

MINUTES
South Carolina Perpetual Care Cemetery Board
Conference Call Board Meeting
Synergy Business Park
110 Centerview Drive, Kingstree Building
Room 201-20
Columbia, South Carolina
2:00 p.m., Tuesday, June 8, 2010

Meeting Called to Order

J. W. Russ, chairman, of Conway, called the meeting to order at 2:05 P.m. Other members participating during the meeting included: Russel Floyd, vice chairman, of Spartanburg; John Bartus, of Mauldin; Roger Finch, of Honea Path; and Rick Riggins of Lancaster.

Thomas Johnson, of Charleston, and Jacquelyn Petty of Union, were absent.

Staff members participating in the meeting included: Doris Cubitt, Administrator; Sandra Dickert, Administrative Assistant; Amy Holleman, Administrative Specialist; Jeanie Rose, Administrative Specialist; and Sheridan Spoon, Deputy General Counsel.

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, and 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 a quorum was present.

Unfinished Business

1. Greenlawn Memorial Park – Stephen Shaffer (sale) – J.W. Russ
2. Woodridge Memorial Park – Stephen Shaffer (sale) – J.W. Russ

The Board found the license application to be in order. The company's registered agent is corporation Service Company, which is a legal entity that processes all legal communications on behalf of the company. The Board also found the legal entity documents to be in order.

Trust Agreements for Care and Maintenance Account and Merchandise Account

The Board reviewed the Trust Agreements for both cemeteries. On page one of the irrevocable care and maintenance trust the Board found net income and net principal gains listed as earnings, which cannot be distributed as dividends. Mr. Shaffer stated he has spoken with the attorney on this matter and will have the language removed from the definitions. In the second paragraph the amounts paid or to be paid to Trustor by the purchasers of interment spaces should also include mausoleum crypts, cremation niches, and memorials. Mr. Shaffer noted the adjustment would be made to the document. On page four, under Article V (9) indicates taxes caused or created by reason of existence would be paid as authorized by the Act, which is not specified in the statute. The fees that exceed earnings must be paid by the Trustor. Mr. Shaffer noted this article would be modified to be in compliance with the statute. On page 5, (10) states, 'To the extent permitted by applicable law, Trustee shall have the right and power to set aside reserves, out of income, . . .' The Board has determined if the cemetery does not take the distributions in the year in which the cemetery is entitled they become part of the corpus and the cemetery cannot go back to those distributions. Mr. Shaffer stated he would remove this item. On page 4, (1) states, 'to allocate the same either to principal or to income, or partly to one and partly to the other, in accordance with the usual and customary accounting practices of Trustee.' This statement is giving either to principal or to income. Mr. Shaffer will remove of Trustee. (3)

states, 'To treat stock dividends, stock splits and dividends payable in the securities of another company, . . . , as income or as principal, or partly one and partly the other, in accordance with the usual and customary accounting practices of Trustee.' A stock split is not considered income and should remain as part of the principal. Mr. Shaffer stated he would remove of Trustee. (8) states, 'To retain brokers, agents, accountants, appraisers and any others as are deemed advisable for the protection and administration of the Trust fund and to advise and represent the Trustee,. . .' These fees cannot be paid from corpus. Mr. Shaffer stated would add a clarifying phrase stating, 'to the extent permitted by the Act but in no instance to be paid by the corpus.'

On page eight, add phrase, 'and upon approval of the Board', in regard to Article XV, Article XVI, and Article XVII.

Condition(s) regarding the trust agreements for care and maintenance account and merchandise account:

1. Remove language regarding net income and net principal gains listed as earnings.
2. Include mausoleum crypts, cremation niches, and memorials to the second paragraph on page 1.
3. Modify Article V (9) to comply with the Act.
4. Remove language stating To the extent permitted by applicable law, Trustee shall have the right and power to set aside reserves, out of income, as the cemeteries cannot go back to the distributions if not taken during the appropriate time.
5. Page 4, (1) and (3) states, 'to allocate the same either to principal or to income, or partly to one and partly to the other, in accordance with the usual and customary accounting practices of Trustee.' Remove trustee.
6. Add a clarifying phrase stating, 'to the extent permitted by the Act but in no instance to be paid by the corpus' to (8).
7. Page eight, add phrase, 'and upon approval of the Board', in regard to Article XV, Article XVI, and Article XVII.

Merchandise and Services Trust Agreement

Discussion ensued regarding the principal and income regarding merchandise and services. The cemeteries would take the distribution from the delivery of the merchandise. Mr. Shaffer will remove Article VIII and Article X to comply with the Act.

Condition regarding the merchandise and services trust agreement:

1. Article VIII and Article X are to be removed to comply with the Act.

Agreed Upon Procedures

Mrs. Cubitt has reviewed the Agreed Upon Procedures; however, Mr. Jim Holloway has not yet reviewed the documents. She asked that if the Board approves the applications that it be approved with the condition that it be reviewed by Mr. Holloway. The previous audit of the Agreed Upon Procedures included 2007. The Board accepted the two-year period of 2008 and 2009. A statement was included on page two, item 4, which states, 'The asset balance is reported at fair market value and differs from the Annual Reports filed with the State of South Carolina, which values the asset account at cost.' When the annual report is completed the cemeteries are asked to insert the adjustment for gains or losses in the account. Mr. Floyd asked that Mr. Holloway verify the number of sample deposits is an adequate sampling.

Mr. Floyd questioned 1.a.iii), which states, 'Agreed that no less than \$0.08 per square inch of each memorial or marker sold was deposited into the trust. He asked that the auditor verify the \$0.08 is deposited into the trust fund. Mrs. Cubitt stated staff would clarify that for future Agreed Upon Procedures. Mr. Shaffer is comfortable with leaving the Agreed Upon Procedures open for further review.

Mr. Floyd questioned statement 7 regarding the decreases in the Care and Maintenance Trust account that were not administrative/care maintenance expense. No exceptions were noted. The auditors were stating they found everything in order.

Mr. Floyd questioned statement two regarding withdrawals on the Agreed Upon Procedures for the merchandise account, which reflects taxes were taken from that account. Mrs. Cubitt thought the auditors were speaking about tax returns; however, she would have to defer that matter to Mr. Holloway.

Mr. Floyd also questioned the last two sentences in item five which state, 'The calculated liability includes income on the required deposits as calculated by the Company. We did not test the income calculation.' Mr. Shaffer stated he is willing to work with the auditors who worked with SCI to resolve the wording for the reports.

Condition(s) regarding the Agreed Upon Procedures:

1. Mr. Holloway is to verify the number of sample deposits is an adequate sampling.
2. The Agreed Upon Procedures will remain open in order to be reviewed by Mr. Holloway at a later date.

Plats

There are 70 acres in Greenlawn Memorial Gardens and do not include the acreage SCI is retaining.

There were no questions or concerns regarding the plat.

Manager Experience Documents

The Board had no questions or concerns regarding the manager for Greenlawn Memorial Gardens or Woodridge Memorial Gardens.

Development Plans

There are currently no development plans for either cemetery.

Mortgage Information

There is no mortgage on either cemetery. Mrs. Cubitt stated Lawyers Title Insurance included a form, which states it is a commitment for title insurance and everything is on an amount and date to be determined and would not be issued until the actual closing. It also states it is fee simple in Schedule A; however, Schedule B discusses release of liens. Mr. Shaffer stated it is a fee simple sale and is assets only. He noted there is no financing contingency on his side.

Rules and Regulations

Mr. Floyd asked if the Board would need a statement from Mr. Shaffer reflecting there is nothing in the rules and regulations contradicts the statute. Mr. Shaffer stated he would provide such a statement.

Condition(s) regarding the rules and regulations:

1. Mr. Shaffer is to provide a statement reflecting there is nothing in the rules and regulations which contradicts the statute.

Price List

Mr. Russ questioned Mr. Shaffer if there were any pre-sold interments made by SCI. Mr. Shaffer replied there have been unfunded pre-sold interments.

Mr. Floyd questioned Mrs. Cubitt regarding the way perpetual care is calculated. The calculation is performed as: total price = (total price/(1+PC%))=perpetual care amount. This item was left open to discuss with Mr. Shaffer and Mr. Holloway at a later date.

Condition(s) regarding the price list:

1. This items was left open for discussion between Mr. Holloway and Mr. Shaffer to be held at a later date.

Sale Agreement

Mr. Floyd stated Section 1.3(c) in regard to excluded assets, pre-sold interments which have not been delivered are not being funded. He asked if Mr. Shaffer or if anyone knows what they are assuming liability for. Mr. Shaffer stated they will have the liability for any pre-sold interments; however, he does not know a total amount.

Mr. Russ stated the Board would like to know the total amount of the liability is and would need a statement from Mr. Shaffer stating there would be no additional fees added to the pre-sold interments. Mr. Shaffer stated he would be comfortable with making a statement clarifying the actual liability regarding interments at the time the arrangements were made, even if the contract was silent.

Section 1.5 discusses assumption of liabilities. This section needs to be clarified regarding pre-sold interments. Mr. Shaffer stated he has assumed all liability regarding pre-sold interments; however he would be willing to clarify the broad statements. Mr. Spoon and the Board will be satisfied with the clarification of the broad statements.

Section 5.7, Withdrawals from trusts. KNA is the company purchased with the cemeteries. Discussion ensued regarding the Board's concerns 5.7 which states that the 'Sellers, may in their sole discretion, make the following withdrawals from the Preneed Trust Fund Accounts. . .'
(a) ' . . . exceeds the amount required to be held in each such trust. . .' The discussion also included 5.8, which discusses post closing trust fund distributions and states, ' . . Buyer shall not be required to withdraw any funds from the Trust Accounts to the extent that such withdrawal is prohibited by applicable law.' The Board asked that Mr. Shaffer and SCI provide the Board with a positive statement reflecting he and the company realize there is no excess funding.

Condition(s) from the sale agreement:

1. A statement from Mr. Shaffer/SCI stating there will be no additional fees for pre-sold interments (openings and closings).
2. A statement clarifying the actual liability regarding interments at the time the arrangements were made, even if the contract was silent.
3. Clarification on the broad statements made in Section 1.5.
4. A positive statement from SCI and Mr. Shaffer reflecting the company and Mr. Shaffer realize there is no excess funding.

Sale Contract

The Board asked that the manufacturer of the outer burial containers be included on the first page of the contract in case a comparable outer burial container must be substituted. The Board also asked that additional language be inserted regarding category 1 outer burial containers and category 2 outer burial containers and if the outer burial containers come with a warranty. Item 14 discusses substitution of merchandise, which includes outer burial containers.

Discussion ensued regarding fee structure. SCI will be using a two-part fee structure as been historically used with each cemetery; however, the company will bring any change in the fee structure to the Board for approval. The two-part fee structure includes the installation and one-eighth inch (1/8"). Itemize short term and long term care. On the Disclosure to Purchase in item D insert optional charges in accordance with Section 40-8-100(G).

Conditions(s) from the sale contract:

1. Insert additional language regarding category 1 and category 2 outer burial containers and if the outer burial containers come with a warranty.
2. Itemize short and long term care.
3. Insert optional charges in Item D on the Disclosure to Purchase.

Verification of Funds

Mr. Floyd expressed concerns regarding the balances as of the Agreed Upon Procedures are in line. He also noted that a cash disbursement was paid under administrative expenses to ORO Solutions. He asked SCI what type of business is ORO Solutions. SCI responded that ORO Solutions is a third party vendor which compiles bank statements and loads the statements onto an online system. Mr. Floyd stated this is an inappropriate fee to be paid out of a trust fund. Mr. Floyd asked if the statements support the Agreed Upon Procedures. Mrs. Cubitt stated the Board may be able to place a condition on the verification of funds of a reconciliation of trust fund documents.

Condition(s) from verification of funds:

1. Administrative fees paid to ORO Solutions are not to be paid from trust funds.
2. The Board placed a condition that a reconciliation of the trust fund documents is to be made prior to issuance of the license.

Mr. Finch left the meeting at 4:10 p.m.

Executive Session

MOTION

Mr. Floyd made a motion the Board enter executive session to seek legal advice on this matter. Mr. Riggins 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. Floyd made a motion pending satisfaction of certain pre-conditions to be determined and listed in an order composed from the meeting minutes the Board will approve transfer of the license to Greenlawn Memorial Park and Woodridge Memorial Park. Mr. Riggins seconded the motion, which carried unanimously.

Adjournment

MOTION

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

The June 8, 2010 conference call meeting of the SC Perpetual Care Cemetery Board adjourned at 4:23 p.m.