

## MINUTES

South Carolina Perpetual Care Cemetery Board  
Board Meeting

10:00 a.m., November 5, 2009

Synergy Business Park  
110 Centerview Drive, Kingstree Building, Conference Room 105  
Columbia, South Carolina

### 1. Meeting Called to Order

J. W. Russ, chairman, of Conway, called the meeting to order at 10:04 a.m. Other members participating during the meeting included: Russel Floyd, vice chairman, of Spartanburg; John Bartus, of Mauldin; Roger Finch, of Honea Path; Jacquelyn Petty of Union; and Rick Riggins of Lancaster.

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

Staff members participating in the meeting included: Sandra Dickert, Administrative Assistant; Mark Dorman, Investigator, Office of Investigations and Enforcement; Amy Holleman, Administrative Specialist; Tony Kennedy, Investigator, Office of Investigations and Enforcement; Jeanie Rose, Administrative Specialist; Sheridan Spoon, Deputy General Counsel; and Sharon Wolfe, Investigator, Office of Investigations and Enforcement.

- A. 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. A quorum was present.

- B. Pledge of Allegiance  
All present recited the Pledge of Allegiance.

### 2. Approval of August 12, 2009 Meeting Minutes

Mr. Floyd noted the following corrections to the August 12, 2009 meeting minutes:

Page five under Florence Memorial Gardens, the third line of the third paragraph should read, 'Mr. Brown is seeking the Board's approval to begin a pre-construction sales program for a mausoleum.'

Page five under Florence Memorial Gardens, the first line of the fifth paragraph should read, 'Mr. Floyd stated Mr. Brown began pre-selling ~~slots~~ crypts for the mausoleum in August 2008.'

Page five the first line in the first paragraph under Clarendon Memorial Gardens, should read, '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 be the trustee.'

### **MOTION**

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

### **3. Chairman's Remarks – J. W. Russ**

Mr. Russ welcomed everyone to the meeting. He noted the Board had a heavy agenda and asked for everyone's patience as the Board worked through the meeting.

### **4. Administrator's Remarks – Amy Holleman**

Ms. Holleman stated Mrs. Cubitt is continuing to recover well and is expected back in January 2010. She further stated Mr. Teague recently attended a National Cemetery Regulators meeting in Texas. Mr. Bryant, Mrs. Cubitt, and Mr. Holloway are working on a plan to bring the cemeteries which are not in compliance with the Agreed Upon Procedures into compliance and that they would update the Board when more information becomes available.

Ms. Holleman stated she attached a link to the members' agendas to an email from the Funeral Consumer Alliance in regard to the FTC expanding the funeral rule to cemeteries which the board may find interesting. She noted this information is for the members' information.

### **5. Unfinished Business**

#### **a. Rock Hill Memorial Gardens – Danny Gibson (trust fund approval)**

Ms. Holleman stated Rock Hill Memorial Gardens is continuing to work on the trust fund. Ms. Holleman stated the Board approved Rock Hill Memorial Gardens over one year ago and asked the Board how long cemeteries would have to complete all documentation prior to beginning the application process again.

Mr. Floyd stated it would depend on what the cemetery needed to complete the documentation. He further stated the process should not take over one year to complete.

Mr. Russ suggested staff contact the cemetery for a report on the length of time it would take to complete the process. He asked staff to inform him of Mr. Gibson's reply.

#### **b. Beaufort Memorial Gardens – Ed Gamble (sell)**

Ms. Holleman stated Mr. Gamble has not completed all of the documentation. She noted this application has been outstanding for awhile.

#### **c. Heritage Memorial Gardens – Penny Hoffman-Poteat (sell)**

Ms. Holleman stated no representative from this cemetery was present at this meeting. She noted Ms. Hoffman-Poteat continues to work on the documentation.

#### **d. Greenhaven Memorial Gardens – Penny Hoffman-Poteat (sell)**

Ms. Holleman stated no representative from this cemetery was present at this meeting. She noted Ms. Hoffman-Poteat continues to work on the documentation.

Mr. Floyd asked staff to compile a comprehensive list of the cemeteries listed under unfinished business regarding the length of time regarding their applications.

Mr. Spoon stated staff could investigate if penalties would be appropriate if necessary since the cemeteries would be required to submit an annual report.

#### **e. Agreed Upon Procedures Update**

Ms. Holleman stated Mr. Teague created a spreadsheet on the cemeteries which are late and/or outstanding on complying with the submittal of the Agreed Upon Procedures. She noted the cemeteries with the higher penalties remain outstanding and were over 300 days late. She is

unsure if any fines have been collected. She said the cemeteries have been sent notices and will be sent notices again next week.

Ms. Holleman stated Mr. Bryant, Mrs. Cubitt and Mr. Holloway are working on a plan to bring the cemeteries into compliance and will report to the Board when the plan is in place.

## **6. New Business**

### **a. IRC Report**

Mr. Kennedy stated the IRC has not met since the last Board meeting. He noted there are currently 14 open complaints. He noted some of the cases deal with the Port Elsewhere which is still being investigated.

Mr. Floyd questioned Mr. Kennedy regarding open cases versus pending cases.

### **b. Inspection Report**

Mr. Lee stated he has inspected 31 cemeteries during the first quarter of the fiscal year. He further stated of the 31 cemeteries inspected, of which six passed inspection and 22 failed inspection. He stated he conducted re-inspections on three of the cemeteries which had failed inspection and that one of the cemeteries passed inspection. He noted he issued two cease and desist orders. He further stated 49 cemeteries have not submitted annual reports from 2007 and 75 cemeteries have not submitted annual reports from 2008. He has submitted nine cases to the Office of Investigations and Enforcement resulting from non-submittal of Agreed Upon Procedures.

Mr. Bartus suggested the Board may need to begin administering a cemetery law exam for those individuals who want to become a manager of a perpetual care cemetery.

### **c. Oak Hill Cemetery – Michelle Cooper**

On October 21, 2009 the Board received a perpetual care cemetery application for Oak Hill Cemetery, LLC. The application reflects Michelle Cooper as the manager. She has run across problems with finding a bank for a trust fund. She was attempting to follow the Board's guidelines as found on the Board's web page.

Mr. Spoon suggested following the format of an application hearing. Mr. Spoon swore Ms. Cooper in to give correct testimony. Ms. Rose stated the only missing document had been the trust agreement; however, staff has now received that document.

Ms. Cooper made remarks regarding the guidelines. She noted there are 300 acres, of which 47 acres will be used as the cemetery. She could not see developing the required two acres if the Board was not going to approve the cemetery. She noted the property has been surveyed and filed with Berkeley County and is currently in the re-zoning office. She stated the rezoning will take place during a meeting in February 2010.

Ms. Cooper has been in the funeral business for 27 years and purchased Dial Murray Funeral Home where she is working when she was 28 years old. She submitted two different contracts for the Board's review: one purchase agreement is the same as what is outlined in the Board's guidelines and a purchase and security agreement which is similar to Shirley Johnson's. She said no merchandise would be sold through the cemetery but would be sold through Dial Murray Funeral Home, which is an agent of Brown Memorials. The markers may be bronze or granite and she will determine at a later date whether to separate or go bronze followed by granite.

Mr. Floyd stated the Board has not seen the language in item three on page three which discusses net income. Ms. Cooper stated she informed the bank they would want to reinvest any funds and the bank has assured her the funds would be available at any time. The Board suggested Ms. Cooper leave those funds as part of the trust if the funds are not used within one year.

Ms. Cooper has never worked for a perpetual care cemetery, but has worked with family cemeteries as well as church cemeteries and is solely responsible for marking the graves. Ms. Shirley Johnson is her mentor. The Board asked that Ms. Cooper submit a document stating Shirley Johnson would be the consulting manager for one year.

### **MOTION**

Mr. Bartus made a motion the Board approve Oak Hill Cemetery and Michelle Cooper as manager of record, pending receipt of the correction to the trust document and receipt of a document stating Shirley Johnson would act as consulting manager for one year. Mr. Floyd seconded the motion, which carried unanimously.

#### **d. Roselawn Memorial Cemetery, Inc. – James Amaker**

Mrs. Amaker stated they purchased the property approximately four years ago. She further stated they could not begin the cemetery earlier as they were taking care of elderly parents and other matters took precedence prior to beginning the cemetery. She noted the property is free and clear and two acres have been developed for the cemetery. She said they plan to develop two to four acres in the beginning. David Sack, a landscape architect developed the cemetery plans. The Palmetto Bank will be the cemetery's trustee. The cemetery requires 48 hours notice prior to internment and will allow four cremated remains in one plot.

Mr. Floyd recommended Mr. and Mrs. Amaker define what care and maintenance and installation provides in the rules and regulations of the cemetery. He noted the rules and regulations discuss the installation charge, but do not discuss care and maintenance and installation.

The Board brought to Mr. and Mrs. Amaker's attention that the cemetery's policies and procedures state that only one grave marker would be permitted on a grave space except for a companion with the same family name, which would contradict the cemetery allowing four cremated remains in one grave space.

Mr. and Mrs. Amaker will be selling vaults at some point in time. The Board suggested Mr. and Mrs. Amaker follow the model contract for vaults.

Mr. Floyd suggested the policies and procedures discuss the use of stand alone flower pots. He further stated the individual mowing the cemetery would have to get off of the lawn mower to move the flower pots and then get off the lawn mower a second time to return the flower pot. He noted policies and procedures can be changed; however, the changes must be approved by the Board.

### **MOTION**

Mr. Bartus made a motion the Board approve Roselawn Memorial Cemetery, Inc. and James Amaker as manager, conditionally pending receipt of the model contract and disclosures, confirmation of the deposit transfer of the trust fund, confirmation of the development of two acres, a letter stating Paul Simmons will be the consulting manager for one year, and anything

else needed to comply with the statute. Mr. Floyd seconded the motion, which carried unanimously.

e. Garden of Devotion Cemetery, Inc. (ownership structure & manager change) – Tim McKenzie

Mr. Spoon swore Mr. Timothy McKenzie and Mr. Raymond Lee to give correct testimony.

One of the principal owners of the Garden of Devotion died and left his share of the business to his children. Ms. Nell Morris, wife of the deceased, has been attempting to sell the cemetery for approximately two years. Mr. McKenzie agreed to become manager and to purchase the cemetery if the cemetery could be turned around financially. Approximately three days after speaking with the company he received a visit from Mr. Lee. Mr. McKenzie stated people assumed that he had purchased the cemetery and was in charge because he moved the cemetery's records from Mrs. Morris' home to an office he was using. He went on to say the company assumed everything would be approved by staff. He stated he spoke with Ms. Rose and Ms. Holleman who felt it was imperative he appear before the Board to explain the confusion regarding the ownership of the cemetery and that Ms. Rose felt the matter could be handled with representation from the Morris and Harrell families.

Mr. McKenzie is seeking approval as manager of record for the cemetery. He went on to say Ms. Rose informed the Agreed Upon Procedures had not been submitted for past two years. He noted Rick Newell who completes the Agreed Upon Procedures assumed the Procedures had to be completed every three years. He had Mr. Newell complete the Agreed Upon Procedures and submitted the documentation on November 5, 2008.

Mr. McKenzie stated the affidavit of the perpetual care trust has been completed, notarized, and submitted. The Garden of Devotion Cemetery Board elected new officers during a meeting on September 19, 2009 to be submitted with the application. He noted Mrs. Morris has been running the cemetery, which has had no manager. He said fifty percent (50%) ownership belongs to the three children of Sham and Verdayne Harrell. The other fifty percent (50%) of the cemetery is owned by Merritt and Nell Morris.

Mr. McKenzie stated the cemetery is now attempting to resolve the issue of ownership and manager for the perpetual care cemetery.

Mr. Lee stated he made several attempts to contact a representative of the cemetery to conduct an inspection. He spoke with Mrs. Morris and learned she was attempting to sell the cemetery. He further stated Ms. Morris had been in negotiations with Mr. McKenzie regarding the cemetery and informed him Mr. McKenzie would be purchasing seventy-five percent (75%) of the stock and would be the manager of record. He said Mrs. Morris also informed him there was a document to that effect. He also stated he contacted Mr. McKenzie who stated he did not own any stock and that he would not be the manager but would be the sales manager. He became concerned with the ownership. He again contacted Mrs. Morris and questioned her regarding the trust fund. She told Mr. Lee the bank which has the trust fund. He then asked Mrs. Morris in regard to sending the document regarding the sale of 75% of the stock to Mr. McKenzie after which she stated Mr. McKenzie informed her it was a confidential document as it was a confidential document between him and his attorney. Mr. Lee questioned Mr. McKenzie regarding the sale of the stock and Mr. McKenzie stated there is an agreement; however, he has not actually purchased the stock. He is concerned with who owns the stock and who is purchasing the stock. He met with the family who owns the stock and that the stock remains with the family. He noted four violations on the inspection report. He also made a note for a

letter of ownership to be sent to the Board prior to the next Board meeting. He further stated Mr. McKenzie apparently contacted staff and stated he was not the manager but was trying to get the application and supporting documentation submitted to the office.

Mr. McKenzie stated he has not entered into an agreement. He further stated the Garden of Devotion board met at which time they made the decision to sell the cemetery to him within a 24 month approval if he became manager and accepted the offer to purchase the cemetery. He further stated there is a private document (a resolution) regarding payment information. He noted there is no contract at this time. He noted he has worked at a perpetual care cemetery.

The Board determined the ownership change from one generation to the next is a separate issue from change of manager. Mr. Lee noted the applications have been signed by a daughter of one the original owners.

Mr. Spoon questioned Mr. McKenzie if he was familiar with the minutes of the September 19, 2009 meeting held by the officers of the cemetery. Mr. McKenzie stated that meeting was held based on a suggestion by Mr. Lee. Mr. Spoon then asked Mr. McKenzie about the individuals listed in the minutes of the September 19, 2009 meeting.

Mr. Spoon asked Mr. Lee how long he had investigated this matter. Mr. Lee replied the matter was not an investigation but an inspection of the cemetery. He noted he began the inspection process on October 14, 2009. Mr. Spoon asked Mr. Lee if it was in the nature of the inspection to investigate the ownership of the cemetery. Mr. Lee replied affirmatively and stated the investigation of a cemetery's ownership is done on a routine basis. Mr. Spoon asked Mr. Lee if he could now say who owns the Garden of Devotion Cemetery. Mr. Lee replied negatively.

Mr. Floyd asked Mr. McKenzie if he completed the application and signed it as manager, even though he is not the manager. Mr. McKenzie replied affirmatively. He then stated he asked Mrs. Morris to sign the application; however, she refuses to sign anything.

Mr. Spoon stated if the Board is going to table this matter the members may want to also consider the trust account, the annual report, and the Agreed Upon Procedures in addition to the ownership issue.

Mr. Russ suggested the Board discuss this application in executive session.

f. Crescent Hill Cemetery (trust fund transfer request) – Lindsey Gill  
Lindsey Gill appeared before the Board at this time.

Ms. Holleman stated US Bank is getting out of the trustee business and is resigning as trustee for Crescent Hill Cemetery. She further stated Independence Trust Company, located in Tennessee, has offered to be the trustee; however, Independence Trust Company does not have a South Carolina license nor does it have a physical presence within the state. She further stated the question is whether or not the national charter held by Independence Trust Company give the Board the right to allow the bank to become trustee. She noted Crescent Hill Cemetery did not submit the 2007 Annual Report but did submit the 2008 Annual Report and staff received the Agreed Upon Procedures on January 2, 2009. She said Independence Trust Company never appeared before the Board. She also stated the Board of Financial Institutions has said the national charter can cover the trust fund; however, it requires a physical presence within the state to obtain licensure to do business within South Carolina.

Ms. Gill stated Independence Trust Company is technically a bank; however, it is non-depository bank. She further stated the institution deals with investment management and personal and cemetery trust accounts. She noted the company is nationally chartered and has trust accounts for cemeteries in 31 states. She went on to say the company's attorney spoke with Mr. Rion Alvey in regard to the trust funds in 2005. In a memo from that discussion it was noted that the Office of Thrist Supervision has determined the national charter would allow Independence Trust Company to do business in the state. The company has a minimum fee of \$7,500.00 for trust accounts.

Mr. Russ stated the Board has also required financial institutions to have a physical presence within the state.

Mr. Spoon asked Ms. Gill if the company is presently doing business within South Carolina. Ms. Gill stated the company has one personal client for which the company manages investments and the will.

The Board determined it would discuss this matter in executive session.

g. Service Corporation International (trust fund transfer request)

Ms. Holleman stated US Bank is removing itself from doing business with trust accounts, which is requiring Service Corporation International (SCI) to move trust accounts to other institutions. She said no one was present from Service Corporation International (SCI). She further stated SCI is requesting to move its accounts to Sun Trust, which does have a physical presence in South Carolina. She noted the cemeteries associated with SCI are listed in the members' packets. She further stated once the Board gives the cemetery approval to transfer the funds the original trustee sends a letter reflecting the funds transferred and the new trustee sends a letter reflecting the funds received. The Agreed Upon Procedures would reflect any wrong doing.

The Board asked that letters from the bank transferring the funds and the banks receiving the funds send letters regarding the trust accounts with the transference.

Ms. Holleman asked the Board if US Bank must submit an accounting of each account with the transfer.

h. Requests to Waive Fines for Late Agreed Upon Procedures

*i. Faith Memorial Gardens*

Ms. Holleman stated Ms. Karen Hobbs, Dr. Hobbs' daughter, had contacted her in December in reference to the Agreed Upon Procedures. She further stated the cemetery had been sending the Agreed Upon Procedures to a bookkeeper. After receiving yet another request from staff regarding the Agreed Upon Procedures Ms. Hobbs contacted the bookkeeper who informed her that a CPA must complete the Agreed Upon Procedures. She said Ms. Hobbs was having difficulty locating a CPA and contacted staff. She noted Mr. Bryant had Ms. Hobbs contact Mr. Holloway who assisted Ms. Hobbs in finding a CPA. Staff did receive the Agreed Upon Procedures on May 28, 2009. She noted Dr. Hobbs is in failing health and is attempting to run his optometry business. She stated the Board has approved one request, from Evergreen Memorial Gardens, to grant waive the fine.

Mr. Lee has been to Faith Memorial Gardens at which time he cited the facility for refusing to be inspected. He noted Dr. Hobbs' two daughters are attempting to run the cemetery. He stated the cemetery is very small.

Ms. Holleman stated Faith Memorial Gardens renewed the license late and entered into a consent agreement which ordered the cemetery to pay a \$1,000.00 fine and be placed on probation for one year.

The Board tabled this matter to the March 2010 meeting to ensure all information regarding the previous fine has been obtained.

i. Consideration of Enforcement/Disciplinary Policies

The Board determined it would discuss this matter in executive session.

j. Consideration of Outer Burial Containers

Ms. Holleman stated Mr. Teague had spoken with Mr. Spoon in regard to outer burial containers.

Mr. Russ stated Mr. Teague attended a National Cemetery Regulators meeting and discovered that one of the companies which owns cemeteries in South Carolina is providing vaults ahead of time by burying the vaults. He went on to say the company is wrapping the vaults in heat wrap and burying the vaults. He further stated the Alabama Board has taken the position that it cannot keep the company from doing this type of practice and he does not feel this Board could prevent such a practice. However, he feels this type of practice needs to be regulated. He feels the Board should set guidelines which should be adhered to and that the consumer needs to be informed of the practice and need to give permission for such a practice to take place. He said the Board should give a restriction on how much the company could charge for opening and closing when the vault is buried and assume liability that the vault is in pristine condition when it is uncovered, which could be many years later. He stated the company should be responsible if the vault is soiled when it is uncovered and does not know if the law would allow the Board to prohibit such a practice. He noted Alabama insisted the company have a program monitoring what the counselors are telling individuals and prove that to the state.

Discussion on this matter ensued and included sealing of vaults and the charge for opening and closing of the grave on two occasions. The Board asked that the company be asked to attend a meeting to allow the Board to ask questions regarding this practice. The Board asked that Mr. Lee visit the cemetery to see if it is burying vaults. The Board determined it wanted to know the advantages and disadvantages of burying a vault on a pre-need basis. It was noted Alabama now has a law which allows pre-installation of vaults.

k. 2006-2009 Agreed Upon Procedures Due Date Vote

Mr. Russ was under the impression the Board had been requiring the cemeteries to complete the reports based on the calendar year.

Ms. Holleman stated Ms. Elrod had led her to believe the Board had voted to have the cemeteries complete the Agreed Upon Procedures on a calendar year basis. She further stated the statute says fiscal year and calendar year. She further stated if the Board requires the cemeteries to submit the Agreed Upon Procedures 90 days past December 31st staff would need to send a letter to the cemeteries to ensure the cemeteries are on the same schedule. She said staff does not know the fiscal year for each cemetery. She suggested the Board require the Year End Financial Reports and the Agreed Upon Procedures be submitted at the same time.



Ms. Holleman stated Mr. Holloway suggested June 30th or August 31st for the Board's consideration. She further stated some CPAs complete audits beginning in July and ending in November and the Board may want to get ahead of the audits. She noted the merchandise fund may have to be submitted at the end of the calendar year by statute.

Following some discussion the Board determined the Agreed Upon Procedures would be due six months from the end of the cemetery's fiscal year.

I. Consideration of Year End Financial Reports Due Date

Following discussion regarding the Agreed Upon Procedures and year end financial reports, the Board determined the year end financial reports would be due within 90 days following the end of the cemetery's fiscal year.

m. Consideration of 2010 Board Meeting Dates

The Board reviewed the following proposed meeting dates for 2010:

March 18, 2010      May 19, 2010      July 7, 2010      November 3, 2010

The Board asked that the July 7, 2010 meeting be rescheduled to later in July 2010 or in August 2010. The Board agreed to meet on July 22, 2010.

**MOTION**

Mr. Floyd made a motion the Board approve the meeting dates as amended. Ms. Petty seconded the motion, which carried unanimously.

n. Election of Officers

**MOTION**

Mr. Riggins made a motion the Board open the floor for nominations. Mr. Bartus seconded the motion, which carried unanimously.

Mr. Riggins nominated Mr. Russ for chairman. Mr. Bartus seconded the nomination, which carried unanimously.

Mr. Riggins nominated Mr. Floyd for vice chairman. Ms. Petty seconded the nomination, which carried unanimously.

**7. Public Comments**

No public comments were made during this meeting.

**8. Executive Session**

**MOTION**

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

**9. Return to Public Session**

**MOTION**

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

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

Crescent Hill Cemetery (trust fund transfer request) – Lindsey Gill

**MOTION**

Mr. Floyd made a motion the Board deny the trust fund transfer request but would reconsider in the future if Independence Trust Company provides registration from the Secretary of State's Office. Mr. Riggins seconded the motion, which carried unanimously.

Garden of Devotion Cemetery, Inc. (ownership structure & manager change) – Tim McKenzie

**MOTION**

Ms. Petty made a motion the Board approve Mr. McKenzie as manager for Garden of Devotion Cemetery and approve the change of ownership. Mr. Riggins seconded the motion, which carried unanimously.

**10. Adjournment**

**MOTION**

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

The November 5, 2009 SC Perpetual Care Cemetery Board meeting adjourned at 5:15 p.m.