

DIVISION OF CEMETERIES

STATE OF NEW YORK
DEPARTMENT OF STATE
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ACTING COMMISSIONER OF HEALTH

TO: NEW YORK STATE CEMETERY BOARD

FROM: LEWS POLISHOOK, Director
KATHLEEN CHITTENDEN, Senior Accountant

CC: ROBERT VANDERBLES, Counsel

SUBJECT: HILLSIDE CEMETERY ASS'N, NO. 46-016

RE: Determination of Abandonment

DATE: JUNE 5, 2023

As is explained below, Hillside Cemetery Association (the Cemetery) in the Town of Burnt Hills, Saratoga County (The Town), 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)):

The Cemetery is located at 201 Kingsley Rd, Burnt Hills, New York 12027. At the time of abandonment, the Division believes that the Cemetery had no officers or directors.

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)):

The Cemetery has very few burials and lot sales. The Cemetery had \$1,300.00 in its General Fund. Given that the Cemetery's Permanent Maintenance Fund was minimal (see page 2) and held in a CD, it earned under \$5.00 per year. Based on costs at other local cemeteries, maintenance of this Cemetery, with approximately 2.8 developed acres, would cost between \$1,100 and \$4,400 per year. The Cemetery's general fund and PM income are clearly not enough to sustain cemetery operations and maintenance.

Furthermore, the Cemetery completely lacked a board to operate it. One of its three board members died in late 2020. A second board member told us that she was resigning and delivered Cemetery records to the Town in early 2021. We have been unable to reach the third board member.

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

We learned of the abandonment only after delivery of records to the Town. All of the events described above occurred before adoption of the Division’s regulation concerning special lot owners’ meetings before abandonment. We made no effort to try to hold a special meeting and recruit new officers and directors, but any such effort would have been futile here.

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 tables lists the balances of the Cemetery’s various funds found at the last Division field examination and the account balances as of the date the cemetery’s records were delivered to the town.

2016 Field Examination	<u>Market</u>	<u>Cost</u>	<u>As Of</u>
Permanent Maintenance	18,528.71	18,528.71	12/31/16
Special Trust	200.00	200.00	12/31/16
General Fund	<u>1086.19</u>	<u>1086.19</u>	12/31/16
TOTAL	19,814.90	19,814.90	12/31/16

2021 accounts delivered to the Town	<u>Market</u>	<u>Cost</u>	<u>As Of</u>
Permanent Maintenance	18,921.40	18,921.40	7/13/2021
General Fund	<u>1,347.98</u>	<u>1,347.98</u>	7/13/2021
TOTAL	20,269.38	20,269.38	7/13/2021

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 no developed areas available for sale. It is unclear whether the approximately 0.5 acres remaining are usable as burial space and, if they are, whether development of this land is commercially viable.

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 Burnt Hills is not obligated to take title to the real property of the Cemetery.

Ongoing Operations

The Town has continued operating the Cemetery, including selling graves, performing grave openings, and mowing the grounds in June, July and August 2021-2022.

Conclusion

The Cemetery does not have any directors serving on its board since one director passed away in 2020, another has been unreachable, and the third turned the Cemetery's records over to the Town and resigned. The Cemetery lacks sufficient unrestricted funds to continue operating on a "maintenance only" basis.

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.