

MINUTES
South Carolina Perpetual Care Cemetery
Board Meeting

10:00 a.m., September 20, 2017
Synergy Business Park
110 Centerview Drive, Kingstree Building Room 108
Columbia, South Carolina

Wednesday, September 25, 2017

1. Meeting called to Order

J. W. Russ, Chairperson, of Conway, called the regular meeting of the South Carolina Perpetual Care Cemetery to order at 10:04 a.m. Other members participating during the meeting were: Russell Floyd, Vice Chairperson, of Spartanburg; Jacquelyn Petty, of Union; and Rick Riggins, of Lancaster.

Staff members participating in the meeting included: Mary League, Advice Counsel, Office of Advice Counsel; Tina Brown, Disciplinary Counsel, Office of Disciplinary Counsel; Amy Holleman, Administrator; Norma McAllister, Program Assistant; Monaca Harrelson, Administrative Assistant; Buddy Poole, Inspector, Office of Investigations and Enforcement; Ernest Adams, Inspector, Office of Investigations and Enforcement; and Eric Thompson, Program Director, Office of Investigations and Enforcement.

Members of the public attending the meeting: E. Rick Black, Doug Hayes, and A. Ben Cumbie of Memory Gardens; W. Glenn Keadle of Arthur State Bank; and Tamala Randolph of Stonemor;

A. Public Notice

Mr. Russ announced that public notice of this meeting was properly posted at the South Carolina 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.

B. Pledge of Allegiance

All in attendance recited the Pledge of Allegiance.

2. Introduction of Board Members and Persons Attending the Meeting

The Board members, staff, and all other persons attending the meeting introduced themselves.

3. Approval of Excused Absences

The Board deferred action on the absence of Ms. McNicoll to later in the meeting.

4. Approval of Minutes for the September 20, 2017 board meeting

Mr. Russ called for a motion to approve the minutes for the September 20, 2017 board meeting.

MOTION

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

5. Chairman's Remarks – J. W. Russ

Mr. Russ asked everyone to pray for the people affected by the many recent hurricanes.

6. Administrator's Remarks – Amy Holleman

- A. Ms. Holleman presented the financial report, informing the Board that the cash balance at the end of August 2017 was -\$127,327.58. Ms. Holleman reminded the Board that annual renewal is in December.

Ms. Holleman briefed the Board on the CANA conference, stating it was informative and provided a vast opportunity for gaining insight and knowledge into the profession.

7. Reports

A. Inspection Report

Mr. Adams informed the Board that he and Mr. Poole conducted 38 inspections between May 15, 2017 and September 12, 2017. Mr. Adams reported that many cemeteries are experiencing issues with potholes.

B. Investigative Review Committee (IRC) Report – Amy Holleman

Ms. Holleman informed the Board that there are no cases to report at this time.

C. Office of Investigations and Enforcement (OIE) Report – Amy Holleman

Ms. Holleman stated the Office of Investigations and Enforcement (OIE), as of September 15, 2017, has four active investigations; three do not open cases; nine cases pending approval of IRC; one pending Board action; and two pending further information. Ms. Holleman stated from January 1, 2017 through September 15, 2017 there were nine closed cases, and 31 do not open cases.

D. Office of Disciplinary (ODC) Counsel – Tina Brown

Ms. Brown presented the Office of Disciplinary Counsel (ODC) report as follows; six open cases; five pending action; one pending CA/MOAs; zero pending hearings; zero pending Final Order hearings; zero pending Final Orders; and seven closed on or after May 22, 2017.

8. Approval of Consent Agreement (CA) – Tina Brown

This proceeding was recorded by a court reporter in order to produce a verbatim transcript should one be necessary.

1. Case No.: 2017-4

Ms. Brown presented the Consent Agreement to the Board.

The Respondent and State agreed to the following:

1. The Respondent's license, CEM.1133, shall be publicly reprimanded and subject to the following conditions:
 - a. Civil Penalty: Respondent shall pay a civil penalty of Two Hundred Fifty Dollars (\$250.00) to the Board within thirty (30) days of the effective date of this Agreement. Said penalty shall not be deemed paid until received in full by the Board. Failure to pay the fine within (30) days of the effective date of this Agreement may result in the immediate administrative suspension of the Respondents' license until such time as the fine is paid in full.

Executive Session

MOTION

Mr. Floyd made a motion to go into Executive Session to receive legal advice in this matter. Mr. Riggins seconded the motion, which carried unanimously.

Return to Public Session

MOTION

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

Mr. Russ stated, for the record, there were no votes taken during executive session.

MOTION

Ms. Petty made a motion to accept the Consent Agreement. Mr. Riggins seconded the motion, which carried unanimously.

Mr. Floyd made a motion to change the agenda, moving item #9B, change of ownership for Memory Gardens, Central, SC, next on the agenda. Mr. Riggins seconded the motion, which carried unanimously.

NEW BUSINESS

APPLICATION HEARINGS

9. A. Change of Ownership

This proceeding was recorded by a court reporter in order to produce a verbatim transcript should one be necessary.

1. Memory Gardens – Central, SC – Ernest Rick Black

Ms. Holleman informed the Board that the application is complete, and that Mr. Black is requesting that the Board approve the change of ownership with him as the manager.

Mr. E. Rick Black, Mr. Alton Cumbie, and Mr. Doug Hayes appeared before the Board on behalf of Memory Gardens. Mr. Black asked the Board to approve the change of ownership with him as the manager.

MOTION

Mr. Floyd made a motion to approve the change of ownership, and Mr. Ernest Rick Black as the manager pending the amendment of the Trust Agreement to state that the Board must approve all changes to the trust document, and any change of Trustee. Ms. Petty seconded the motion, which carried unanimously.

B. Transfer of Irrevocable Trust Account

This proceeding was recorded by a court reporter in order to produce a verbatim transcript should one be necessary.

1. Twin City Memorial Gardens, Inc. – Loris, SC – James W. Russ

Mr. Russ recused himself, and Mr. Floyd presided in this matter.

Ms. Holleman informed the Board that the application is complete. Mr. Russ asked the Board to approve the transfer of the Irrevocable Trust Account from South State Bank to Arthur State Bank.

Mr. Floyd called for a motion to approve the transfer.

MOTION

Ms. Petty made a motion to approve the transfer of the Irrevocable Trust Account from South State Bank to Arthur State Bank. Mr. Riggins seconded the motion, which carried unanimously.

Mr. Russ returned to presiding over the meeting.

10. Discussion Income Tax and Capital Gains – Glenn Keadle

This proceeding was recorded by a court reporter in order to produce a verbatim transcript should one be necessary.

Mr. W. Glenn Keadle of Arthur State Bank's Trust Department stated the purpose of appearing before the Board today is to obtain an opinion regarding the procedures used for the calculation and distribution of net income to cemetery companies for maintenance of cemeteries, income tax and capital gains, and payment of taxes. Mr. Keadle referenced Sections 40-1-110 (A); Section 40-1-110 (B); and Section 40-8-110 (E). The Board discussed the matter.

Mr. Russ called for a motion to go into Executive Session to seek legal advice for this matter.

Executive Session

MOTION

Mr. Floyd made a motion to go into Executive Session to receive legal advice in this matter. Mr. Riggins seconded the motion, which carried unanimously.

Return to Public Session

MOTION

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

Mr. Russ stated, for the record, there were no votes taken during executive session.

Mr. Russ called for a motion in this matter.

MOTION

Mr. Floyd asked Ms. League to read the Board's opinion regarding this matter. Ms. League stated the Board's motion is the opinion that SC Code of laws Section 62-7-929 provides the guidance for administering payment of taxes by the trustee. It states under Payment of taxes from income and principal that:

(A) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

(B) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

(C) A tax required to be paid by a trustee on the trust's share of the taxable income of the entity must be paid:

(1) from income, to the extent that receipts from the entity are allocated to

income;

(2) from principal, to the extent that receipts from the entity are allocated only to principal;

(3) proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal; and

(4) from principal to the extent that the tax exceeds the total receipts from the entity.

(D) After applying subsections (A) through (C), the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary.

Based on the guidance of the aforementioned statute the Board is defining capital gains, as referred to in Regulations 21-11, as net capital gains defined as the remainder of realized capital gains after payment of taxes due on their gain. Therefore, the net capital gains will become part of the corpus of a trust, so that the trust is responsible for the capital gains' tax liability.

Mr. Riggins seconded the motion, which carried unanimously.

11. Discussion: Merchandise Account Agreed Upon Procedures

The Board reviewed, and discussed the submitted changes in paragraph D. 2 of the Merchandise Agreed Upon procedures. Mr. Floyd stated the re-wording of the sentence is to provide further clarification of the procedures. The Board agreed that the changes provided clarification of the requirements and procedures.

The paragraph will read as follows:

- D.2. We traced all of the withdrawals from the Merchandise Fund Bank/Brokerage account to the client's documentation on the 20xx, 20xx and 20xx Annual Reports. We selected randomly from client's documentation the greater of 10% of the number of contracts or 10 contracts for which funds were withdrawn and:
- a. Verified that the amount withdrawn was calculated properly.
 - b. Verified that merchandise had been provided.

Mr. Russ called for a motion to accept the changes.

MOTION

Mr. Floyd made a motion to amend the Merchandise Agreed Upon procedures with the presented changes to paragraph D. 2. Mr. Riggins seconded the motion, which carried unanimously.

The Board recessed for a few minutes.

12. Regulatory Review Pursuant to Executive Order 2017-09

Ms. League explained to the Board that according to Executive Order No. 2017-09, the purpose of the regulatory review is to determine if a regulation should be: withdrawn, because it is overly burdensome to the public, amended to further protect the public, or amended because it is overly

burdensome to the public; or approved because it sufficiently protects the public. The Board gave the following recommendations:

Regulation	Recommendation	Action
21-2(4)Said accountant, pursuant to Section 40-8-100(A), shall examine a cemetery company's care and maintenance trust fund and merchandise fund every three (3) years even if there was not a previous account.	Amend (currently being promulgated)

Recommendation	Regulations	Action
There were no recommended changes to	21-1; 21-3; 21-4; 21-5; 21-6; 21-7; 21-8; 21-9; 21-10; 21-11; 21-12; 21-13; 21-14; 21-15; 21-16; 21-17; 21-18; 21-19; 21-20; 21-21; 21-22; 21-23; 21-24; 21-25; 21-26; 21-27	Approve (sufficient to protect the public)

Ms. League confirmed that the Board does not anticipate any new regulations. Ms. League asked that the Board approve that the Chairperson sign the recommendations.

MOTION

Mr. Floyd made a motion for the Chairperson to sign the Board's regulatory review recommendations. Ms. Petty seconded the motion, which carried unanimously.

13. Public Comments (No Vote May Be Taken) There were no public comments.

14. Adjournment

Mr. Russ called for a motion to adjourn the meeting.

MOTION

Mr. Riggins made a motion to adjourn the meeting. Ms. Petty seconded the motion, which carried unanimously.

Mr. Russ adjourned the meeting at 11:52 a.m.

Due to unfinished business, Mr. Russ reconvened the meeting at 11:56, to revisit Ms. McNicoll's absence. It was determined that neither staff nor Board members received any notice of Ms. McNicoll's absent.

MOTION

Mr. Riggins made a motion to count Ms. McNicoll's absent as unexcused. Mr. Floyd seconded the motion, which carried unanimously.

Mr. Russ called for a motion to adjourn the meeting.

MOTION

Mr. Floyd made a motion to adjourn the meeting. Mr. Riggins seconded the motion, which carried unanimously.

Mr. Russ, after ensuring there being no further business to discuss, adjourned the September 20, 2017 meeting for the South Carolina Perpetual Care Cemetery Board at 11:57 a.m.

The next scheduled Board meeting for the South Carolina Perpetual Care Cemetery Board is November 9, 2017 at 10:00 a. m., at Synergy Business Park, 110 Centerview Drive, Kingstree Building, Room 108, Columbia, South Carolina.