

MINUTES
South Carolina Perpetual Care Cemetery Board
Board Meeting
9:00 a.m., March 18, 2010
Synergy Business Park
110 Centerview Drive, Kingtree Building, 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; Thomas Johnson, of Charleston; Jacquelyn Petty of Union; and Rick Riggins of Lancaster.

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. Public Notice

Mr. Russ announced that public notice of this meeting was properly posted at the S. C. Perpetual Care Cemetery Board office, Synergy Business Park, Kingtree 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 also noted that a quorum was present.

B. Pledge of Allegiance

All present recited the Pledge of Allegiance.

2. Approval of November 5, 2009 and December 22, 2009 Meeting Minutes

Mr. Bartus noted one correction to page 5 of the November 5, 2009 minutes. He said he became concerned with and strike and in the last paragraph middle.

MOTION

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

MOTION

Mr. Floyd made a motion the Board approve the December 22, 2009 meeting minutes. Mr. Bartus seconded the motion, which carried unanimously.

3. Chairman's Remarks - J. W. Russ

Mr. Russ welcomed everyone to the meeting.

4. Administrator's Remarks - Amy Holleman

Ms. Holleman reminded the members to complete and submit the Statement of Economic Interest Forms to the State Ethics Commission. Mr. Bryant stated Mrs. Cubitt is progressing

from her surgery well. Mr. Bryant stated possible budget cuts may affect the board's services. He briefed the board regarding the budget.

5. Old Business

Mr. Floyd stated the Board during the last meeting asked for documentation regarding the items under old business. Discussion ensued regarding changing Unfinished Business to Pending. Add town to cemetery on agenda.

A. Rock Hill Memorial Gardens - Danny Gibson (trust fund approval)

Danny Gibson appeared before the Board at this time.

The Board had previously approved the transfer of funds, which have been transferred. The Board, however, has not approved the trust fund documents. The trust fund documents have been amended per the Board's instructions.

Discussion ensued regarding the trust fund documents as well as a disclaimer for the documents.

The Board asked that Mr. Gibson delete customer gain on page two and personal gain on page three and change the verbiage in 7.2 and 7.3 on page ten.

B. Heritage Memorial Gardens - Penny Hoffman-Poteat (sell)

C. Greenhaven Memorial Gardens - Penny Hoffman-Poteat (sell)

Ms. Holleman stated Mrs. Cubitt sent a letter to Ms. Poteat as well as Mr. and Mrs. Igleheart requesting them to appear before the Board to update the members regarding the purchase of the cemetery.

Ms. Holleman reminded the members that Mr. and Mrs. Igleheart had purchased two of Terry Lanford's cemeteries in December 2007 and were unaware they needed to appear before the Board to gain approval of the purchase.

Mr. and Mrs. Igleheart have filed a civil suit against Mr. Lanford, the former owner, in regard to the trust accounts. They do not have a timeline on the case in the court system at this time.

Mr. and Mrs. Igleheart are now in the process of establishing trust accounts with Palmetto Bank, although no deposits have been made to those trust accounts at this time. They were attempting to transfer the funds from Mr. Lanford's trust accounts; however, they ran into a problem.

Ms. Hoffman-Poteat stated she is working with the accountant in regard to the trust fund accounts to see how much money is to be transferred.

Ms. Poteat stated since they appeared before the Board in August 2009 they have discovered there was no merchandise trust account for either cemetery. She further stated there is one account with Merrill-Lynch under a corporate account, which is supposed to be for merchandise. She noted there is only \$49,000.00 in that account, which would not cover the liability for both cemeteries. She also stated the account has not been audited in several years. She noted in the past two years they have purchased approximately five vaults per month and approximately two memorials per month that were trusted several years ago. She went on to say they have

been unable to recoup the monies from those purchases because Merrill Lynch won't let them touch an account as Mr. Lanford has not signed that account over to them. She went on to say there is not a merchandise account for the Greenhaven cemetery.

D. Oak Hill Cemetery - Michelle Cooper (new)

The Board took no action on this matter.

E. Roselawn Memorial Cemetery, Inc - James Amaker (new)

The Board took no action on this matter during this meeting.

F. Garden of Devotion Cemetery, Inc. (ownership structure & manager change)

Ms. Holleman stated this matter may have been taken care of.

Mr. Spoon stated since the last appearance there seems to be an issue as to whether or not a cease and desist may have been issued. He understands this cemetery is not licensed. He noted there is an existing order in place and that staff has suggested to them that since it has been since November 2009 the applicant has indicated they would resubmit the original documentation and allow staff to make the determination if all documentation has been submitted. He went on to say the order specified three or four matters which needed to be completed, which is probably why they are not present for the meeting.

Ms. Rose stated the cemetery had submitted documentation; however, the trust documents did not contain the word 'irrevocable'. She noted the documents were returned to the bank to have the documents rewritten to include 'irrevocable'.

Mr. Spoon stated a question had arisen after meeting regarding the cease and desist order.

No action to be taken by Board during this meeting.

G. Request to Waive Fines for Late Agreed Upon Procedures

Faith Memorial Gardens

The Board has received a letter from Faith Memorial Gardens requesting the Board waive the fine for the late submittal of the agreed upon procedures. Mr. Russ suggested the Board postpone the decision until the matter can be discussed in executive session.

Ms. Holleman stated the agency showed the cemetery had not paid fine; however, the fine had been paid. She noted it was an administrative error and that the fine had been applied to the wrong account, which has since been corrected.

H. Agreed Upon Procedures Update

Ms. Holleman stated there are currently 21 outstanding agreed upon procedures of the ones that were due December 31, 2008. She also said staff is beginning to receive the 2007, 2008, and 2009 agreed upon procedures.

Mr. Jim Holloway stated have been getting good response. He further stated eight of the cemeteries are represented by the Graham cemeteries. He noted the Board has inherited a fairly large task.

6. New Business

MOTION

Mr. Floyd made a motion to move items 1-3 and move item 21 up. Mr. Riggins seconded the motion, which carried unanimously.

A. Request to Waive Fines for Late Agreed Upon Procedures

Newberry Memorial Gardens

Mr. Huger Caughman of Newberry Memorial Gardens appeared before the Board.

Mr. Caughman stated he is requesting the Board refund the fine of \$5,500.00. He feels the agreed upon procedures was submitted in a timely manner; however, he does not have the necessary proof. He noted the cemetery has now put checks and balances in place to ensure all documentation is submitted to the Board in a timely manner.

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

B. IRC Report

Mr. Tony Kennedy, investigator, stated the Board has a new investigator, Mr. Bobby Taylor. He further stated he would continue assisting with the investigations.

Investigations Report

Mr. Kennedy stated 93 complaints have been received since 2004, of which 24 complaints were labeled do not open. He noted 63 cases have been worked since 2004. He said 11 cases were worked in 2004, 28 cases in 2005, ten cases in 2006, eight cases in 2007, 12 cases in 2008, and 19 cases in 2009.

Mr. Kennedy noted there are seven cases pending board action, of which six cases deal with the old Port Elsewhere. He further stated staff was holding these cases until the matter is finished. He went on to say currently there are 17 active cases, of which 11 cases have been completed and ready to be presented to the IRC. He noted there are three more cases ready to be presented to the IRC, which brings the total number of cases to be presented to the IRC to 14.

Mr. Bryant stated as far as staff is concerned the Port Elsewhere matters have been resolved since the cemeteries have been sold to Stonemor. He further stated since Stonemor is now licensed in South Carolina that company is now being monitored for any violation of the Board's practice act.

Discussion ensued regarding the sale of the Port Elsewhere cemeteries.

Mr. Kennedy noted since 2005 \$19,125.00 have been collected in fines and since September 2009 \$16,325.00 out of the \$19,125.00 have been collected on behalf of the Board.

February 18, 2010 IRC Report

Mr. Kennedy briefed the Board regarding the February 18, 2010 IRC report.

Continue to next IRC

2009-9

2009-16

Dismissals

2009-6

2009-7

MOTION

Mr. Floyd made a motion to approve IRC Report. Mr. Riggins seconded the motion, which carried unanimously.

Mr. Spoon stated a complaint should be filed in order for Mr. Lee to conduct inspections on these properties.

C. Inspection Report

Mr. Lee stated Ms. Holleman had approximately 79 cemeteries in non-compliance with the annual reports. For the past three months he has been contacting the cemeteries and working with the staff in order to obtain the reports. He has not obtained 16 reports, of which six have admitted to under funding the accounts. He noted the amounts ranged from \$70,000.00 to \$79,000.00. He further stated he has filed complaints on some of these cemeteries and forwarded those complaints to the Office of Investigations and Enforcement.

Mr. Lee stated some of the cemeteries had not been funding the trust fund accounts when the Board had been previously sunsetted. He went on to say when the Board had been re-established the cemeteries were embarrassed that the accounts are not properly funded and hope that the Board would work with them in structuring a payment plan for the accounts. He further stated the other eight to ten cemeteries would be appearing before the Board in hearings.

Mr. Lee stated Mr. Floyd had directed him to inspect Cedar Hill Memorial Gardens; however, there are complications. He noted Mr. Lanford, the owner, will not return phone calls or respond to any other type of communication for any documentation. He understands the cemetery is going into foreclosure.

Mr. Floyd stated the Board wants to be on record that it is making every attempt to protect the public in regard to that cemetery.

c. OGC Report

The Perpetual Care Cemetery Board has not tried cases in the last two years. There is no report at this time.

D. Aiken Memorial Gardens - Adam Taylor (sale)

E. Jessamine Memorial Gardens, LLC - Adam Taylor (sale)

F. Memorial Gardens of Columbia - Adam Taylor (sale)

- G. Plantation Memorial Gardens - Adam Taylor (sale)**
- H. Chatham Hill Memorial Gardens - Adam Taylor (sale)**
- I. Forest Lawn Memorial Park - Adam Taylor (sale)**
- J. Crestlawn Memorial Gardens - Adam Taylor (sale)**
- K. Belleville Memorial Gardens - Adam Taylor (sale)**

Suzanne Coe, Esq., stated applications for all eight cemeteries have been submitted and supplemented with documents requested by the Board on several occasions. She went on to say the cemeteries were owned by Mr. Michael Graham who has been deceased for a number of years. She said a March 16th letter from Mr. Nick Nicholas, Esquire, states he is representing Mr. Graham's widow on a pro bono basis and asks the Board to approve the sale of the cemeteries. She stated Mrs. Graham did not have the know-how or the ability to run the properties. She noted they are aware there are significant problems with the cemeteries and they are stepping in hoping to correct the problems.

Ms. Coe stated two big things supplemented are (1) several documents have been filed as UCCs on all eight properties by VLX. She continued by saying Mr. Graham borrowed \$2.3 million dollars from VLX and in turn VLX produced covenants that state VLX basically owns the licenses and the trust accounts. She stated she researched the deliberation on the covenants and found them to be completely ineffective. She referred to Section 36.9.08 which states that promissory notes cannot be assigned to other individuals. She noted VLX has since declared bankruptcy. She noted that no one can locate the promissory note.

Ms. Coe stated another major problem is that merchandise, such as markers, has not been delivered to clients. She said upon approval Mr. Taylor would be able to close on the properties and begin a methodical system in delivering the merchandise.

Mr. Spoon swore Mr. Taylor to give correct testimony.

Mr. Taylor stated the trust funds are located with US Bank, which no longer has a trust department. He further stated the bank wants to relinquish the funds.

Ms. Coe stated she has revised the care and maintenance trust fund to make it irrevocable and contains all of the points noted by the Board. She has also revised the merchandise trust fund and went by the provisions in the statute or old regulation.

Ms. Coe stated they have not seen the audit conducted on the properties; however, they know the first thing to be done is delivery of the merchandise to the customers.

Mr. Jim Holloway stated Mr. Taylor guaranteed him he would deliver the merchandise and he did not look at the merchandise trust fund. He noted his concern was the protection of the citizens under the perpetual care fund. He visited all of the cemeteries, with the exception of the Moncks Corner property. He went on to say all of the properties were well maintained. He went on to say each location has an inventory of plots which have been platted and the number of plots, niches and crypts that have been sold. He knows what the current prices are and how many plots have been sold. He briefed the Board regarding how he figured the amount of monies which should be in the care and maintenance fund as well as the merchandise fund.

Mr. Holloway noted the Aiken property has 7,900 sites platted, 2,000 plots have not been sold, which makes approximately 6,000 sites sold. Using his methodology with 2,800 markers, an average cost of \$30.00 per marker, about \$700,000.00 should be in the account. Records

indicate \$112,487.23 is in the account. The deficiency, based on his estimate, is approximately \$600,000.00. He noted he has one of these computations for each cemetery. The total estimated amount which should be in the accounts for all eight cemeteries is \$4,360,000.00.

Discussion ensued regarding the delivery of merchandise and the change of cemetery ownership, removing the UCCs civilly, and overcoming the shortfall.

Mr. Spoon stated the Board and staff should reserve the right that any additional issues which may arise may be revisited at a later time. He further stated that based on assumption the two major issues at this point are the trust fund accounts and the liens and encumbrances. He went on to say argument has been made regarding the mortgage (UCC) against the cemeteries. He noted the statute says the cemetery must be free and clear and a mortgage cannot be held. He noted the likelihood of the UCCs being called in is very small; however, he wants to allow for the UCCs in the Board's decision regarding approval.

Mr. Spoon stated the second issue is the deficiencies, which include care and maintenance, merchandise, and opening and closing to some extent. He stated, based on 40-8-90, the applicant in theory cannot get a license and he wants the Board to allow that one day the UCC liens may resurface. He suggested the Board interpret the statute in regard to the liens and allow for the possibility that the applicant should provide conclusive evidence that the liens have been discharged or, should they resurface the applicant should be responsible for those amounts. He also suggested the trust accounts the applicant would be responsible for funding the amounts in the care and maintenance trust account and the merchandise account as well as the opening and closing as a condition of licensure. He said the Board could determine the amounts. He noted it is a decision that would include a couple of conditions that would protect the clientele and the public.

Ms. Coe stated should the UCC issue resurfaced there is a promissory note that no one has copies of, including the Secretary of State's Office or the Clerk of Court office, which is alluded to in the assignment of rent. She said VLX is the actual owner of the cemeteries even though the company is not licensed and can never own the trust funds. She went on to say VLX would have to file a lawsuit to call the note and would use funds the company believes is already theirs. She noted the promissory note was done in 2004 and the law which would strike it all down went into effect in 1988. She noted a UCC is usually placed against personal property, such as refrigerators, and automatically expire. She said UCCs must first be valid to be renewed. She went on to say a UCC was initially placed against all eight cemeteries; however, some of the UCCs have not been renewed.

A brief discussion ensued regarding the language in the merchandise trust fund documents. Ms. Coe will email Mr. Floyd the pages regarding the definition of income and refunding or distributing money from the account on instruction from the purchaser of the merchandise.

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

Mr. Floyd stated Mr. Graham's acquisition and operation of these properties occurred during the 12 year period between 1990 and 2003 when the board had been sunsetted. At that time there was no board in place to enforce the statute or regulations.

- L. Forest Lawn Memory Gardens - Trust Fund Transfer**
- M. Evergreen Cemetery Park - Trust Fund Transfer**
- N. Hillside Memorial Park - Trust Fund Transfer**

- O. Greenlawn Memorial Park - Trust Fund Transfer**
- P. Hillcrest Memory Gardens - Trust Fund Transfer**
- Q. Grandview Memorial Gardens - Trust Fund Transfer**
- R. Crescent Hill Memorial Park - Trust Fund Transfer**
- S. Twin Cities Memorial Gardens - Trust Fund Transfer**
- T. Sunset Memorial Gardens - Trust Fund Transfer**

MOTION

Mr. Floyd made a motion to approve the transfer of the trust fund monies pending the Board's review of the trust fund documents. Mr. Riggins seconded the motion, which carried unanimously.

U. Southeastern Memorial Gardens - Richard Leonard (Trust Fund Question)

Richard Leonard did not appear during this meeting.

Ms. Holleman stated staff could not locate any evidence the Board would have told him to take overage from his care and maintenance account and apply it to his merchandised account. She further stated Mrs. Cubitt believes the overage to be earnings of the care and maintenance account and that it should go back to principal. She went on to say Mrs. Cubitt does not believe it is an actual overage.

The Board does not recall stating Mr. Leonard could take the overage and asked that he appear during the May 2010 meeting.

7. 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.

8. 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 stated there was no official action taken during executive session.

9. Request to Waive Fines for Late Agreed Upon Procedures

- A. Faith Memorial Gardens**
- B. Newberry Memorial Gardens**

10. Determination of Adam Taylor's acquisition of Mike Graham Properties

MOTION

Mr. Floyd made a motion the Board will waive one-half of the fines for Faith Memorial Gardens and Newberry Memorial Gardens with one year probation with the stipulation that in the future there would be no waiver of the fines. Mr. Riggins seconded the motion, which carried unanimously.

Aiken Memorial Gardens – Adam Taylor (sale)
Jessamine Memorial Gardens, LLC – Adam Taylor (sale)
Memorial Gardens of Columbia – Adam Taylor (sale)
Plantation Memorial Gardens – Adam Taylor (sale)
Chatham Hill Memorial Gardens – Adam Taylor (sale)
Forest Lawn Memorial Park – Adam Taylor (sale)
Crestlawn Memorial Gardens – Adam Taylor (sale)
Belleville Memorial Gardens – Adam Taylor (sale)

MOTION

Mr. Floyd made a motion Mr. Floyd made the Board issue licenses to Mr. Taylor with the stipulation that the bonding shortfall, trust account, care and maintenance account, for at least \$2,000,000.00, that the merchandise account should be bonded in the amount of \$500,000 and the UCCs be bonded in the amount of \$250,000; that the trust account be made good within five years or as soon as possible. The shortfall is based on Mr. Holloway's estimate, if Mr. Taylor and Ms. Coe can provide the Board with proof the UCCs have now been satisfied it is now a moot point and the bond can be terminated; the merchandise account would need to be bonded with a time table to be restored within five years and they would need to assume liability for the opening and closing; amend the merchandise document and care and maintenance trust fund document and the rules and regulations. Mr. Finch seconded the motion, which carried unanimously.

11. Public Comments

No public comments were made during this meeting.

12. Adjournment

MOTION

Mr. Floyd made a motion the meeting be adjourned. Mr. Riggins seconded the motion, which carried unanimously.

The March 18, 2010 meeting of the SC Perpetual Care Cemetery Board adjourned at 2:47 p.m.