

MINUTES

South Carolina Perpetual Care Cemetery Board

Board Meeting

10:00 a.m., February 18, 2004

Synergy Business Park

110 Centerview Drive, Kingstree Building, Room 107

Columbia, South Carolina

Mr. Russ, Chairman, called the meeting to order at 10:00 a.m.

Board members attending the meeting included: John E. Bartus, of Mauldin, Roger Finch, of Honea Path; Russel Floyd, Jr., of Spartanburg; Thomas Johnson, of Charleston; James W. Russ, of Conway; and Ray Visotski, of Aiken.

Andrew Cone, of Pickens, was granted an excused absence.

Staff members participating included: Wendi Elrod, Administrative Specialist; Dwight Hayes, Administrator; Bill Whitby, Investigator; Ronnie Blackmon, Inspector.

Members of the public participating included: Rick Black, of Memory Gardens in Clemson; Rick Riggins, of Lancaster Memorial Park in Lancaster; Tim White and Rick Pirkl, both with Port Elsewhere.

Meeting Called to Order

Mr. Russ 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.

Chairman

Mr. Russ started with welcoming Mr. Johnson to the board.

Pledge of Allegiance

All present recited the Pledge of Allegiance.

Approval of Minutes for the November 19, 2003 Meeting

Mr. Visotski stated that on page two, item number 2 should be eighty-five and page three, item number 3 should be too high. Mr. Russ indicated that on page one, under Administrator's Remarks, desist order should be desist orders, page two, first paragraph should be sales not sells, page three, item number 3 should be too high not to high, item number 5 should be this not his and item number 6 sale not sell.

Administrator's Remarks, For Information - Dwight Hayes

1. Mr. Hayes informed the Board that we have been working on a preliminary Maintenance and Care Trust Fund reporting form.

Mr. Hayes suggested that the board members have their accountant to review the form so we may get feed back on how difficult it is to obtain the information and if there is anything that should be added.

Mr. Floyd suggested that maybe include the fiscal year on the form.

Mr. Visotski suggested that the form remain in simple terms so that smaller cemeteries may fill out the form with out having to hire a CPA.

2. We have also been working on a preliminary rough draft inspection form.

Mr. Finch stated that he had received a call on who is responsible for the repair of a memorial or monument. Mr. Floyd stated that there could be several different parties that could be responsible for the memorial or monument being damaged or knocked over, the Cemetery, Vault Company, Funeral Home or the customer. The cemetery equipment, the vault company equipment or the funeral home equipment could be responsible for causing the damage so who is responsible for the repair. In most cases the cemetery will take responsibility unless there is evidence that the cemetery is not responsible for the damage.

Mr. Hayes explained each item on the inspection form and gave a copy to the board members for them to review. Mr. Floyd suggested change number 1 to grass appears to be cut regularly.

Mr. Visotski suggested that beside each item there be a line for comments.

Mr. Johnson inquired what would happen if someone failed the inspection. Mr. Hayes stated that the cemetery will be given a list of things that are wrong and the will be given 30 to 60 days to correct those areas for a re-inspection. If they do not comply then the board will evaluate those cases.

3. We also have a preliminary compilation of the interments that have renewed thus far. Mr. Hayes stated that we have approximately 120 Cemeteries and 105 have renewed. Mr. Hayes stated that there is no reference in the law to late renewal fees. He informed the Board members that we might be able to adjust this under the Engine Bill.

4. Mr. Hayes discussed adjusting the license fee. He will work on a spreadsheet to set a base line based upon the number of interments each year with a minimum of \$250.

5. Mr. Hayes discussed Trust Fund trustees; there are some investment bankers that are not a trust intuition however their accounts may work for some of the smaller cemeteries. Mr. Hayes suggested researching the investment bankers to see if their

accounts will meet the needs of the cemetery and meeting the criteria of the trust fund. Mr. Russ inquired to the status on Morning Glory Cemetery trust fund. Mr. Hayes stated that there has been no new development.

6. Mr. Russ addressed Mr. Black, with Memory Gardens in Clemson, with his concerns. Mr. Black inquired to mortgages on office buildings that are built on the cemetery property.

Mr. Hayes stated that the board has not made a decision on how this will be handled at this time. He also stated that the board might require the cemetery to submit a financial statement to make sure the cemetery can handle the financial obligation prior to the board's approval.

Action Items (Vote Required)

Unfinished Business

Update on cemeteries that are not in compliance

Mr. Hayes stated that all but three cemeteries have complied except for documentation. He has been in contact with the two different owners and indicated that they need to get their application and license fee in by the end of the week. All cemeteries have been contacted that the Board has record of existing.

Mr. Floyd inquired on the way on finding out the number of interments through Vital Statistics.

Mr. Hayes stated that Vital Statistics has some information, however you need to give them general time frame and county that the person died. Vital Statistics is in the process of putting together a death registry for South Carolina, it is unclear if it will include deaths from prior years.

Discussion Items

The Maintenance and Care Trust Fund

New Business - Dwight Hayes

1. Merchandise Account - what should be included in this (opening and closing, preneed) Mr. Hayes discussed changing the statute to include pre-sold services in the merchandise account. Mr. Visotski suggested that 50 percent of the opening and closing be placed in the account. Mr. Floyd suggested 75 to 80 percent be placed in the account. This is to be discussed at a later date after more information has been obtained.

2. Should fees be paid on second right of interment

Mr. Russ had been approached to whether there should be a charge for the second right of interment. Mr. Russ explained the second right interment process. This is when a cemetery has a double depth interment. The first right interment would be \$1,000.00 and the second right interment would be \$500.00. Should this money be placed in the trust fund account?

Mr. Bartus inquired that for a second right interment you would have to dig the burial deeper and have another vault as well as a second opening and closing.

Mr. Hayes stated that the law states \$40 or 10 percent be placed in the trust fund account.

Mr. Visotski made a motion for any second right interments that are sold follow the same law as the first right interments. Mr. Floyd seconded the motion, which motion carried unanimously.

3. Graceland-disposition of opening and closing fees in escrow account

Mr. Hayes gave an overview of the situation with the sale of Graceland Cemetery. Alderwoods Group has sold Graceland Cemetery in Greenville along with 67 other properties. The broker in Tennessee is responsible for the sale of the cemetery. Port Elsewhere put in the winning bid for the Graceland Cemetery. In the process of the sale Alderwoods had put together some information on the opening and closing argument for the cemetery. Mr. Pirkl from Boiling Springs stated that there was about \$912, 099.89 as of December 2002. Mr. Pirkl with Port Elsewhere and Alderwoods Group had called Mr. Hayes to discuss the funds having to be trusted.

Mr. Pirkl stated that Port Elsewhere had negotiated with Alderwoods Group for Graceland West in Greenville, on White Horse Road. Alderwoods Group's attorneys stated that the State Cemetery Law neglected to require opening and closing funds to be set aside in to a trust fund. Therefore Alderwoods withdrew one hundred percent of the funds from the trust fund account that was set up. Port Elsewhere had agreed with Mr. Hayes to submit this to the board for a decision on what percentage of \$912,000 should go to the cemetery for the opening and closings for future use. Mr. Pirkl's believes that one hundred percent of the money should go with the cemetery. Mr. Pirkl proposed that the money be trusted in an irrevocable trust or a full return of the money to the people that have paid. Mr. Pirkl said that he does not believe that the state intended to neglect to mention the money for opening and closings to be trusted nor did they intend for the money to be moved out of the state after the sale of the cemetery. Both parties will do as the Board requests.

Mr. Hayes stated that his belief is that all assets as well as liabilities should go with the cemetery.

Mr. Bartus inquired as to how long has Alderwoods owned the cemetery. Mr. Pirkl indicated that Alderwoods has owned the cemetery since 1990 however only records for 1998 thru 2002 have been turned over to Port Elsewhere. It was indicated that the cemetery has been in business for about 75 years. Mr. Bartus stated that Alderwoods had run a big campaign for opening and closings in 1995.

Mr. Pirkl again stated his proposal for what he hopes the Board will decide. Mr. Russ inquired as to whether the records include the names of all the people that have paid

their opening and closings and the fees that they have paid. Mr. Pirkl stated that yes there are records on that as well as the interest on the money. He indicated that it appears that the majority of the money, about ½ million dollars was collected in 1998.

Mr. Hayes stated that there is no law in the statute that requires this money to be trusted however at the time the law was written no one anticipated this interpretation of the law. The Board's responsibility is to protect the public and the Board should approve the sale of a cemetery. This will ensure that the sale of the cemetery is in the best interest of the public. In this case it is Mr. Hayes's opinion that this sale without the assets is not in the best interest of the public.

Mr. Finch brought up the point that giving the money back to the people that had purchased opening and closings will run a risk of the people having to pay more money at a later date. Mr. Pirkl stated that the people that receive their money back would be locked into the price that they had originally paid. Mr. Pirkl also stated that Alderwoods' attorney states that there is only about \$700,000 available to be trusted due to the use of the money for opening and closings for deaths that have occurred in the last 14 months.

Mr. Visotski mentioned that the amount that should be placed in to a trust fund be based on the interest that has accrued, sales for new opening and closings as well as the amount that has been used for deaths that have occurred in the last year.

Mr. Floyd stated that the sale of the cemetery should be based upon the money being placed into a trust fund and an annual report submitted to the Board.

Mr. Visotski made a motion to require Alderwoods to put the money, along with interest that has accrued, for sales of new opening and closings as well as the amount that has been used for deaths that have occurred in the last year into some type of trust fund to be used in accordance with the agreements. Mr. Bartus seconded the motion, which motion carried unanimously.

Public Comments (No Votes May Be Taken)

There were no public comments made during the February 18, 2004 meeting.

Executive Session

No executive session necessary.

Adjournment

There being no further business to be discussed at this time, Mr. Russ adjourned the February 18, 2004 meeting at 12:30 p.m.

The next meeting of the S.C. Perpetual Care Cemetery Board has been scheduled for May 19, 2004.