

MINUTES
South Carolina Perpetual Care Cemetery
Conference Call Board Meeting

10:00 a.m., February 15, 2019
Synergy Business Park
110 Centerview Drive, Kingstree Building Room 107
Columbia, South Carolina

Friday, February 15, 2019

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 10:02 a.m. Other members participating during the meeting were: Russell Floyd, Vice Chairperson, of Spartanburg; and Rick Riggins, of Lancaster.

Staff members participating in the meeting included: Mary League, Advice Counsel, Office of Advice Counsel; Ashley Thompson, Disciplinary Counsel, Office of Disciplinary Counsel; Amy Holleman, Administrator; Norma McAllister, Program Assistant; Monaca Harrelson, Administrative Assistant; Rodney Pigford, Chief Investigator, Office of Investigations and Enforcement; Ernest Adams, Office of Investigations and Enforcement; and William Poole, Inspector, Office of Investigations and Enforcement.

Members of the public attending the meeting: Brad Smith, Attorney; Lawrence Wayne Willoughby; Terrence Lavern Carter; Cassie West; James Boswell; Phili Contino, Jr.; and Phili Contino, of Southern Palms Memorial Gardens; Mark Hall, Head of Funeral and Cemetery Trust Services, of SunTrust Bank; and Ester H. Bateman via conference call.

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 present 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

Jacquelyn Petty Moore was not in attendance.

MOTION

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

4. Approval of Minutes for the November 16, 2018 board meeting

Mr. Russ called for a motion to approve the minutes.

MOTION

Mr. Floyd made a motion to approve the November 16, 2018 Board meeting minutes with the following corrects, remove Roger Finch's name and on page 3, #9, second paragraph of the motion to correct the word "my" to "may". Mr. Riggins seconded the motion, which carried unanimously.

5. Chairman's Remarks – J. W. Russ

Mr. Russ did not make any comments.

6. Administrator's Remarks – Amy Holleman

A. Financial Report

Ms. Holleman presented the financial report, informing the Board that the cash balance at the end of December 2018 was -\$130,884.18.

Ms. Holleman informed the Board that staff mailed Cease and Desist orders to licensees that failed to renew by January 31, 2019. There were six non-renewals at the time the Cease and Desist order was issued. Since that time, one licensee has renewed; four licensees will be submitting an application to comply with late renewal statute, and one cemetery has not communicated with staff.

Ms. Holleman reminded the Board to file the Statement of Economic interest with the State Ethnic Commission by March 30, 2019.

7. Reports

A. Inspection Report – Ernest Adams

Mr. Adams informed the Board that he and Mr. Poole conducted 31 inspections between November 10, 2018 and February 7, 2019. Ms. Holleman informed the Board that the Funeral Service Board has developed an Inspection Review Committee that reviewed the current inspections report system and made recommendations to update the current system. Ms. Holleman suggested the Board consider developing an Inspection Review Committee or a Board review of the statutes and regulations governing cemetery inspections.

B. Investigative Review Committee (IRC) Report – Rodney Pigford

Mr. Pigford informed the Board that on February 5, 2019 the Investigative Review Committee recommended the dismissal of two cases, a formal complaint for one case, and one letter of caution.

MOTION

Mr. Floyd made a motion to accept the IRC recommendations. Mr. Riggins seconded the motion, which carried unanimously.

C. Office of Investigations and Enforcement (OIE) Report – Rodney Pigford

Mr. Pigford reported that of the cases received from January 1, 2019 through February 7, 2019, there were four active investigations, two closed cases, one case referred to the inspection unit; six do not open cases, four pending Board review, and seven pending a complaint analyst review for a total of 24 cases.

D. Office of Disciplinary (ODC) Counsel – Ashley Thompson

Ms. Thompson informed the Board that the Office of Disciplinary Counsel (ODC) has eight open cases; six pending actions; two pending hearings; and two cases closed since November 7, 2018.

New Business

Application Hearings

8. A. Change of Ownership

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

1. Southern Palms Memorial Gardens – North Myrtle Beach – Terrence Lavern Carter

Mr. Brad Smith, Esquire; Mr. Terrence Lavern Carter, Mr. Lawrence W. Willoughby, Ms. Cassie West, Mr. James Boswell, Mr. Phili Jason Contino, Jr., and Phili Jordan Contino appeared before the Board on behalf of Southern Palms Memorial Gardens.

Ms. Holleman informed the Board that Mr. Willoughby has complied with the previous order and is asking that the Board approves the change of ownership. Ms. Holleman informed the Board that the Care and Maintenance Trust Agreement dated 1993 has a compliance issue.

Mr. Willoughby asked that the Board approve the application for change of ownership. He informed the Board that the business is in full compliance with the previous order. Mr. Willoughby informed the Board that Mr. Leonard was the previous cemetery manager and Mr. Terrence Carter is the proposed manager. He stated that the company has been operating with the 1993 Care and Maintenance Trust Agreement. The Board responded that the Care and Maintenance Trust Agreement document requires revisions to comply with the current statutes and regulations. The Board informed Mr. Willoughby that the sales and purchase agreement needs to include the right of substitution per statute; optional disclosures should be included on the contract, and a separate disclosure document should be provided at the time of sale.

The Board discussed the application and noted discrepancies within the Agreed Upon Procedures for sales in the years ending 2016, 2017, 2018. Mr. Willoughby agreed to reconcile all discrepancies found in the Agreed Upon Procedures.

The Board advised Mr. Willoughby to familiarize himself with the statute and regulations. Mr. Smith stated Mr. Willoughby has diligently attempted to rectify previous discrepancies under the previous owner and will continue to do so in order to comply with current statutes and regulations.

Executive Session

MOTION

Mr. Floyd made a motion to go into executive session to receive legal advice. Mr. Riggins seconded the motion, which carried unanimously.

Return to Public Session

MOTION

Mr. Floyd made a motion to come out of Executive Session. Mr. Riggins seconded the motion, which carried unanimously.

Mr. Russ noted, for the record, there were no votes taken during Executive Session.

Mr. Russ called for a motion in this matter.

MOTION

Mr. Floyd asked that Advice Counsel read the motion which stated the Board approves the change of ownership application pending applicant submitting updated trust documents; a contract that complies with the statute and regulations of the Board; and submit updated disclosures. Mr. Riggins seconded the motion, which carried unanimously.

Ms. League explained the change of ownership will not be final until the applicant submits all required documents to staff. Ms. Holleman reminded the Board that all applications expired six months from the date of receipt of the application. Therefore, Mr. Willoughby is required to submit all pending information within six months of the initial application.

Mr. Russ called for a 10 minute recess.

B. Approval of Irrevocable Trust Agreement

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

1. Approval of Care and Maintenance Irrevocable Trust Agreement with Omnibus Amendment and Restatement Care and Maintenance Irrevocable Trust Agreement - SCI
 - a. Carolina Memorial Park – North Charleston – Ronald Ashley Hicks
 - b. Elmwood Cemetery – Columbia – Matthew B. Bedenbaugh
 - c. Greenville Memorial Gardens – Piedmont – Grace Hensley
 - d. Hillcrest Memorial Park – Pickens – Tanya A. Gravely
 - e. Oconee Memorial Park – Seneca – Tanya A. Gravely
 - f. Pineview Memorial Park – North Augusta – Ronald Ashley Hicks
 - g. Southland Memorial Gardens – West Columbia – Ronald Ashley Hicks
 - h. Sunset Memorial Gardens – Graniteville – Ronald Ashley Hicks
 - i. Woodlawn Memorial Park – Greenville – Kevin Boudle

Ms. Ester H. Bateman, via conference call, and Mark Hall, Head of Funeral and Cemetery Trust Services of SunTrust Bank, appeared before the Board on behalf of SCI.

Ms. Holleman confirmed that the application is complete. Ms. Holleman stated that SCI is asking the Board to approve a Master Care and Maintenance Irrevocable Trust Agreement with Omnibus Amendment and restatement Care and Maintenance Irrevocable Trust Agreement.

Ms. Bateman stated the purpose of the agreement is to implement a Master Trust agreement for each state for the cemeteries in that particular state, i.e., South Carolina. The reason is to apply one single Trust agreement in the goal to obtain administrative efficiency and consistency. Ms. Bateman stated that the Master Agreement will terminate and supersede the previous agreements. This agreement will apply to all SCI cemeteries in South Carolina.

The Board stated that the agreements should include the definition of income and should refer to the individual statutes. The Board asked that the Master Care and Maintenance Trust agreement define income as interest and dividends. Ms. Bateman agreed to the change.

Mr. Hall explained that SCI submitted the Omnibus Amendment and Restatement SCI South Carolina Care and Maintenance Irrevocable Trust Agreement and resolution adopting the Master Trust agreement. This agreement will replace the old SCI-South Carolina Care and Maintenance

Trust Agreement for SCI cemeteries in South Carolina. Mr. Hall stated contingent on the approval of the agreement with the changes, the Omnibus will be signed to adopt the new Master Trust agreement for SCI – South Carolina cemeteries. Ms. Bateman stated that SCI will provide SunTrust with the South Carolina statute and regulations regarding South Carolina Care and Maintenance Irrevocable Trust Agreement.

MOTION

Mr. Floyd made a motion that the Board approves the SCI – South Carolina Master Care and Maintenance Irrevocable Trust Agreement with Omnibus Amendment and Restatement Care and Maintenance Irrevocable Trust Agreement pending the addition of the definition of income as interest and dividends. Mr. Riggins seconded the motion, which carried unanimously.

C. Transfer of Merchandise Fund

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

1. Elmwood Cemetery – Columbia – Matthew B. Bendenbaugh
2. Southland Memorial Gardens – Graniteville – Ronald Ashley Hicks

The Board decided to hear Elmwood Cemetery and Southland Memorial Gardens simultaneously.

Ms. Ester H. Bateman, via conference call, and Mark Hall, Head of Funeral and Cemetery Trust Services of SunTrust Bank, appeared before the Board on behalf of SCI.

Ms. Holleman informed the Board that the application is complete and that SCI is asking that the Board approve the transfer of the Merchandise Trust Fund for Elmwood Cemetery and Southland Memorial Gardens to SunTrust Bank.

Ms. Bateman stated that the request is to transfer the Merchandise Trust Fund, explaining that upon approval SCI will apply the SCI Master Cemetery Merchandise Agreement - South Carolina to all SCI South Carolina cemeteries.

MOTION

Mr. Floyd made a motion to approve the transfer of Merchandise Trust Fund from Regions Bank to SunTrust Bank for Elmwood Cemetery and Southland Memorial Gardens. The Board's statute does not grant the Board authority to approve the Master Merchandise Trust Agreement. Mr. Riggins seconded the motion, which carried unanimously.

9. Clarification of 501(c) Status

Ms. Holleman informed the Board that she recently received questions concerning cemeteries with a 501(c)(13) tax exemption status. This status is for cemetery companies that are owned and operated exclusively for the benefit of their members or which are not operated for profit.

Ms. Holleman cited Regulations 21.2 (10) which defines a "Non-Profit Cemetery" to mean a cemetery owned by a non-profit group which has established 501(C)(3) status with the Internal Revenue Service (IRS). Ms. Holleman asked for the Board's opinion in this matter.

The Board discussed the matter.

Executive Session

MOTION

Mr. Floyd made a motion to go into executive session to receive legal advice. Mr. Riggins seconded the motion, which carried unanimously.

Return to Public Session

MOTION

Mr. Floyd made a motion to come out of Executive Session. Mr. Riggins seconded the motion, which carried unanimously.

Mr. Russ noted, for the record, there were no votes taken during Executive Session.

Mr. Russ called for a motion in this matter.

MOTION

Mr. Floyd asked that Advice Counsel read the motion which stated the Board finds that a 501(c) (13) will qualify as a non-profit entity per statute and regulations. Mr. Riggins seconded the motion, which carried unanimously.

10. Public Comments (No Vote May Be Taken)

There were no public comments.

11. Adjournment

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 February 15, 2019 meeting for the South Carolina Perpetual Care Cemetery Board at 12:07 p.m.

The next scheduled Board meeting for the South Carolina Perpetual Care Cemetery Board is June 20, 2019 at 10:00 a. m., at Synergy Business Park, 110 Centerview Drive, Kingstree Building, Room 204, Columbia, South Carolina.