funds to continue operating on a "maintenance only" basis for more than two years. Had the Town not assumed responsibility in October 2021, the Cemetery would have quickly found itself abandoned in the sense of being completely unmaintained, with no one to perform openings and no ongoing maintenance.

Consequently, the Division hereby determines that this Cemetery is abandoned within the meaning of Town Law section 291 because it is "not controlled by any existing board or body and for the care of which there exists no special fund or endowment" to generate income sufficient to cover minimal maintenance expenses.

The Division will present this determination to the New York State Cemetery Board at its February 14, 2023, meeting. You are hereby invited to attend, either in person or via WebEx.

The Division will not address here the Town's application for abandonment funds; the Division will present that application to the Board at a subsequent meeting if the Board confirms the Division's determination of abandonment.

Very truly yours,



Lewis A. Polishook
Director

cc: Former Officers and Directors of Pleasant Valley Cemetery (Per Exhibit A)

EXHIBIT A

05-035 Pleasant Valley: Officers and Directors

Name	Position
Brooks, Mark	Director
Dutton, Susan	Director
King, Randy	Vice President
Mohr, Deborah	Director
Oakes, Dana	Superintendent
Oakes, Erica	Secretary
Oakes, Lisa	Treasurer
Spink, Brad	President

Contact Info



EXHIBIT B

05035 Pleasant Valley Cemetery Association

	From Cemetery Reports		
	2020	2019	2018
Income (Receipts)			
Lot and Grave Sales	\$8,100.00	\$9,540.00	\$9,400.00
Interment Income	\$27,580.00	\$25,045.00	\$19,575.00
Foundations	\$6,205.50	\$4,860.00	\$6,232.50
Div & Int (deposited in reporting year)	\$0.00	\$0.00	\$56.66
Other: Allocations	\$1,445.00	\$1,020.00	\$0.00
Other: Tractor Sale	\$0.00	\$10,000.00	\$0.00
Other: State Fee	\$0.00	\$220.00	\$0.00
Other: Donations	\$0.00	\$75.00	\$5,150.00
	<u>\$43,330.50</u>	<u>\$50,760.00</u>	<u>\$40,414.16</u>
Expenses (Disbursements)			
Wages	\$15,324.21	\$16,573.99	\$17,438.50
Salaries of Officers	\$0.00	\$800.00	\$800.00
Contractor - Grave Opening	\$0.00	\$0.00	\$2,350.00
Contractor - Maintenance & Mowing	\$0.00	\$0.00	\$5,682.68
Supplies, repairs, equipment	\$3,770.92	\$11,099.42	\$2,372.31
Vandalism & Assessment fees	\$0.00	\$0.00	\$920.00
Transfer to PM fund from lot sales	\$820.00	\$0.00	\$940.00
Transfer to PM fund from interment income	\$1,190.00	\$0.00	\$805.00
Insurance	\$3,336.04	\$3,723.00	\$3,952.96
Other: Office Expenses	\$4,529.90	\$0.00	\$662.09
Other: Payroll taxes	\$1,703.31	\$0.00	\$0.00
Other: Foundations	\$2,062.52	\$0.00	\$0.00
Other: Unspecified	\$0.00	\$340.60	\$0.00
Other: Rent	\$0.00	\$0.00	\$1,500.00
	<u>\$32,736.90</u>	<u>\$32,537.01</u>	<u>\$37,423.54</u>
Operating Surplus/(Deficit)	\$10,593.60	\$18,222.99	\$2,990.62
Dividends & Interest Earned (all)	\$3,073.50	\$2,612.34	\$56.66
Dividends & Interest Earned (PM only)	\$2,864.59	\$2,612.34	\$2,454.74
Acreage			
Developed - Sold	11		
Developed - Unsold	4		
Undeveloped	2		
	<u>17</u>		
Fund Balances 12/31/2021 (per audit)			
	<u>General Fund</u>	<u>PM Fund</u>	<u>Total Assets</u>
Value at cost	\$38,889.88	\$86,959.66	\$125,849.54
Market value		\$121,773.43	
Excess Income		\$34,813.77	
Permanent Maintenance Surplus/(Deficit) as of 12/31/21			
Cost value	\$86,959.66		
Liability	\$115,291.37		
PM Deficit	<u>-\$28,331.71</u>		
Excess income (market less cost value)	\$34,813.77		this income can be withdrawn and reinvested as principal to cover the PM deficit
Excess income, after transfer	\$6,482.06		

No new Activity	*assumes no new sales because, absent a board, no one will sell graves, and funeral homes will assume responsibility of remaining burials
\$0.00	
\$0.00	
\$0.00	
\$2,643.89	Div & Int from PM fund, 3-yr avg
\$0.00	
\$0.00	
\$0.00	
\$0.00	cannot be assumed
<u>\$2,643.89</u>	
\$0.00	
\$0.00	
\$0.00	
\$22,500.00	*assumes \$1.5k/acre x 15 developed acres (cemeteries in Cattaraugus County that we sampled range from \$600 to \$5,000 in maintenance costs per acre
\$574.76	assumes 10% of 3-year average for minor repairs
\$0.00	
\$0.00	
\$600.00	General liability, estimate
\$0.00	
\$0.00	
\$0.00	
\$0.00	
\$0.00	
<u>\$23,674.76</u>	
<u>-\$21,030.87</u>	Annual deficit for care & maintenance
\$38,889.88	Oper funds (GF) as of 12/31/21
1.85	yrs remaining

EXHIBIT C

Pleasant Valley Cemetery Ass'n, No. 03-035
Report of Accounts

Fund	Bank Name	Acct #	Statement Date	Type	Market Balance	Cost Balance	Principal	Status
Permanent Maintenance	Mass Mutual (from last audit)	xx [REDACTED]	10/20/2022	Mutual Fund	124157.55	86,959.66	115291.37	cost bal is as of 12/31/21 <i>PM deficit, balance was \$110,887.61 as of 12/31/17</i>
Special Trust - Kritzer for Liechti lot	Key Bank	xx [REDACTED]	7/1/22- 09/30/22	Investment	3190.51	2562.27	2000.00	Still open, sent ltr to KB requesting transfer to Town 11/21/22
Special Trust -Simpson for Williams plots	Community Bank NA	xx [REDACTED]	5/3/2022	CD	3523.90	3523.90	1250.00	closed 6/3/22 cx ck rec'd Simpson Trust was \$7048.97 on 12/31/04.
Special Trust -Mallery Flower Fund	Community Bank NA	xx [REDACTED]	5/3/2022	CD	1693.15	1693.15	1693.15	closed 6/3/22 cx ck rec'd Mallery Trust was \$3345.86 on 12/31/04.
Special Trust - Swart for Swart lot	Community Bank NA	xx [REDACTED]	5/3/2022	CD	2006.36	2006.36	2000.00	closed 6/3/22 cx ck rec'd
					10,413.92	9,785.68		
General Fund	Community Bank NA	xx [REDACTED]	6/1/2022	checking		27570.41		closed 3/28/22 cx ck rec'd incl's \$5032.80 gift from Cattaraugus Fdn
General Fund	Community Bank NA	xx [REDACTED]	6/1/2022	savings		8123.63		closed 3/28/22 cx ck rec'd
General Fund	Community Bank NA	xx [REDACTED]	6/1/2022	Investment		12979.25		closed 5/27/22 cx ck rec'd Bal. last audit 13,726.66 12/31/17
				Total GF		48,673.29		

Loan Community Bank NA xx [REDACTED] 6/1/2022 Loan 17,106.48 pys due 20th/mo, Town making payments
Orig. Loan Balance: \$34,740, Term: 60 mos, \$685.48/mo, 6.75%
Invoices from Burt Young Sales Center: 9/16/19, \$20,270 (of \$30,270 tractor purchase) and \$14,470 for mower; both paid using loan

Copies of Wills

3/13/1985 Guy Swart 2000 Net Income for care, maintenance, beautification, and preservation of the Swart lot
Ltr dated 9/6/1978 Kritzer Trust 2000 Income paid annually for perpetual care and preservation of Liechti family burial plot.
Will on file, 10/29/1940 Simpson Trust 1250 Income paid annually for PC, maint., and upkeep of Mr & Mrs Williams plots. Balance of any income after the care is provided can be used for general cemetery care, maint., and upkeep.

Copies of Checks Issued to Town of Olean

From	Date	Check#	Amount	Memo
Community Bank	6/3/2022	2832070	2006.36	CD close out xx6720, Swart Special Trust
Community Bank	6/3/2022	2832068	3523.90	CD close out xx0060
Community Bank	6/3/2022	2832067	1693.15	CD close out xx0061
Community Bank	5/27/2022	1105500	12979.25	closed GF investment acct xx7104
Community Bank	3/28/2022	2694371	8123.63	closed GF savings acct xx2444
Community Bank	3/28/2022	2694370	27570.41	closed GF checking xx1381
Cattaraugus Region Community Fdn.	5/2/2022	deposit slip	5032.80	10/20/22 letter from Fdn states these funds are unrestricted This was a grant payable directly to the Town for care of the cemetery.

Cemetery Surplus/Deficit per annual report

		DIV earned	
12595.80	2020	3073.50	
18222.94	2019	2612.34	
<u>4735.62</u>	2018	<u>2458.74</u>	
35554.36	Total Surplus since 2017	8144.58	
Total General Fund 2017		2021 \$ VAR	
26587.90		48673.29	22085.39
Total Assets 2017		2021 \$ VAR	
133655.27		145,418.63	11,763.36

EXHIBIT D

05-035, Pleasant Valley Cemetery Ass'n

Cemetery Surplus/Deficit per annual report	Year	DIV earned	
\$12,595.80		2020	\$3,073.50
\$18,222.94		2019	\$2,612.34
<u>\$4,735.62</u>		2018	<u>\$2,458.74</u>
\$35,554.36	Total Surplus since 2017		\$8,144.58

Total General Fund 2017	2021 \$ VAR	
\$26,587.90	\$0.00	-\$26,587.90

Total Assets 2017	2021 \$ VAR	
133655.27	\$11,647.53	-\$122,007.74