

Minutes

South Carolina Perpetual Care Cemetery Board Meeting
Synergy Business Park
110 Centerview Drive
Columbia, SC 29210
10:00 a.m., March 6, 2007

Mr. Floyd, Acting Chairman, called the meeting to order at 10:05 a.m.

Board members attending the meeting included: W. Russel Floyd, Jr., of Spartanburg; Roger Finch, of Honea Path; John E. Bartus, of Mauldin; Rick Riggins, of Lancaster and Thomas Johnson of Charleston.

Board members granted an excused absence J. W. Russ, of Conway; and Andrew Cone, of Pickens.

Staff members participating included: Wendi Elrod, Administrative Specialist; Randall L. Bryant, Assistant Deputy Director; Robin Wilkes, BRS staff CPA; Doris Cubitt, Accountancy Board Administrator; Raymond Lee, BRS Inspections.

Members of the public participating included: Sonny Clardy and Kevin Braswell, both of Twin City Memorial Gardens, Loris, SC; Randolph Shives, Shives Funeral Home, Columbia; R L Kannaday, Greenlawn Memorial Gardens, Dillon; Ashley Hicks, Southland Memorial Gardens, West Columbia; Brent Caughman, Bush River Memorial Gardens, Irmo; Don Green, Elmwood Memorial Gardens, Columbia; Ron James, James Memorial Gardens, Florence; Mitch Laplante, and his legal counsel, Jason Tarokh, Tarokh Law firm.

Meeting Called to Order – 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. A quorum is present.

Pledge of Allegiance

All present recited the Pledge of Allegiance.

Approval of November 13, 2006 Meeting Minutes

Motion

Mr. Bartus made a motion for the minutes to be accepted, seconded by Mr. Johnson and unanimously carried.

Chairman's Remarks – Russel Floyd

Mr. Floyd welcomed all guest to the Board Meeting.

Assistant Deputy Director's Remarks, For Information – Randall L. Bryant

Action Items (Vote Required)

New Business

1. Bill (cemetery), Thomas Johnson

Mr. Johnson stated that there are two bills, one is before the Senate # 65 and one before the House #3346, both are to provide that "owners of property on which a cemetery or graves are located

must allow ingress and egress to the cemetery by families of persons buried there, plot owners, and persons conducting genealogy; to authorize the property owner to designated times and frequency of access; to provide that the property owner is immune from liability in any action arising out of granting such access; to establish a cause of action for denial of reasonable access; and to provide that this act does not apply to a deed that creates or reserves a cemetery on private property; and to designate sections §27-43-10 through §27-43-40 as article 1 of chapter 43, title 27, entitled "Removal of Abandoned Cemeteries" and to reentitle chapter 43, title 27 as "Cemeteries".

Mr. Johnson added that there were many people who were present to show their support for the Bill ranging from family members, Geologists, Archeologists and Cemetery owners.

There was one lady that spoke in favor of the Bill due to she has not been able to visit her families graves for over 65 years.

Mr. Johnson indicated that there were two (2) amendments under for the House Bill. The first amendment was in Section § 27-43-310 (A)(1)(c) "any person engaging in genealogy research, who has given reasonable notice to the owner of record or to the occupant of the property, or both would have accessibility", it now reads as " any person engaging in genealogy research, must give permission from the owner of record or to the occupant of the property, or both." The second amendment was to Section § 27-43-310 (D) "A person denied reasonable access under the provisions of this section may bring an action in the circuit court or the magistrates court where the property is located to enjoin the owner of the property from denying the person reasonable ingress and egress to the cemetery or gravesite. In granting this relief, the court may set the frequency of access, hours, and duration of the access." Which was changed to read as "A person denied reasonable access under the provisions of this section may bring an action in the circuit court or the magistrates court where the property is located to enjoin the owner of the property from denying the person reasonable ingress and egress to the cemetery or gravesite. In granting this relief, the Magistrate may set the frequency of access, hours, and duration of the access."

Mr. Johnson stated that the only issue in regards to cemeteries is a change to the Bill to add "To give access to nonprofit associations that are chartered in the state of South Carolina that are involved in the cleaning and preserving cemeteries where there are no know descendents and to assist family members with the cleaning and preserving cemeteries of there family members."

2. New car Tags for Cemetery Board members, Rick Riggins

Mr. Riggins stated that for information purposes only that he and two other Board members (Andy Cone and John Bartus) had applied for the Cemetery car tags and he had received a letter back stating that any Board must have a minimum of 6 members to participate to receive the car tags. So if any Board member is interested in getting a tag it would need to be applied for by the end of the year with 6 of the 7 Board member applying.

3. James Memorial Gardens, Raymond Lee

Mr. Raymond Lee indicated that he had been out on a routine inspection at other cemeteries in the area when he was informed that a new cemetery had opened up in the Florence area. When Mr. Lee stopped by James Memorial Gardens he had noticed a sign that stated buy one burial space get one free, so Mr. Lee attempted to find someone at the office at the cemetery but no one was there. So Mr. Lee was in the process of taking pictures of the sign at the cemetery when someone noticed him and approached him, which was in contact with Mr. Ron James, the owner of the cemetery.

Mr. Lee spoke with Mr. James by phone and asked if Mr. Lee had a Perpetual Care Cemetery license and Mr. James indicated that he had a business license. Mr. James stated that the business is Rauch Burial Center, LLC, dba James Memorial Gardens. Mr. Lee wasn't sure if this was correct or not so he was unsure if they should be licensed under the Board or not. So Mr. Lee issued a cease and desist to Mr. James from operating a for Profit cemetery. Mr. Lee told Mr. James he would need to obtain the proper documentation and present it to the Board for a determination whether his cemetery falls in the category of a Profit or Non-Profit cemetery. The next day after the cease and desist was issued Mr. James contacted the Secretary of States office to have his cemetery, James Memorial Gardens, LLC., categorized as a Non-Profit cemetery.

Mr. Russel Floyd asked if James Memorial Gardens has a sign indicating that they are a Perpetual Care cemetery? Mr. Lee stated that they are not advertising as a Perpetual Care cemetery and he had asked for a contract to see if Mr. James is using the term "Perpetual Care" or "Endowment Care".

Mr. James stated that James Memorial Gardens is a stem off of James Family Burial ground located behind James Memorial Gardens that has been in his family for 60 to 70 years that his grandfather had established. The property was already zoned for a cemetery so the James family decided to clear the property and expand the cemetery. Mr. James started the clearing of the property in 2002-2003 but in 2005 he tried to obtain a business license but there were two things going on: one was establishing Rauch Burial Center that was started for the purpose of selling Markers. The other was expanding the James Memorial Gardens. Now Mr. James understands that when you use the term Memorial Gardens then the public think of Perpetual Care. Mr. James' attorney assisted him in establishing the two (2) businesses. Mr. James indicated that his attorney contacted the Perpetual Care cemetery board for the laws on a Perpetual Care cemetery and since they didn't have the thirty (30) acres and were not providing perpetual care then the cemetery fell under section § 40-8-200 for a non-profit, family burial ground cemetery. Mr. James stated that there's a church cemetery adjacent to this cemetery and the property is all rolled into one. Mr. James indicated that when he received the cease and desist order and he complied and then applied with the Secretary of States office for a non-profit license for the cemetery. Mr. James stated that he is from a small community named "Pine Grove" and everyone in Pine Grove is related in one way or another. Mr. James indicated that the cemetery is a low end cemetery, they do not come close to charging what a Perpetual Care cemetery would, they're just a family cemetery. Mr. James apologized to the Board because it was not his intent to violate the Perpetual Care Cemetery law even though he didn't know that the cemetery was in violation until he received the cease and desist notice.

Mr. Lee stated that he based his decision for issuing of the cease and desist on not being able to determine if the cemetery is perpetual care or if they have a trust fund set up for the care and maintenance. Mr. Floyd asked if the cemetery sign addresses the cemetery as a perpetual care cemetery. Mr. Lee stated that the cemetery's sign doesn't indicate that it is a perpetual care cemetery and Mr. Lee has not reviewed a contract as it was not available to him.

Mr. Floyd asked who the cemetery has been selling lots to. Mr. James stated that it has been family members. Mr. James also stated that he is a minister of Savannah Grove Baptist church which is who they have been selling most of the lots to. Mr. James stated that James Memorial Gardens is right there by a perpetual care cemetery, Sunset Memory Gardens, which is why he feels this is an issue that lead to the cease and desist order.

Mr. Bryant indicated that the board staff has been receiving calls just like this, that are not perpetual care cemeteries but maybe they should be. Mr. Bryant stated that staff is advising those cemeteries to go before the board for that determination as the staff doesn't have the knowledge or experience to make that decision. Mr. Bryant stated that Mr. Lee is going out on routine inspections and licensees are indicating to the inspector that there are cemeteries in their area that are doing the same thing they are doing.

Mr. Floyd stated that sections §40-8-200 and §40-8-240 are an issue for determining if a cemetery falls under the perpetual care cemetery law.

Mr. James indicated that he feels that because he has started cleaning the cemetery up and expanded that's why the perpetual care cemeteries in the area are seeing this cemetery as competition and that is why they pointed a finger at this cemetery. Mr. Lee stated that James Memorial Gardens is a really nice cemetery and since it is so close to Sunset Memory Gardens that the public may view this cemetery as being a perpetual care cemetery.

Mr. James stated that he has five (5) acres that has been cleared and he has access to five (5) more back behind the cemetery, he also stated that with in his family he could have access to forty (40) acres or more if need be for the cemetery. Mr. James stated that only five (5) acres has been landscaped at this time so the thirty (30) acres exemption rule is out. Mr. Floyd corrected Mr. James, it is thirty (30) acres total with two (2) acres as developed. Mr. Floyd stated the thirty (30) acres is to insure the future of the cemetery. Mr. James stated that thirty (30) acres is not allocated to the cemetery but it can if it is absolutely necessary since the James family owns all the land around the cemetery.

Mr. Riggins asked if a fund has been set up for this cemetery. Mr. James stated that he had inquired to setting up an account with the bank but the bank had denied him because then he would fall under the perpetual care cemetery board's jurisdiction. Mr. Johnson asked if Mr. James is selling grave spaces. Mr. James stated yes he is selling grave spaces for \$400 a space. Mr. James' church is looking to this cemetery to be like their church cemetery. Mr. Bartus asked has the cemetery been using the term "perpetual care" on the contracts. Mr. James stated no they have not. Mr. Bartus questioned that the contract that has been provided uses the term "care and maintenance". Mr. James stated that he has not used that form yet. Mr. Floyd stated that Mr. James should provide the board with copies of the forms that the cemetery is currently using. Mr. James asked that since the cemetery is a non-profit cemetery under the Secretary of States office, that means nothing. Mr. Floyd indicated that the term "care and maintenance" is another term for "perpetual care" which comes under the jurisdiction of this board.

Mr. Lee stated that there are three issues for cemeteries like this.

- 1. exempt*
- 2. required licensure*
- 3. not qualified for licensure*

What we need is some sort of criteria to follow to determine which category a cemetery falls under.

Motion

The Board tabled this issue until the next board meeting so additional information can be obtained.

4. Robin's update on old Trust files, Robin Wilkes

Mr. Robin Wilkes stated that he found a Legislative audit counsel audit of the old board was at the state library for 1989. Mr. Wilkes indicated that he was able to research the fee structure for the trust accounts all the way back to when the board started. Mr. Floyd asked if Mr. Wilkes had found the cemetery trust records for each cemetery. Mr. Wilkes stated that he had found some information at the State Archives and the information that he has looked at so far doesn't look to be very helpful. Mr. Wilkes suggested that the board request that each cemetery have their accountants to look for their individual records for years prior to 2003 and submit to the board.

5. Columbarium, Charleston; Jason M Tarokh, J W Russ

Mr. Tarokh introduced himself and Mr. Mitch Laplante which is his client. He also indicated that Mr. Laplante is a well established architectural who is licensed in two (2) other states. Mr. Tarokh stated Mr. Laplante is requesting a ruling on whether the Perpetual Care Cemetery Board would govern the purposed columbarium plan. South Carolina law § 40-8-90 states that a "legal entity wishing to establish a cemetery shall file a written application for authority to do so", and then must comply with the criteria outlined in § 40-8-90(A) (1) (a-e). "Cemetery" is defined broadly and includes any one or combination of perpetual care cemeteries, burial parks for earth interment, mausoleums and columbariums as indicated in § 40-3-30 (5). According to § 40-8-200 "The provisions of this chapter do not apply to governmental cemeteries, nonprofit cemeteries, church cemeteries, nature preserve cemeteries, or family burial grounds. However, nowhere in South Carolina's "Perpetual Care Cemetery Act" is a "natural preserve cemetery" defined. Therefore, the issue is whether the nature preserve cemetery exception applies to the columbarium plan described.

Mr. Tarokh stated that Charleston County has a minimum of five (5) acre and a minimum 25-foot landscaped buffer from adjacent properties for the creation of a cemetery, which includes a columbarium. Therefore, out of the required five (5) acres, only a maximum of 2,000 square feet will be developed for the columbarium. The courtyard perimeter will only use about one (1) percent of the required five (5) acres. The majority remaining acreage will not be touched or developed at all and will remain in its natural state. The intent is to preserve the remaining acreage in its untouched, undeveloped and natural state. Landscaping in the courtyard will work to incorporate natural ground covering, trees and gravel walk ways. Benches will be placed for meditation. Beyond the courtyard, vegetation will be untouched and left in its natural low country state.

Mr. Floyd asked will it be for profit and sold to the public? Mr. Tarokh stated that yes it would be for profit and sold to the public. Mr. Floyd stated that a natural preserve cemetery and a columbarium are not the same thing. Mr. Floyd asked if they have any drawings or plans yet. Mr. Laplante stated that yes they have drawings but have not found or purchased the property for the plan at this point and time. Mr. Laplante stated that have two (2) properties that are being considered. Mr. Laplante stated that he is evaluating there logic before any steps are taken.

Motion

The Board tabled this issue until the next board meeting so it could be considered by the full board.

Unfinished Business

1. Update on Safe Harbor statement filed, Rick Wilson

Mr. Bryant stated that the Safe Harbor statement is just for information purposes only.

2. Sale of Bush River, Elmwood, Southland Memorial Gardens, Columbia area; Brent Caughman, Don Green, Ashley Hicks, J W Russ

Mr. Wilkes stated that the audit that was submitted based on the Agreed Upon Procedures is not what was provided.

Motion

The Board tabled this issue until the next board meeting until the audit can be completed.

3. Sale of Greenlawn Memorial Gardens, Dillon; R L Kannaday, J W Russ

Mr. Wilkes stated that the audit that has been submitted showed adequate financial trust funds that are required by law.

Motion

Mr. Bartus made a motion for the transfer to be approved, seconded by Mr. Riggins and unanimously carried.

4. Sale of Twin City Memorial Gardens, Loris; Sonny Clardy, J W Russ

Mr. Sonny Clardy stated that the report that was submitted from June 2005 which shows the beginning balance, then gives a break down and then shows the ending balance at the end of June 30, 2006 which shows a difference in the Care and Maintenance trust fund of \$4,000. The CPA overlooked the trustee fees, state and federal tax on the account. So he made the correction and he has submitted the corrected copy. Mr. Clardy stated that for the audit all files for the cemetery has been reviewed going back to 1959. Mr. Clardy stated that the perpetual care trust fund is in good shape. Mr. Floyd stated that the audit based on the agreed upon procedures looks good. Mr. Floyd then asked if Mr. Wilkes has reviewed the report. Mr. Wilkes stated that the care and maintenance fund looks good.

Mr. Clardy stated that the merchandise account has the biggest gap. During the audit that was done going back to 1959 the review of the merchandise escrow account. Mr. Clardy stated that the merchandise account is owed \$71,103.24. Mr. Clardy stated that he will assume the \$20,640.00 for openings and closings leaving a balance due to the account of \$50,463.24. As of February 2007, there is \$5,546.21 in the escrow account. That leaves an unfounded balance of \$44,917.03. Accounts receivable for the escrow account total is \$7,237.04.

Mr. Clardy stated that he is preparing to sell the cemetery. He understands that he has to have all of the funds straight be for the sell can be approved. Mr. Clardy stated that in June 2007 he will make a contribution to the account \$34,000.00. He also indicated that when Ms. Prince donated that cemetery to him she had also donated \$30,000.00 to the cemetery and she will give an additional \$4,000.00 in June 2007. Mr. Floyd inquired if Mr. Clardy has the \$30,000.00 now and if so it should be placed in the fund now. Mr. Clardy stated that he does have the \$30,000.00 and will place it in the fund.

Mr. Clardy proposed to fund the account fully in June 2007. Mr. Clardy stated that he would like to submit the \$34,000.00 to the account in June 2007 and the additional amount (\$10,917.03) in January 2008.

Motion

Mr. Riggins made a motion to approve the transfer pending a promissory note for the \$44,917.03 and appropriate documentation that Mr. Clardy assumed the opening and closing grave liability, seconded by Mr. Bartus and unanimously carried.

5. IRC - Tony Kennedy, Investigator

Mr. Bryant stated that Tony Kennedy had three (3) pending cases that have not been heard before the IRC.

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

Motion

Mr. Bartus moved the Board enter executive session at 11:44 am for discussion. Mr. Riggins seconded the motion, which carried unanimously.

Return to Public Session to Report on Executive Session

Motion

Mr. Riggins made a motion at 12:17 pm, seconded by Mr. Johnson and unanimously carried, that the Board return to public session.

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

Adjournment

There being no further business to be discussed at this time, Mr. Riggins made a motion that the meeting be adjourned at 12:20 pm, seconded by Mr. Johnson.

The next meeting of the S.C. Perpetual Care Cemetery Board has been scheduled for May 29, 2007.