

Minutes
South Carolina Perpetual Care Cemetery Board Meeting
Synergy Business Park
110 Centerview Drive, room 108
Columbia, SC 29210
10:00 a.m., July 31, 2007

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

Board members attending the meeting included: J. W. Russ, of Conway; W. Russel Floyd, Jr., of Spartanburg; John E. Bartus, of Mauldin; Andrew Cone, of Pickens; Thomas Johnson of Charleston; and Roger Finch, of Honea Path.

Board members granted an excused absence Rick Riggins, of Lancaster.

Staff members participating included: Wendi Elrod, Administrative Specialist; Doris Cubitt, Administrator; Sheridan Spoon, General Counsel; Stan Bowen, Office of Investigations and Enforcement; and Raymond Lee, BRS Inspections.

Members of the public participating included: Ron James, James Memorial Gardens, Florence; David Brown, Florence Memorial Gardens, Florence; Brent Caughman, Bush River Memorial Gardens, Columbia; Gary Toye, Keystone Group; and Richard Leonard, Southeastern Memorial Gardens, Myrtle Beach.

Meeting Called to Order – S C Perpetual Care Cemetery Board staff properly posted public notice of this meeting at the S. C. Department of Labor, Licensing and Regulation office, Synergy Business Park, Kingstree Building, and provided notice 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 was present.

Pledge of Allegiance

All present recited the Pledge of Allegiance.

Approval of May 29, 2007 Meeting Minutes

The Board made the following changes:

1. *On page 1, under Approval of March 6, 2007 minutes, # 2 read “Mr. Riggins mad 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.” The Board changed “mad” to “made”. The motion should read “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.”*
2. *On pages 2 & 3, last paragraph on page 2 & continued on page 3, last sentence on page 2, “Also does the Board want an expenditure report to see what money is being allocated to the construction of the mausoleum? Deleted “Also does” and the “question mark at the end of the*

- sentence”. It should read “The Board wants an expenditure report to see what money is being allocated to the construction of the mausoleum”.
3. On page 2, paragraph 5, “Ms. Cubitt” should be replaced with “Mr. Russ”. It should read “Mr. Wilson suggested that Mr. Russ give an outline of expenditures to the board at the next meeting to possibly include a draw schedule”.
 4. On page 2, paragraph 7, “eight” should be replaced with “eighty” it should read “Mr. Bryant stated that he and his family have maintained this cemetery for about eighty (80) years”.
 5. On page 4, 1st paragraph, added a sentence to make the statement “No votes required until a determination for profit or non-profit cemeteries ca be defined. Status is pending for further investigation”.
 6. Page 4, # 2 header, Tarkoh was misspelled it should be “Tarokh”.
 7. Page 4, motion under # 2, after the thirty acres (30) will still apply. Then add under Perpetual Care Cemetery Law. It should read “Mr. Floyd made a motion that this columbarium does not meet the true definition of a Natural Preserve cemetery so the Perpetual Care Cemetery statue should apply”.
 8. Page 4, paragraph 9, 2nd sentence, after 501c, added “Mr. James stated no he hasn’t received a letter from the IRS”.
 9. Page 5, last sentence on the page, “November 28, 2007” should be replaced with “July 31, 2007”.

Motion

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

Chairman’s Remarks – J. W. Russ

Mr. Russ welcomed all visitors.

Administrator’s Remarks, For Information – Doris Cubitt

Ms. Cubitt welcomed everyone and thanked them for attending. Ms. Cubitt stated that the Board has statues but no regulations, so it was added to the agenda for discussion after the Board meeting so that Board members could go over suggestions about things they feel need to be written in the Regulations.

Action Items (Vote Required)

New Business

1. Sell of Florence Memorial Gardens

Mr. David Brown addressed the Board and stated that he has documentation that wasn’t included in the initial packet. Mr. Brown stated that SCI currently owns the cemetery. This cemetery was an Alderwoods Group, Inc. cemetery that transferred to SCI since SCI purchased Alderwoods Group, Inc. corporate.

Mr. Floyd stated that he noticed that the Care and Maintenance fund didn’t state that it was an irrevocable trust. The statue Section §40-8-90 (A) (1) (b) states that establishment and maintenance of an irrevocable care and maintenance trust fund agreement with a trust institution doing business in this State. Mr. Brown stated that he would have that corrected on the trust agreement. Mr. Floyd also stated that the Merchandise fund refers to a Merchandise

Trust fund, and the law does not require the Merchandise to be in the form of a trust fund. Mr. Floyd stated that the title insurance states the land is fee simple. Mr. Floyd asked Mr. Brown if fee simple means that the land is fee simple tile so it is not mortgaged.

Mr. Brown stated that there were some items that he wanted to review with the Board to make sure that he was in compliance with the Perpetual Care Cemetery Law. Mr. Brown stated he provided the Board with a plat and development plans. Currently the cemetery is a Memorial Gardens so all markers are the flat bronze memorials; however, there have been many request for upright monuments. So, the cemetery has designed a small section of the cemetery for upright monuments. Mr. Floyd asked if Mr. Brown has any experience with upright monumental sections. Mr. Brown stated that he does not, but he has been in contact with Brown Memorial (Pat Brown) who is advising him on upright memorials. Mr. Floyd also suggested that another helpful resource may be Elberton Granite Association. He has never used them personally, but he has researched them and they will provide assistants in the design and layout for a monumental section. Mr. Brown indicated that currently there is a mausoleum, and it is almost full. So, he proposes to construct an expansion to the current mausoleum in Phase I and, later, an expansion to the whole mausoleum. Mr. Floyd asked if the cemetery is pre-selling crypts in Phase I. Mr. Brown stated no pre-selling has commenced thus far. Mr. Floyd stated that before pre-selling he needs to ask for approval by the Board.

Mr. Brown stated that SCI is currently doing the audit for this cemetery. SCI is hoping to have the audit completed by the first of September 2007. With this being the last of the information needed for the sell of this cemetery, it should be placed on the next Board meeting agenda. Mr. Robin Wilkes stated that SCI has not yet submitted annual reports for the merchandise account for past years. Mr. Wilkes suggested that Mr. Brown contact SCI to insist they complete these reports.

Motion

Mr. Floyd made a motion the ruling be tabled until the next Board meeting so all information can be reviewed. Mr. Bartus seconded the motion, and it carried unanimously.

2. Discuss appropriate sanctions on Cease & Desist Agreements

Ms. Cubitt asked the Board to evaluate giving the Board Administrator the authority to issue Cease and Desist orders or Consent Agreements on standard complaints failure to timely deliver merchandise or services. The Administrator suggested issuing a consent agreement to the licensee as follows:

- 1. 1st offense - \$500.00 fine*
- 2. 2nd offense - \$1,000.00 fine and probation*

This would provide a standard procedure for standard complaints received without taking time out of the IRC (Investigative Review Committee) meeting. Ms. Cubitt stated that after the Consent Agreement has been issued and signed, it will go before the Board for final approval.

Mr. Lee stated that this will simplify the complaint process for complaints received.

The Board discussed the disciplinary offenses:

- 1. 1st offense - \$500 to \$1,000 fine and 1 year probation*
- 2. 2nd offense - \$1,001 to \$2,000 fine and 2 years probation*
- 3. 3rd offense - \$2,001 to \$3,000 fine and 3 years probation*

Motion

Mr. Finch made a motion that the parameters as listed above for disciplinary offenses should be used for standard complaints. Mr. Floyd seconded the motion, and it carried unanimously.

Unfinished Business

1. Hillcrest Cemetery Inc. - Mausoleum approval

Mr. Russ recused himself from voting since he is the manager at this cemetery.

Mr. Russ submitted a brief draw schedule. Mr. Floyd stated that the funds should not be withdrawn until the construction has begun. Mr. Russ stated that the cemetery already hired an architect which has completed the construction plans and is ready to start construction.

Motion

Mr. Floyd made a motion for approval upon certification from the contractor as to the expenditures for the construction of the mausoleum. Mr. Johnson seconded the motion and it carried unanimously.

2. Pre-construction of Mausoleum sales & construction guidelines

Mr. Floyd suggested that the Board staff design some type of draw schedule for Board review and approval.

3. Southeastern Cemetery's Audit

Mr. Robin Wilkes reviewed the audit and stated it is good. However there is \$7,719 that should be paid to the trust fund. Mr. Wilkes recommended that the \$7,719 be placed in the fund to offset the under funding of this account. Mr. Richard Leonard asked if he can have twelve (12) months to pay the money to the Perpetual Care Trust Fund.

Mr. Floyd asked if there is a merchandise account. Mr. Leonard stated that there was not merchandise account prior to him buying the cemetery; however, he has started selling merchandise and has started filing merchandise annual reports for the cemetery.

Mr. Floyd asked if the cemetery has found any files that merchandise was sold but not funded. Mr. Leonard said that there have been some files where merchandise was sold but not funded. Mr. Leonard paid for the merchandise out of his pocket because there was a contract for paid merchandise. Mr. Floyd suggested that the Agreed Upon Procedures should be amended to account for merchandise sold but not funded. Mr. Floyd suggested that Mr. Leonard have his CPA review the cemetery files so the cemetery can account for sold merchandise that is not funded.

Motion

Mr. Floyd made a motion to approve the license transfer of Southeastern Memorial Gardens to Mr. Leonard provided that Mr. Leonard pay a total of \$7,719 to the Perpetual Care Trust Fund over a period of twelve (12) months. Mr. Johnson seconded the motion, and it carried unanimously.

4. Keystone Group – Bush River, Elmwood & Southland Memorial Gardens

Mr. Russ indicated that Keystone Group is asking for the approval for transfer of funds from SCI accounts to Keystone Group accounts. On behalf of Keystone Group, Regions Bank submitted a request for transfer of funds for the Care and Maintenance Trust and the Merchandise Account from the below banks to Regions Bank:

- 1. Southland Memorial Gardens – change trustee from US Bank and BB & T*
- 2. Elmwood Cemetery – change trustee from US Bank and First Citizens Bank & Trust*
- 3. Bush River Memorial Gardens – change trustee from US Bank and BB & T*

Mr. Russ stated that it seems all documentation has been submitted. Mr. Russ inquired about the audit that SCI was conducting. Mr. Brent Caughman indicated that SCI was given approval for an extension to complete the audit. Ms. Cubitt confirmed that she had given SCI a verbal extension to the end of August 2007.

Motion

Mr. Cone made a motion for the transfer of funds for the Care and Maintenance Trust and the Merchandise Account from the above banks to Regions Bank to be approved, seconded by Mr. Bartus, and unanimously carried.

5. Discussion for Non-Profit cemeteries

*The Board requested that Mr. Sheridan Spoon research the laws for non-profit cemeteries. Mr. Spoon informed the Board that **Section §12-20-120** (Annual report to be signed by person authorized to make report) and **501(c)(13)** (Federal Cemetery law) applies to all non-profit cemeteries.*

501(c)(13) — Cemetery Companies

If your organization wishes to obtain recognition of exemption from federal income tax as a cemetery company or a corporation chartered solely for the purpose of the disposal of human bodies by burial or cremation, it should file an application on Form 1024. For the procedure to follow to file an application, see chapter 1.

A nonprofit mutual cemetery company that seeks recognition of exemption should submit evidence with its application that it is owned and operated exclusively for the benefit of its lot owners who hold lots for bona fide burial purposes and not for purposes of resale. A mutual cemetery company that also engages in charitable activities, such as the burial of paupers, will be regarded as operating within this standard. The fact that a mutual cemetery company limits its membership to a

particular class of individuals, such as members of a family, will not affect its status as mutual so long as all the other requirements of section 501(c)(13) are met.

If your organization is a nonprofit corporation chartered solely for the purpose of the disposal of human bodies by burial or cremation, you should show that it is not permitted by its charter to engage in any business not necessarily incident to that purpose. Operating a mortuary is not permitted. However, selling monuments, markers, vaults, and flowers solely for use in the cemetery is permitted if the profits from these sales are used to maintain the cemetery as a whole.

How income may be used. You should show that your organization's earnings are or will be used only in one or more of the following ways.

1. To pay the ordinary and necessary expenses of operating, maintaining, and improving the cemetery or crematorium.
2. To buy cemetery property.
3. To create a fund that will provide a source of income for the perpetual care of the cemetery or a reasonable reserve for any ordinary or necessary purpose.

No part of the net earnings of your organization may benefit any private shareholder or individual.

Ordinary and necessary expenses in connection with the operation, management, maintenance, and improvement of the cemetery are permitted, as are reasonable fees for the services of a manager.

Buying cemetery property. Payments may be made to amortize debt incurred to buy land, but may not be in the nature of profit distributions. You must show the method used to finance the purchase of the cemetery property and that the purchase price of the land at the time of its sale to the cemetery was not unreasonable. Except for holders of preferred stock (discussed later), no person may have any interest in the net earnings of a tax-exempt cemetery company or crematorium. Therefore, if property is transferred to the organization in exchange for an interest in the organization's net earnings, the organization will not be exempt so long as that interest remains outstanding. An equity interest in the organization is an interest in the net earnings of the organization. However, an interest in the organization that is not an equity interest may still be an interest in the organization's net earnings. For example, a bond issued by a cemetery company that provides for a fixed rate of interest and also provides for additional interest payments based on the income of the organization is considered an interest in the net earnings of the organization. Similarly, a convertible debt obligation issued after July 7, 1975, is considered an interest in the net earnings of the organization.

Perpetual care organization. A perpetual care organization, including, for example, a trust organized to receive, maintain, and administer funds that it receives from a nonprofit tax-exempt cemetery pursuant to state law and contracts, may apply for recognition of exemption on Form 1024, even though it does not own the land used for burial. However, the income from these funds must be devoted exclusively to the perpetual care and maintenance of the nonprofit cemetery as a whole. Also, no part of the net earnings may benefit any private shareholder or individual. In addition, a perpetual care organization not operated for profit, but established as a civic enterprise

to maintain and administer funds, the income of which is devoted exclusively to the perpetual care and maintenance of an abandoned cemetery as a whole, may qualify for exemption.

Care of individual plots. When funds are received by a cemetery company for the perpetual care of an individual lot or crypt, a trust is created that is subject to federal income tax. Any trust income that is used or permanently set aside for the care, maintenance, or beautification of a particular family burial lot or mausoleum crypt is not deductible in computing the trust's taxable income.

Common and preferred stock. A cemetery company that issues common stock may qualify for exemption only if no dividends may be paid. The payment of dividends must be legally prohibited either by the corporation's charter or by applicable state law. Generally, a cemetery company or crematorium is not exempt if it issues preferred stock. However, it can still be exempt if the preferred stock was issued before November 28, 1978, or was issued after that date under a written plan adopted before that date. The adoption of the plan must be shown by the acts of the responsible officers and appear on the official records of the organization. The preferred stock issued either before November 28, 1978, or under a plan adopted before that date, must meet all the following requirements.

1. The preferred stock entitles the holders to dividends at a fixed rate that is not more than the greater of the legal rate of interest in the state of incorporation or 8% a year on the value of the consideration for which the stock was issued.
2. The organization's articles of incorporation require:
 - i. That the preferred stock be retired at par as rapidly as funds become available from operations, and
 - ii. That all funds not required for the payment of dividends on or for the retirement of preferred stock be used by the company for the care and improvement of the cemetery property.

Tax treatment of donations. Donations to exempt cemetery companies, corporations chartered solely for human burial purposes, and perpetual care funds (operated in connection with such exempt organizations) are deductible as charitable contributions on the donor's federal income tax return. However, a donor may not deduct a contribution made for the perpetual care of a particular lot or crypt. Payments made to a cemetery company or corporation as part of the purchase price of a burial lot or crypt, whether irrevocably dedicated to the perpetual care of the cemetery as a whole or earmarked for the care of a particular lot, are also not deductible.

6. Discussion on proper funding of Opening and Closings

The Board tabled this issue until the next board meeting.

7. James Memorial Gardens

Mr. Russ stated that Mr. Ron James submitted additional information regarding his cemetery.

Mr. James decided to donate the cemetery to New Life Baptist Church, where he is the pastor.

Mr. Russ asked if the contracts for the cemetery still state that they offer care of any kind. Mr.

James stated that he didn't use the term care on his contracts. He submitted a contract proof

that he would have used if the cemetery fell under the Perpetual Care Cemetery Board's jurisdiction. Mr. James stated that this was a family cemetery started by his grandfather. Mr. Russ questioned if James Family Cemetery and James Memorial Gardens are on the same deed. Mr. James stated that his grandfather deeded the property separately to his sons.

Mr. Floyd stated that the church cemetery needs to have a sign stating that the cemetery is non-perpetual care. Mr. Floyd also stated that the church cannot sell grave spaces to the public.

Motion

Mr. Floyd made a motion that once Mr. James submits documentation giving the property to the church for the purpose of a church cemetery and has non-perpetual care sign(s) posted at all entrances, the cemetery would fall in the category of a church cemetery, so Section §40-8-200 would apply. Mr. Finch seconded the motion, and it carried unanimously.

8. Discussion regarding Policies/Procedures for late renewal and/or practicing without a license

Ms. Cubitt stated that there are a few cemeteries that have not renewed their licenses for last year. Ms. Cubitt asked for the Board to discuss what procedures the staff should follow to get the lapsed licenses renewed. Ms. Cubitt stated that in Section §40-8-80 failure to renew a license by the December 31 deadline renders the license invalid. The license may be reinstated upon receipt of a renewal if postmarked no later than January 31. Delinquent renewal requests not postmarked on or before January 31 require that a new application be submitted under the guidelines in effect for the current period; therefore, a \$250 dollar application fee would apply.

The Board discussed future procedures for late renewals.

- October 15 – Mail renewals
- December 31 - Renewal deadline
- January 15 - Mail letter indicating a Cease & Desist will be issued if not renewed
- February 1 - New application should be filed & \$250 application fee
- March 1 - New application should be filed & \$250 application fee, \$1,000 fine, (1) year probation, (a Cease & Desist order will be issued to cemeteries that have not renewed and notice of Board Hearing).
- April 1 - Hearing to close cemetery until cemetery is in compliance.

Motion

Mr. Floyd made a motion that a letter be sent to the cemeteries that have not renewed their licenses indicating that they must pay the appropriate licensing fee, complete a renewal form, complete a licensing application, and pay the designated application fee. If not in compliance by September 1, 2007, a Cease and Desist order will be issued for this year. In the future failure to renew should follow the above disciplinary schedule. Mr. Bartus seconded the motion, and it carried unanimously.

9. Discussion on Policies/Procedures on failure to timely file Annual Reports

Ms. Cubitt informed the Board that a letter was mailed in April 2007 to most all cemeteries indicating which annual reports have not been filed. Ms. Cubitt requested the Board discuss what procedures staff should follow for all cemeteries to comply with Section § 40-8-110 (L).

The Board discussed future penalties for failure to timely file annual reports.

- 1st offense (60 days delinquent) - \$25 per day penalty*
- 2nd offense (90 days delinquent) - \$50 per day penalty, notice of hearing*
- 3rd offense (120 days delinquent) - Hearing*

Motion

Mr. Bartus made a motion that a letter be sent to the cemeteries that have not complied this year indicating that they must submit their annual reports by October 30, 2007. If not in compliance by the deadline, then a \$25 per day penalty will apply for each day delinquent. Failure to submit required reports will result in further disciplinary action taken. Failure to file future reports should follow the above disciplinary schedule. Mr. Floyd seconded the motion, and it carried unanimously.

Ms. Cubitt suggested that the Board staff send letters to all cemeteries informing them of the audit requirement. Ms. Cubitt indicated that this letters would be mailed with a copy of the Agreed Upon Procedures allowing three (3) months for submission of an audit for the Care and Maintenance Trust Fund and the Merchandise Account. The audit should include an audit from 1991-2003 and 2003-2006 then every third (3rd) year there after.

Motion

Mr. Bartus made a motion to approve the audit requirement. Mr. Floyd seconded the motion, and it carried unanimously.

10. IRC

Ms. Cubitt went over the IRC report.

June 25, 2007 Recommendations

<u>Dismiss</u>	<u>Formal Complaint</u>	<u>Letter of Caution</u>
2007-1	2007-3	
2007-2		

Motion

Mr. Floyd made a motion for the Board to accept the IRC recommendations on 2007-1 and requested further information on 2007-2 and 2007-3. Mr. Bartus seconded the motion, and it carried unanimously.

Recess

The Board recessed at 12:40 p.m. for lunch. The Board reconvened at 2:05pm.

Public Comments (No Votes May Be Taken)

There were no public comments made during the July 31, 2007 meeting.

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

No executive session necessary.

Adjournment

There being no further business to be discussed at this time, Mr. Johnson made a motion that the meeting be adjourned at 4:40 pm, seconded by Mr. Bartus.

The next meeting of the S.C. Perpetual Care Cemetery Board has been scheduled for November 28, 2007.