

MINUTES
South Carolina Perpetual Care Cemetery Board
Board Meeting
Synergy Business Park
110 Centerview Drive, Kingstree Building, Room 105
Columbia, South Carolina
10:00 a.m., August 12, 2009

Meeting Called to Order

J. W. Russ, chairman, of Conway, called the meeting to order at 10:08 a.m. Other members participating during the meeting included: Russel Floyd, vice chairman, of Spartanburg; John Bartus, of Mauldin; Roger Finch, of Honea Path; Thomas Johnson, of Charleston; Jacquelyn Petty of Union; and Rick Riggins of Lancaster.

Staff members participating in the meeting included: Randy Bryant, Assistant Deputy Director; Sandra Dickert, Administrative Assistant; Amy Holleman, Administrative Specialist; Jeanie Rose, Administrative Specialist; Sheridan Spoon, Deputy General Counsel; and Michael Teague, Administrative Assistant.

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 was present.

Pledge of Allegiance

All present recited the Pledge of Allegiance.

Approval of May 5, 2009 Meeting Minutes

Mr. Riggins noted a correction to Ms. Petty's name on page two. He also noted a correction to a motion in regard to waiving the fines on page four.

Mr. Floyd made corrections to page five regarding answers to the questions from Mr. Pennington.

MOTION

Mr. Riggins made a motion the Board approve the minutes of the May 5, 2009 meeting as amended. Mr. Floyd seconded the motion, which carried unanimously.

Chairman's Remarks – J. W. Russ

Mr. Russ welcomed everyone to the meeting.

Administrator's Remarks – Randy Bryant

Mr. Bryant stated Mrs. Cubitt is recuperating at home and he would be handling her duties during her recuperation.

Mr. Bryant noted the following amendments the agenda: remove items three and four under unfinished business and insert Mr. Holloway's remarks following Ms. Holleman's presentation.

Mr. Finch arrived at the meeting at 10:18 a.m.

MOTION

Mr. Floyd made a motion the Board approve the agenda as amended. Mr. Riggins seconded the motion, which carried unanimously.

Unfinished Business

South Lawn Memorial Gardens, Inc – Wilton E. Mackey (sell)

Rob Sosebee and Wilton Mackey appeared before the Board at this time. Mr. Sosebee stated he understands there was a discrepancy between 1991 and 2002, which will be discussed during the final sale of the cemetery following the Board's approval. Ms. Holleman noted the discrepancy to the care and maintenance fund is \$9,941.00. Mr. Sosebee noted the trust fund is currently with Wachovia; however the future plan is to move the fund to the bank which the funeral home is using. The sale of the cemetery is actually a stock transfer, which is a transfer of owner. The amended sales contract does not include an exclusion clause regarding liability.

Mr. Spoon noted when the application was presented to the Board during the May 2009 meeting it lacked the updated Agreed Upon Procedures, the trust fund account, and an updated sales contract. He believes the question now is if these three items are now part of the application.

MOTION

Mr. Floyd made a motion the Board approve the transfer pending receipt of an updated trust agreement making it an irrevocable document which satisfies the Board's requirements. Mr. Riggins seconded the motion, which carried unanimously.

Southeastern Memorial Gardens – Richard Leonard (trust fund transfer)

The Board has received an updated trust fund for Southeastern Memorial Gardens. Ms. Holleman noted the ninth paragraph on page 12 states the trust is irrevocable. She also noted the second agreement states the trustee is now Branch Banking and Trust Company of SC.

No Board action was needed on this matter as the documents were in order.

Board approval of Mandatory Disclosure Format [40-8-35 and 40-8-100(G)] Template for Board Website

Mr. Floyd suggested the following corrections to the form.

1. Section J – vaults should include manufacturer and model.
2. The Disclosure to Purchaser include the name of the cemetery at the top of the page and a blank line for the date of purchase.
3. Section B Outer burial containers should include a list of approved manufacturers.
4. Section C Memorial installation, charges for a qualified third party – remove 50¢ and \$95.
5. Section G – the phrase 'The Purchaser Agrees' should remain.
6. Page five, Include Section E - Processing fees, if any.
7. The bottom of page five should include a line for the signature of the cemetery employee/witness.

Mrs. Petty questioned Mr. Floyd regarding Section E niches on page one.

Mr. Bryant suggested Mr. Spoon include a disclaimer stating the document is a model and that the cemeteries are not required to use it.

MOTION

Mr. Bartus made a motion the Board approve the template upon review by the chairman. Mrs. Petty seconded the motion, which carried unanimously.

Agreed Upon Procedures Update

Ms. Holleman stated there are currently 22 cemeteries with outstanding Agreed Upon Procedures.

Proper Accounting for Perpetual Care Trust & Merchandise Accounts – Jim Holloway

Mr. Holloway stated staff would formulate a report of the Agreed Upon Procedures results once Mrs. Cubitt has returned to the office. He is currently compiling the Agreed Upon Procedures according to the information staff has received: existing records with adequate balances, existing records with inadequate balances, and non-existing records due to a disaster such as fire or flood, or for some other reason with no known balances. He discussed trust funds and liabilities with the Board.

New Business

IRC Report

Mr. Ernest Adams stated the Board currently has two open cases and noted the IRC has not met since the last meeting.

Biannual Inspection Report

In the last six months Mr. Raymond Lee has conducted 82 inspections of the 142 perpetual care cemeteries, conducted six inspections on lapsed licenses and collected \$2,750 in renewal fees, and conducted four inspections based on complaints, which have been resolved. He has visited the 22 cemeteries that have not completed the Agreed Upon Procedures and advised those cemeteries of what needed to be done. He referred four cases to the Office of Investigations and Enforcement (OIE).

Mr. Floyd questioned Mr. Lee regarding the licensee who refused to pay re-application fee and the one licensee who would not cooperate with inspection. Mr. Lee believes these two matters have been resolved.

Faith Memorial Gardens – Karen Hobbs (Consent Agreement)

Mr. Spoon briefed the Board on the consent agreement regarding a cemetery which failed to renew licensure. He noted technical corrections are being made to the document.

MOTION

Mr. Bartus made a motion the Board approve the consent agreement. Mr. Johnson seconded the motion, which carried unanimously.

Request to Waive Fines for Late Agreed Upon Procedures

a. Evergreen Memorial Gardens – Ralph Rogers

Ralph Rogers, Manager, of Evergreen Memorial Gardens, is requesting the Board waive the fines for the Agreed Upon Procedures. Ms. Holleman stated staff has now received the Agreed Upon Procedures.

Mr. Rogers apologized for the late submittal of the Agreed Upon Procedures. He has now submitted the documentation, which is dated either May 4, 2009 or May 5, 2009. He provided the Board with a letter and a brief history of the cemetery. Mr. Rogers went through Magistrate's Court to obtain the cemetery records. He is asking that the Board waive the fine for the late submittal of the Agreed Upon Procedures.

The Board informed Mr. Rogers the Board would take his remarks under advisement and would discuss this matter in executive session.

Rosemont Cemetery – Dana Elder (Agreed Upon Procedures and Cease & Desist Issues)

The Board received a letter from Dana Elder of Rosemont Cemetery dated July 29, 2009 regarding a cease and desist order issued by staff.

Mr. Elder stated the cemetery has never represented itself as a perpetual care cemetery. He noted the cemetery was city-owned. He went on to say the contracts containing the words 'perpetual care' were destroyed once the discovery was made and that new contracts were being printed. The cemetery did not collect funds for perpetual care. Cemetery staff maintains the cemetery. The old contracts contained a box indicating if the cemetery was perpetual care; however, that box was not checked on any of the contracts. He has reviewed approximately 100 of 3,000 contracts and found that none of the contracts reflected perpetual care in the cemetery. He presented the Board members with a copy of the revised contract currently used by the cemetery. He noted this contract is being printed for use.

Mr. Lee stated he noted the clause regarding perpetual care on the back of the contracts during his review of the contracts. However, he did not bring copies of the contracts to the meeting. He noted Mr. Elder operates two perpetual care cemeteries and does an excellent job. He further stated Mr. Elder purchased Rosemont cemetery from either the City of Union or Union County and has owned the cemetery since 1994.

Mr. Floyd asked Mrs. Petty if Rosemont Cemetery is perceived as a perpetual care cemetery. Mrs. Petty replied negatively.

Mr. Floyd asked Mr. Spoon regarding the clause in the contract which states, 'the company agrees (a) to convey by deed the perpetual and exclusive use forever in said space.' Mr. Spoon stated the use of the word 'perpetual' is used in a different context.

Mr. Spoon asked Mr. Elder if he is appearing before the Board regarding a specific request or on a specific charge. Mr. Elder responded Mr. Lee had issued a cease and desist order and he is asking that the order be withdrawn and to discover clarification of the status of the cemetery.

Mr. Russ asked Mr. Elder if an old contract could be faxed to staff for the Board's review. Mr. Spoon asked Mr. Elder if he would be willing to notify the consumers who signed contracts acknowledging to the Board's satisfaction that no perpetual care is provided at Rosemont. Mr. Elder replied affirmatively. Mr. Elder stated the unused contracts with the box reflecting perpetual care have been destroyed.

Mr. Spoon stated as he understands the question Mr. Elder was concerned he would lose his exemption as a non-perpetual care cemetery. He does not advise the Board to withdraw the cease and desist order as it was issued based on information contained in the contract. He does not believe the customers have been misled. He does not believe the Board has an issue before them. He stated Rosemont Cemetery has not lost its exemption as a perpetual care cemetery since Mr. Elder has taken corrective action with the contract.

Mr. Bartus suggested a revised contract be printed. Mr. Elder stated new contracts are currently being printed.

Ms. Holleman stated Mr. Elder's two perpetual care cemeteries, Lakeview and Chester Memorial Garden, would not be affected by the cease and desist order issued against Rosemont Cemetery.

Mr. Bryant stated Mr. Elder's two perpetual care cemeteries have not provided the Board with the Agreed Upon Procedures and now faces fines of \$6,300.00 as of this date.

Mr. Elder stated it is his understanding that a number of cemeteries are not going to submit the Agreed Upon Procedures; however, it is his intent to come into compliance with submitting the documentation as soon as possible. He is in negotiations to sell the three cemeteries in South Carolina as well as two cemeteries he owns in North Carolina. He has hired an accountant to complete the documentation although the cemeteries are completing as much of the documentation as much as possible prior to submitting the documentation to the accountant.

Florence Memorial Gardens – David Brown – (Rules & Regulations and Mausoleum)

David Brown of Florence Memorial Gardens submitted an email regarding "flush mount bronze memorial only cemetery." He is asking for the Board's approval to change the cemetery's rules and regulations to allow small upright monuments. He submitted regulations regarding the cemetery.

The Board suggested Mr. Brown require the manufacturer submit a drawing of the monument for approval prior to allowing the installation and that 'EGA' certified stone be used for the monuments.

Ms. Rose stated Mr. Brown thought he had been approved to build a mausoleum during an earlier meeting; however, he had not been approved. Mr. Brown is seeking the Board's approval to build a mausoleum for pre-sell.

Mr. Brown stated he began taking pre-sells for the mausoleum on August 27, 2008. Section 40-8-130 states he begin construction three years from the date of first sale. Only four sales have taken place, of which two sales are trusted. It will be a chapel mausoleum that is being expanded in an existing building.

Mr. Floyd stated Mr. Brown began pre-selling slots for the mausoleum in August 2008. In August 2011 the Board would need to verify from Mr. Brown that construction has begun on the mausoleum.

MOTION

Mr. Floyd made a motion the Board approve the Florence Memorial Gardens' regulations as amended. Mr. Riggins seconded the motion, which carried unanimously.

Clarendon Memorial Gardens (trust fund transfer)

On July 31, 2009 the Board received a letter from Clarendon Memorial Gardens notifying the Board that Synovus Trust Company the successor of the previous bank will no longer. Mr. Floyd stated paragraph ten of nineteen states, "Clarendon Memorial Gardens, Inc., hereby irrevocably grants unto Trustee, its successors and assigns, all of those properties and assets listed on schedule A". He asked Mr. Spoon if that phrase would mean an irrevocable trust. Mr. Spoon stated there is no reason it would not mean that it is not an irrevocable trust.

MOTION

Mr. Floyd made a motion the Board approve the transfer pending receipt of a letter from Synovus reflecting the amount of funds being transferred and a letter from First Federal reflecting the amount of funds received and that the bank understands it is irrevocable trust account. Mr. Riggins seconded the motion, which carried unanimously.

Heritage Memorial Gardens – Penny Hoffman-Poteat (sell)

Greenhaven Memorial Gardens – Penny Hoffman-Poteat (sell)

On July 28, 2009 the Board received incomplete applications for the sale of Heritage Memorial Gardens and Greenhaven Memorial Cemetery. Ms. Penny Hoffman-Poteat, manager of both cemeteries, was out of town when she received an email stating the sale of the two cemeteries had taken place on December 22, 2007. She noted the sale took place without the Board's notification and that an audit of the cemeteries had not been conducted prior to the sale. The owner, Terry Lanford, sold the cemeteries to his son and daughter-in-law; however, the sale was not a one hundred percent sale as Mr. Lanford kept ten percent of both cemeteries. She is not aware if the sales were stock sales.

Ms. Holleman stated the Board still needs completed applications, an LLC, Agreed Upon Procedures, and updated trust documents for both cemeteries.

Ms. Hoffman-Poteat stated Arthur State Bank holds the trust accounts for both cemeteries and have not been turned over to the new owners. She is attempting to have the trust accounts set up with Palmetto Bank. She went on to say Mr. Lanford would not respond to Arthur State Bank and the bank has now resigned itself as the trustee for the cemeteries. She was informed in late 2008 that the Agreed Upon Procedures would need to be submitted. She thought Mr. Lanford would have the books audited to ensure the trust accounts were up to date; however, he made no attempt to do so. She took the deed book, along with documentation regarding the merchandise account to an accountant in Boiling Springs to be audited.

Ms. Holleman stated Arthur State Bank has submitted documentation, a communications log, to Mr. Raymond Lee.

Mr. Lee stated he has issued a Cease and Desist to both cemeteries. He noted Mr. Lanford has not cooperated with any banks in regard to this matter.

Ms. Hoffman-Poteat stated the records for Heritage Memorial Gardens are available since it opened in 1984 to complete an Agreed Upon Procedures. However, the office at Greenhaven Memorial Cemetery was incorporated to the Heritage office in 2001. At that time the deeds for Greenhaven were cut from the Heritage office.

Mr. Igleheart stated he was not aware he was to appear before the Board regarding the transfer of the cemeteries. He contacted Mr. Eubanks to complete an audit; however, he does not have records prior to 2001 in regard to Greenhaven. He is asking the Board what to do. He noted Mr. Lanford still owns ten percent of the LLC.

Ms. Hoffman-Poteat stated she has asked for the records; however, Mr. Lanford has not turned over the records for Greenhaven or either turned over the records for the perpetual care and merchandise trust that were given to him when he purchased the cemetery from the previous owner. She noted Mr. Lanford did not contact her or Tammy Nelson prior to the sale of the cemeteries. She went on to say she and Ms. Nelson were aware that Mr. Lanford was to appear before the Board prior to the sale of the cemeteries; however, they were not informed of

the sale until after it had been completed. There is another cemetery included in the sale; however, that cemetery is a non-perpetual care cemetery.

Mr. Holloway stated Mr. Igleheart contacted him regarding the sale of the cemeteries. He further stated the cemeteries would come under the pile with no files or records. He further stated Mr. Lanford would need to get a handle on the funds for the trust account. He went on to say it is clear Mr. Lanford is ignoring the cease and desist order issued by Mr. Lee.

Mr. Igleheart stated he does not think a letter Mr. Lanford has had drawn up letter is legally binding as he has not gone through all of the procedures to transfer the cemeteries.

Mrs. Hoffman-Poteat she and the Iglehearts met the certified public accountant on August 10, 2009. She has also met with the bank holding the mortgage on the cemeteries. She also has not seen the letter or any financial information Mr. Igleheart has mentioned. She does not think the perpetual care for 2006 or 2007 has been paid. Ms. Nelson stated the perpetual care for 2006 has been paid; however, the perpetual care for 2007 has not been paid.

Mr. Igleheart stated they have paid Mr. Lanford in full for the cemeteries.

Mr. Spoon stated the Board may take the position to grant licensure; however, the Iglehearts must answer questions that cannot be answered today. He further stated the Board may need to take the application under advisement. He said it is an incomplete application at this time and it is the burden of the applicant to provide all documents. Some of the matters are civil matters that cannot be handled by the Board and that neither he nor the Board could offer legal advice on those matters.

The Board asked Mr. Spoon if the Board has the power to compel Mr. Lanford to transfer the trust accounts, or at least transfer the names. If so, what would be the next logical step. Mr. Spoon stated the Board could not compel Mr. Lanford to do this. However, if the individual is a licensee the matter could become a disciplinary matter.

The Board recommended Mr. Igleheart complete the Agreed Upon Procedures, the applications, the LLC and work through the trust accounts to complete the transition begun two years ago.

Mr. Floyd stated the cemetery should disclose in the regulations that the markers are to be bronze on granite.

Green Cemetery Guidelines (discussion)

The Board was presented with information regarding green burials. Mr. Russ recommended the Board table this matter at this time.

Michael Bishop (green cemetery plan)

The Board received a letter from Michael Bishop in regard to having land zoned by Lexington County as a cemetery. The zoning would prohibit the land from being anything other than cemetery. He plans on obtaining a conservation easement to ensure that the property will never be developed.

Michael Bishop stated he and his wife had discussed being buried on his property in Swansea. He has reviewed the laws regarding caskets and vaults which led him to green burials. He has looked into the natural preserve cemetery. He has discussed the matter with the local

(Lexington) zoning officials, which was approved and has had the plat and land surveyed for a couple of acres to be used as a green burial cemetery. He has researched obtaining a conservation easement; however, such an easement is not offered for such a small plot of land. The cemetery would be open to the public and would meet the green burial criteria. He noted the Green Burial Council has approved approximately two embalming fluids. He and his family would keep the records and noted the cemetery would not be a perpetual care cemetery. He plans on using granite markers, but would not allow artificial monuments such as bronze markers.

Mr. Riggins expressed concerns regarding maintenance of the cemetery.

Mr. Bishop asked the Board what he would have to claim prior to perpetual care becoming an issue. He noted the Green Burial Council requires five percent fund for a green cemetery. He further stated the deed restriction through the Green Burial Council prohibits future development of a cemetery with caskets, vaults and markers. He will issue a deed to the family for each space.

Mr. Bishop's attorney stated he is researching the Green Burial Council promulgates regulations for standards for practices for individuals wishing to obtain green burial certification for a cemetery. He noted any maintenance performed on the cemetery would be done out of daily expenses, not from a maintenance trust fund. He hopes the cemetery will be a for-profit cemetery.

The Board informed Mr. Bishop the funeral home would bring a BRT to the cemetery. The Board also informed Mr. Bishop the cemetery does the opening and closing of the grave and there is no sales tax on the digging of plots.

Possible Statute Change – Human and Pet Remains (discussion)

Mr. Floyd sent the Board a memo in regard to changing his cemetery's regulations to allow pet cremations and to allow pets buried with owners. He asked his attorney to review the statute in regard to making this change. He further stated the statute defines 'grave space', which includes the word 'intended'. He is proposing to strike '8.k. No interment of any body, of the cremated remains of any body, other than that of a human being shall be permitted in the Cemetery' and replace with, "At the discretion of the Cemetery management a section in its grave sites may be designated as permitting the interment of the cremated remains of pets and humans. However, only the burial of a human body shall be permitted in the cemetery." He stated the new section of the cemetery would be pet friendly.

Mr. Spoon stated Mr. Floyd has submitted a proposal to his cemetery's rules and regulations, which is subject to the Board's approval. However, the question is if the Board's practice act would permit Mr. Floyd's request.

Discussion on this matter ensued. The Board determined it would approve Mr. Floyd moving forward with making a legislative change.

Public Comments

No public comments were made during this meeting.

Executive Session

MOTION

Mr. Bartus made a motion the Board enter executive session to seek legal advice. Mr. Finch seconded the motion, which carried unanimously.

Return to Public Session

MOTION

Mr. Bartus made a motion the Board return to public session. Mr. Riggins seconded the motion, which carried unanimously.

Mr. Russ noted for the record that no official action was taken during executive session.

MOTION

Mr. Petty made a motion the Board waive Mr. Rogers' fine. Mr. Floyd seconded the motion, which carried unanimously.

Adjournment

MOTION

There being no further business to be discussed at this time, Mr. Floyd made a motion the meeting be adjourned. Mr. Riggins seconded the motion, which carried unanimously.

The August 12, 2009 meeting of the SC Perpetual Care Cemetery Board adjourned at 2:55 p.m.