

MINUTES
South Carolina Perpetual Care Cemetery
Board Meeting

10:00 a.m., Thursday, August 7, 2014
Synergy Business Park
110 Centerview Drive, Kingstree Building Room 108
Columbia, South Carolina

Thursday, August 7, 2014

1. Meeting Called to Order

J. W. Russ, Chair, of Conway, called the meeting to order at 10:11 a.m. Other members participating during the meeting included: Russel Floyd, Vice Chair, of Spartanburg; John Bartus, of Mauldin; Roger Finch, of Easley; and, Rick Riggins, of Lancaster.

Staff members participating in the meeting included: Doris Cubitt, Administrator; Wendi Elrod, Program Assistant; Amy Holleman, Administrative Assistant; Mary League, Advice Counsel, Office of Advice Counsel; Sharon Wolfe, Chief Investigator, Office of Investigations and Enforcement; Sharon Cook, Investigator, Office of Investigations and Enforcement; Tracey Perlman, Office of Disciplinary; and, Buddy Poole, Inspector, Office of Investigations and Enforcement.

Members of the public attending the meeting included: Jim Holloway, LLR's CPA Consultant; Bill Gaffney, of Mountain View Memorial Park; Brad Rustin, of Nelson Mullins Riley & Scarborough; John Rogers, Ward Law Firm; Hayden Igleheart, of Carolina Memorial Parks; Tamala Randolph, of StoneMor; Robin Trivette; Penny Poteat, of Heritage Memorial Gardens; Liz Nelson, of Nelson Mullins Riley & Scarborough; Robin Thomason, of Westview Memorial Park; Robert Thomason, of Westview Memorial Park; Jeff Temples, of Temples and Halloran Funeral & Cremation Service – St. Andrews Chapel; Greg Rollings; of Rollings Funeral Service Inc; John Halloran, of Bush River Memorial Gardens; and, Stan Stone, Cannon Memorial Gardens.

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, 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 a quorum was present.

B. Pledge of Allegiance

2. Introduction of Board Members and Persons Attending the Meeting

Mr. Russ introduced himself, all Board members, and advice counsel. Mr. Russ requested that Ms. Cubitt please introduce herself and her staff. Mr. Russ asked that all other persons attending the meeting introduced themselves.

3. Approval of Excused Absences

Jacquelyn Petty, of Union, was granted an excused absence.

MOTION

Mr. Riggins made a motion that the Board approve Ms. Petty's absence. Mr. Floyd seconded the motion, which carried unanimously.

4. Approval of Minutes for the March 14, 2014, meeting

The changes are as follows for March 14, 2014:

- A. On page 1, line 16; change "Honea Path" to "Easley", so it should read, "Roger Finch, of Easley".
- B. On page 6, line 252; delete "terms" and add "capital gains cannot be distributed as income", so it should read "stated that the capital gain cannot be distributed as income and the Board needs an updated trust agreement".

MOTION

Mr. Floyd made a motion the Board approve the minutes of the March 14, 2014, board meeting as amended. Mr. Bartus seconded the motion, which carried unanimously.

5. Chairman's Remarks – J. W. Russ

Mr. Russ welcomed everyone to the meeting.

6. Administrator's Remarks – Doris Cubitt

Ms. Cubitt had no comments at this time.

7. Reports

A. Inspection Report – Doris Cubitt

Mr. Poole stated there were 62 inspections from March 7, 2014, thru July 29, 2014.

B. Investigative Review Committee (IRC) Report – Doris Cubitt

Ms Wolfe presented the Investigative Review Committee (IRC) report from the July 22, 2014, IRC meeting. The IRC recommended that the Board issue a formal complaint for case numbers 2014-1 and 2014-7; and to dismiss case 2014-5.

MOTION

Mr. Floyd made a motion that the Board approve the IRC recommendations. Mr. Riggins seconded the motion, which carried unanimously.

C. OIE Report – Doris Cubitt

Ms. Wolfe presented the OIE report stating that the cases were received from January 1, 2014, through July 28, 2014. There were three closed cases, five active cases, one do not open case, and five cases pending Board action.

MOTION

Mr. Floyd made a motion that the Board accept the OIE report as information. Mr. Riggins seconded the motion, which carried unanimously.

D. Office of General Counsel (ODC) – Tracey Perlman

Ms. Perlman reviewed the Office of Disciplinary Counsel case log for the Cemetery Board and informed them that there are currently 14 open cases. She stated that five cases are pending action, and nine are pending hearings.

MOTION

Mr. Riggins made a motion that the Board accept the ODC report as information. Mr. Floyd seconded the motion, which carried unanimously.

8. Old Business

A. Carolina Memorial Parks LLC

1. Greenhaven Memorial Cemetery
2. Heritage Memorial Gardens

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

Mr. Rustin stated that there were three different counts to determine the short fall of the accounts. Mr. Holloway did a basic accounting with the bare minimum deposits based on the law requirements in the absences of records. His figures came to a \$7,100.48 shortfall for Heritage and no shortfall for Greenhaven.

Mr. Rustin's office based their figures on the cemetery books and contracts that were found. They showed that Greenhaven had a shortfall of \$10, 804.54 and Heritage had a shortfall of \$59,660.10. They also found that the merchandise account was short \$4,546.55.

Mr. Menard's numbers were based on a forensic accounting record based on the contracts and walking the cemetery for an accurate account for graves sold. He showed a shortfall of \$148,196.00 for Greenhaven and \$350,799.48 for Heritage. The merchandise account was combined for Greenhaven and Heritage and it was short \$207,167.22.

Mr. Floyd asked if Mr. Igleheart has made any deposits since he took over the cemeteries in 2007. Mr. Igleheart stated he started making deposits in November 2013 since with all the income he received he has honored all merchandise sold under the previous ownership that he hasn't received any money for.

Mr. Igleheart stated that he has paid between \$20,000 to \$50,000 in legal fees and \$50,000 to \$100,000 in accounting fees.

Ms. Perlman suggested the Board deny the cemetery licenses because Mr. Igleheart isn't financially able to support these cemetery short falls.

Mr. Rogers stated that Mr. Igleheart should be applauded for what he has done since 2007, without any complaints, even though he was defrauded by the previous owner.

Lunch Break

MOTION

Mr. Floyd made a motion the Board break for lunch at 12:15 pm and reconvene at 1:20 pm. Mr. Riggins seconded the motion, which carried unanimously.

Executive Session

MOTION

Mr. Bartus made a motion that the Board enter into executive session for legal advice. Mr. Floyd seconded the motion, which carried unanimously.

Return to Public Session

MOTION

Mr. Floyd made a motion that 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, read by advice counsel, Mary League, that the Board grant the Respondent's license, to be placed on probation for a period of two (2) years beginning on the date of this hearing. During the two (2) year probation period, both cemeteries shall provide to the Board quarterly reports from an accountant showing the paid-out accounts for both the care and maintenance trust funds and merchandise accounts, reconciled to the bank accounts. The reports are due no later than 45 days after the end of each quarter. The reports should reflect that any statutory deposits have been made into the care and maintenance trust fund in addition to deposits of \$25,000 for Greenhaven Memorial Cemetery and \$100,000 for Heritage Memorial Gardens, made in equal monthly payments over a ten year period, beginning no later than October 1, 2014. The deposits are to bring both care and maintenance trust funds current through 2013. When access is obtained to the merchandise accounts, no reimbursement for any past payments of merchandise obligations shall be taken. During the period of probation, failure to comply with the terms of the Order, or with any statutes or regulations of the Board may result in immediate administrative suspension of the license or licenses until the cemeteries come into compliance and appear before the Board. Mr. Riggins seconded the motion, which carried unanimously.

B. No Manager/No annual reports filed/No AUP filed

1. Anderson Memorial Gardens

Ms. Cubitt reminded the Board that Mr. Stephen Lowe could not attend the August 7, 2014, meeting and Ms. Robin Trivette cannot attend the November 20, 2014 meeting. So Ms. Cubitt suggested scheduling a conference call meeting just to hear Anderson Memorial Gardens and the available board meeting dates are October 3, 2014, October 10, 2014, and October 27, 2014.

MOTION

Mr. Floyd made a motion to schedule a conference call meeting for October 10, 2014. Mr. Riggins seconded the motion, which carried unanimously.

9. New Business

A. New Ownership

1. Rollings Funeral Service Inc

1. Bush River Memorial Gardens

2. Cannon Memorial Gardens

Mr. Rollings purchased Bush River Memorial Gardens and Cannon Memorial Gardens. He stated Mr. Halloran will manage Bush River Memorial Gardens, and Mr. Stone will manage Cannon Memorial Gardens.

Mr. Floyd stated that on page 5 of the trust agreement, under # 9, reads "taxes caused or created by reason of the existence of such care fund trust". He stated he didn't believe that the cemetery can pay taxes out of the care and maintenance trust fund. Ms. Cubitt stated that is referring to the filing of the tax return which is done by the trustee and that can only be paid from the net income.

Mr. Floyd stated that the sales document doesn't address opening and closings and if they sell preneed. Mr. Rollings stated that Bush River Memorial Gardens does sell preneed, but Cannon Memorial Gardens does not.

Mr. Floyd stated he doesn't see that the new owner is assuming the liability's for the cemeteries.

MOTION

Mr. Floyd made a motion to grant the license pending striking paying taxes from care and maintenance trust fund and assuming the cemetery liability. Mr. Bartus seconded the motion, which carried unanimously.

B. Westview Memorial Park

Executive Session

MOTION

Mr. Floyd made a motion that the Board enter into executive session for legal advice. Mr. Bartus 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 noted for the record that no official action was taken during executive session.

Ms. Cubitt stated that this cemetery license has been suspended for noncompliance for failing to file annual reports for the care and maintenance trust fund, merchandise account, and agreed upon procedures.

Mr. Thomason stated that they are a small, family run cemetery that has built a solid reputation in their community through hard work, dedication and integrity. He stated that he hopes the Board understands that their failure to remit payment was not at all intentional, and they intend to make good on their debt. They hope that by working with the Board a satisfactory solution can be reached, and Westview Memorial Park can continue to provide exceptional service to the public. Once they have all of the information for satisfying the consent agreement and determining the obligation to the perpetual care trust fund, they can come before the Board to re-access a plan for funding the outstanding trust obligation.

Mr. Thomason stated that they completed the annual reports for the years 2004 thru 2013 and the agreed upon procedures for 2007 thru 2012. However they still need to furnish the 1991 thru 2006 agreed upon procedures.

Mr. Thomason made the following proposal for consideration of the Board to allow Westview to continue operating under this proposal until the terms of the Order are satisfied.

- Immediate payment to the perpetual care trust fund of Five Thousand (\$5,000.00) Dollars.
- Funds from all Westview plot sales shall be placed in escrow monitored by a 3rd party. Funds can only be withdrawn to fund normal operating expenses including grounds maintenance, insurance, taxes, utilities, etc.
- Monthly operating expenses are projected to average approximately Two Thousand (\$2,000.00) Dollars a month.
 - 1) Grounds Maintenance -\$1000.00
 - 2) Utilities -\$250.00
 - 3) Insurance -\$250.00
 - 4) CPA/Bookkeeping -\$400.00
 - 5) Advertising -\$100.00
 - 6) Total Monthly -\$2000.00
- A minimum contribution to the perpetual care trust fund of Eight Hundred (\$800.00) Dollars per month.
- Any income from plot sales in excess of normal operating expenses shall be applied to the trust fund perpetual care trust on a monthly basis.
- Audited statements of escrow disbursements available at the Board's request. They are also in the process of developing a 12 month business plan.
- Immediate
 - 1) Management Change – Robert Thomason – Manager & Robin Thomason – Assistant
 - 2) Manager
 - 3) Pursue collection of delinquent accounts
 - 4) Update Pricing Structure
- 0 – 3 Months
 - 1) Bookkeeping Assistance
 - 2) Develop Marketing Plan
- 4 – 6 Months
 - 1) Research new database to increase operational efficiencies
 - 2) Columbarium – Present plan to Board for approval
- 7 – 12 Months
 - 1) Potentially open new section in cemetery

MOTION

Mr. Floyd made a motion that the Board remove the license suspension and accept the proposal as presented, and they must appear before the Board at the November 14,

2014 meeting with further completion of their proposal. Mr. Riggins seconded the motion, which carried unanimously.

C. Appointment of hearing officers

Ms. Cubitt stated that the appointment of hearing officers is only in the event there is a conflict with the Board where the hearing officers will hear the case instead of the Board. The President will have final approval for the referral to the panel.

Mr. Russ suggested that Mr. Joe Owens, Mr. Jeff Riggins, Mr. Andy Cone, and Mr. Brent Caughman serve on this panel.

MOTION

Mr. Floyd made a motion that the Board approve Mr. Owens, Mr. Riggins, Mr. Cone, and Mr. Caughman to serve on this panel and for Mr. Russ to have the final approval of the panel. Mr. Riggins seconded the motion, which carried unanimously.

D. Change of Trustee

1. Faith Memorial Gardens

Mr. Floyd stated that it appears that the trust agreement is missing from the trustee change packet.

MOTION

Mr. Floyd made a motion that the Board defer this item to the November 20, 2014 board meeting once all items are received. Mr. Riggins seconded the motion, which carried unanimously.

10. Discussion of Fees

MOTION

Mr. Floyd made a motion that the Board defer this item to a later date. Mr. Riggins seconded the motion, which carried unanimously.

11. Election of Officers

Chairman

MOTION

Mr. Finch nominated Mr. Russ for Chairman. Mr. Floyd seconded the motion, which carried unanimously.

Mr. Riggins made a motion the Board close nominations. Mr. Bartus seconded the motion, which carried unanimously.

Vice-Chairman

MOTION

Mr. Riggins nominated Mr. Floyd for Vice Chairman. Mr. Finch seconded the motion, which carried unanimously.

Mr. Riggins made a motion the Board close nominations. Mr. Finch seconded the motion, which carried unanimously.

12. Public Comments (No Vote May Be Taken)

No public comments.

13. Adjournment

MOTION

Mr. Riggins made a motion the Board adjourn. Mr. Bartus seconded the motion, which carried unanimously.

The August 7, 2014, meeting of the SC Perpetual Care Cemetery Board adjourned at 5:05 p.m.

The next meeting of the SC Perpetual Care Cemetery Board is scheduled for November 19, 2014 & November 20, 2014.