

MINUTES

South Carolina Perpetual Care Cemetery Board

Board Meeting

10:00 a.m., August 20, 2003

Synergy Business Park

110 Centerview Drive, Kingstree Building, Room 108

Columbia, South Carolina

Randy Bryant, Assistant Deputy Director, called the meeting to order at 10:05 a.m.

Board members attending the meeting included: Andrew Cone, of Pickens; Roger Finch, of Honea Path; Russel Floyd, Jr., of Spartanburg; James W. Russ, of Conway; and Ray Visotski, of Aiken.

Thomas Johnson, of Charleston, was granted an excused absence.

Staff members participating included: Ronnie Blackmon, Inspector; Randall Bryant, Assistant Deputy Director; Sharon Dantzler, Deputy General Counsel, LLR-Office of General Counsel; Sandra Dickert, Administrative Assistant; Susan Duncan, Legislative Coordinator; Wendi Elrod, Administrative Specialist; Larry Hall, Investigator; Dwight Hayes, Administrator; Jimmy Knotts, Inspector; Raymond Lee, Investigator; Carol Paquet, Administrative Assistant; and Bill Whitby, Investigator.

Meeting Called to Order

Mr. Bryant announced that public notice of this meeting was properly posted at the S. C. Perpetual Care Cemetery Board office, Synergy Business Park, Kingstree Building, provided to all requesting persons, organizations, and news media in compliance with Section 30-4-80 of the South Carolina Freedom of Information Act. He noted that a quorum is present.

Pledge of Allegiance

All present recited the Pledge of Allegiance.

Assistant Deputy Director's Remarks, For Information - Randy Bryant

Responsibility of Cemetery Board and Introduction of Staff

Mr. Bryant briefed the Board members on the agency's responsibilities and the Engine Act and introduced staff to the members.

Board Members Responsibility - Sharon Dantzler

Ms. Dantzler briefed the members on their responsibilities as Board members.

Administrator's Remarks, For Information - Dwight Hayes

Election of Officers

Chairman

Mr. Bryant opened the floor for nominations for chairman.

Mr. Floyd nominated Mr. Russ as chairman. Mr. Finch seconded the nomination. Mr. Russ elected by acclamation.

Vice Chairman

Mr. Russ opened the floor for nominations for vice chairman.

Mr. Cone nominated Mr. Floyd for vice chairman. The nomination was seconded by Mr. Visotski. Mr. Floyd was elected vice chairman by acclamation.

Complaint Process - Larry Hall

Mr. Hall briefed the Board on the complaint process.

Administrative Process - Susan Duncan

Ms. Duncan briefed the Board on the administrative process for introducing legislation.

Annual Statement of Economic Interest Form

Mr. Hayes and Ms. Dickert briefed the Board on the Annual Statement of Economic Interest forms.

Discuss Other Board Meeting Dates

Mr. Hayes stated the Board should set Board meetings dates through 2004.

The Board scheduled the following dates for meetings in 2003 and 2004:

November 19, 2003 Room 107

February 18, 2004 Room 111

May 19, 2004 Room 111

August 18, 2004 Room 111

November 17, 2004 Room 107

The above meetings will begin at 10:00 a.m.

Recess

The Board recessed at 11:25 a.m. and returned to public session at 11:55 a.m.

Return to Public Session

Action Items

Unfinished Business

There was no unfinished business to be discussed during the August 20, 2003 meeting.

New Business - Dwight Hayes

1. License Fee Structure (see attachment # 1)

Mr. Hayes stated the general consensus from the industry is that the fees are too high and that the fees should not be set according to the size of the cemetery, but according

to the sales of the cemetery. He further stated there are cemeteries that may be 30 acres and only have approximately two acres developed. He indicated that these cemeteries might also have poor sales.

There was some discussion on cemetery acreage, revenue, the number of interments, sales figures and the expense of running this program. The Board asked that staff conduct a study on the acreage, the number of interments, and the sales revenues of each cemetery. Mr. Hayes stated staff could achieve this by sending a questionnaire with the renewal notices.

2. Issuance of Licenses

Mr. Hayes stated the statute requires that all facilities be required to be in compliance with providing all information and having an inspection prior to licensure. He further stated staff is proposing that licenses be issued contingent upon full compliance under the law as soon as possible or practical. He noted that staff is keeping track of all documentation already sent in or being sent in. He also stated that staff is not going to be able to visit all of the cemeteries prior to licensure. He indicated staff would need to know what they are dealing with.

MOTION

Mr. Visotski moved that staff grant the licenses contingent upon receipt of the required documentation. Mr. Floyd seconded the motion. Following discussion regarding plats, etc., the motion carried unanimously.

3. Questions for Alderwoods Group (see attachment # 2)

The letter from the Alderwoods Group is herewith attached (attachment 2) and hereby becomes a permanent part of this record. The questions referred to in these minutes may be found in this attachment.

Question #1 - Presales of Services, such as opening and closing, and the requirement that they be trusted.

Mr. Hayes stated he thinks the general scheme in most states is that services would be trusted. During the discussion on this question it was noted the statute is intentionally silent on this issue that the cemeteries do not have to do as funeral homes. It was noted that services are not included on the trusting requirement.

Question #2 - Net Income/Corpus of Care & Maintenance Fund

Mr. Hayes read into record part of Section 40-8-110(E), "Fees and other expenses of the trust fund may be paid from the corpus. To the extent the net income is not sufficient to pay the fees and other expenses, they must be paid by the cemetery company." Mr. Cone stated the word 'not' was left out in the statute.

The Board determined its interpretation would be that this would be a scrivener error in the legislation, which would have to be corrected. Ms. Dantzler stated if the error could be found at the Legislative Council, the council might be able to repair the error.

Question 3 - Net Income Defined (Does it include Capital Gains and Losses?)

It was determined that this would be a Board interpretation of the statute, however, Ms. Dantzler stated that it would be premature to interpret this issue until all of the facts have been received. She suggested the Board inform the Alderwoods Group that the Board expects the accounting of these trust funds to be according to the standard accounting practices and the division between corpus and income.

Question 4 - Preconstruction Withdrawals

It was noted that a new statute is now in effect that would pertain to this question.

4. Morning Glory Cemetery Trust Fund (see attachment # 3)

Mr. Hayes stated Douglas Neff, Assistant Vice President of Wachovia, has written a letter regarding a trust fund from Morning Glory Cemetery. The fund now has a deficit of \$2,048.54 and after several written and verbal communications with Reverend McKnight regarding the overdraft Wachovia would now like to resign as Trustee. He further stated he informed Mr. Neff that he would bring the matter before the Board. (The letter and all attachments are herewith attached at attachment #3 and hereby become a permanent part of this record.)

During discussion of this matter Ms. Dantzler stated that the Trust Agreement states that should Reverend McKnight not name a Trustee the monies must be turned over to the Resident Judge of Fifteenth Judicial Circuit. She noted that the Board's response would be for the bank to hand the funds over to the successor trustee and if there is not a successor trustee the Fifteenth Judicial Circuit is the appropriate place to place the funds.

The Board stated that viewing the cemetery and contacting the funeral directors in that area would tell staff what kind of business the cemetery is doing.

5. Transfer of Assets of Existing Cemeteries (see attachment # 4)

Jonathon Wolens, of Porter & Hedges, LLP, represents Mike W. Graham & Associates, L.L.C., which intends to purchase the assets of eight cemetery properties, to include two cemeteries, from Service Corporation International (SCT). The two cemeteries are Crestlawn Memorial Gardens, in Orangeburg and Belleville Memorial Gardens, in Orangeburg. Since the Board does not yet have a transfer application form or established the procedures for a change in ownership of an existing cemetery, Mr. Wolens is informing the Board its plan of action until such time a renewal application has been received by the two cemeteries in question. (This letter is herewith attached as attachment #4 and hereby becomes a permanent part of this record.)

Mr. Hayes questioned the members what the Board would require on the transfer of the trust fund of existing cemeteries.

A discussion ensued regarding the trust funds. It was noted that the Board would be making an inquiry regarding the corpus during the transfer of assets and the applicant must prove that he is in compliance with the statute. It was also noted the during the discussion that it would be appropriate to inform the law firm that there is not a transfer

application form, however, a filing is required at the time of the transaction and that the Board is concerned with the adequacy of the funding and that they should be prepared to make that showing.

6. Trade name that is accepted (see attachment # 5)

Mr. Hayes stated staff has received two applications from Stewart Enterprises, Inc. for two cemeteries with similar names. He further stated trade names are an issue in the funeral industry and that staff needed to know if the Board is concerned with trade names. (The two applications are herewith attached as attachments #5-A and #5-B and herewith become a permanent part of this record.)

The Board members indicated they have no problem with trade names being similar.

Lunch

The Board recessed for lunch at 12:45 p.m. and returned to public session at 2:13 p.m.

Return to Public Session

7. Attorney Certificate of Title (see attachment # 6)

Mr. Hayes stated Thomas Player, Jr., an attorney in Sumter, is asking the Board to waive the Title and Fee Simple on Hillside Memorial Park, a cemetery that has been in existence since 1953. (Mr. Player's letter is herewith attached as attachment #6 and is herewith becomes a permanent part of this record.)

A discussion ensued regarding mortgages on cemeteries.

MOTION

Mr. Visotski moved that the Board require Mr. Player comply with the law and that the Board not make an exception. Mr. Floyd seconded the motion.

8. List of Cemeteries in Noncompliance (see attachment # 7)

Mr. Hayes presented the members with a list of cemeteries in noncompliance with licenses.

The following cemeteries will receive cease and desist notices for noncompliance with licensure requirements:

Chester Memorial Park, Chester
Greenlawn Memorial Garden, Walterboro
Greenhaven, Woodhaven
Pinedale Memorial Gardens, Greenville
River Hills Community Cemetery, Lake Wylie
S.F. & K. Cemetery Association, N. Augusta
Twin City Memorial Gardens, N. Myrtle Beach

9. Select Committees (Legislative, Regulation, IRC)

The legislative and regulation committees were not formed during the August 20, 2003

meeting. The Board determined it would discuss the IRC appointee(s) in executive session.

Discussion Items

Can cemeteries have a person or corporation for the preneed trustee instead of a Bank or Trust officer?

Mr. Hayes asked the members if a cemetery could have an employee for a preneed merchandise fund instead of a bank or trust officer.

Mr. Floyd stated they intentionally did not want the merchandise fund to be a trust fund; they just wanted it as an account.

How should staff handle cemeteries with mortgages on them?

This matter was discussed earlier in the meeting.

How much time is adequate for cemeteries to submit remaining documentation?

After a brief discussion Mr. Hayes stated he would produce a priority list of the documents staff would need to include: a price list, a guideline of procedures regarding opening and closing, a pricelist, a policy on memorials (composition, materials, finish, what is acceptable and what is not), charges for the various types of monuments, and the policy on outside sales and installation. He indicated staff would be working on a determination on a reasonable policy for the installation of outside monuments.

Mr. Floyd questioned Mr. Hayes if staff would be contacting funeral homes regarding unidentified cemeteries. Mr. Hayes replied he would be sending a list of area cemeteries to the funeral homes in the same region and ask that the funeral homes notify him of cemeteries not on the list.

Mr. Floyd questioned staff how the Board members are protected. Ms. Dantzler explained how the members are protected under the State Tort Claims Act as long as they are within the scope of the practice act and their duties.

Mr. Visotski questioned how the Board would fulfill Mr. Kirkpatrick's position. Mr. Hayes stated the Governor's Office has already been notified of Mr. Kirkpatrick's death and that the agency is waiting for the appointment to be made.

Public Comments

There were no public comments made during the August 20, 2003 meeting.

Executive Session (To Consider Disciplinary Matters and/or Seek Legal Advice)

MOTION

Mr. Cone moved the Board enter executive session to discuss a personnel issue. Mr. Floyd seconded the motion, which carried unanimously.

Return to Public Session to Report on Executive Session

MOTION

Mr. Floyd made a motion, seconded by Mr. Cone and unanimously carried, that the Board

return to public session.

Mr. Russ noted for the record that no motions were made and no votes were taken during executive session.

MOTION

Mr. Floyd moved that an invitation be extended to Mr. Willard Rainey and Mr. Rick Riggins to serve on the IRC. Mr. Cone seconded the motion, which carried unanimously.

Adjournment

There being no further business to be discussed at this time, Mr. Visotski made a motion that the meeting be adjourned. The motion was seconded by Mr. Cone and unanimously carried.

The August 20, 2003 meeting adjourned at 3:27 p.m.