

MINUTES
South Carolina Perpetual Care Cemetery
Board Meeting

10:00 a.m., Wednesday, June 8, 2011
Synergy Business Park
110 Centerview Drive, Kingstree Building Room 105
Columbia, South Carolina

Wednesday, June 8, 2011

1. Meeting Called to Order

J. W. Russ, Chairman, of Conway, called the meeting to order at 10:03 a.m. Other members participating during the meeting included: Russel Floyd, Vice Chairman, of Spartanburg; Roger Finch, of Honea Path; Jacquelyn Petty of Union; and Rick Riggins of Lancaster.

Staff members participating in the meeting included: Doris Cubitt, Administrator; Wendi Elrod, Program Assistant; Amy Holleman, Administrative Specialist; Jeanie Rose, Administrative Specialist; Sheridan Spoon, Advice Counsel; and Sharon Wolfe, Chief Investigator, Office of Investigations and Enforcement.

Members of the public attending the meeting included: Adam Taylor, of Cemetery Equity Solutions; Rivers Stillwell, Esq, of Nelson Mullins, for Cemetery Equity Solutions; and Franklin Daniels, Esq, Nexsen Pruet, for StoneMor.

A video of this meeting can be viewed at www.llr.state.sc.us/POL/Cemetery. On the Board's home page, click 'Board Information' and follow the link to the video.

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

All present recited the Pledge of Allegiance.

2. Approval of Excused Absences

John Bartus, of Mauldin, was granted an excused absence.

3. Introduction of Board Members and Persons Attending the Meeting

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

4. Approval of Minutes for the January 6, 2011 Meeting

The changes are as follows:

1. *On line 72, the word "weree" is misspelled; it should be "were".*
2. *On line 180, "Mike Braughn & Associates" should be changed to "Mike Graham & Associates".*
3. *On line 269, "trust fund in that was not the interest" should be corrected to "trust fund, in that, was not the interest".*
4. *On line 414, "life cost" should be changed to "lot cost".*

5. *On line 416 & 417, "Ms. Cubitt added that he averaged his thing and didn't use it at all at today's rate, it should be corrected to read as "Ms. Cubitt added that he used weighted average price and didn't use it at all at today's rate.*
6. *On line 455, add "Mr. Floyd made a motion" and change "Mr. Riggs" to "Mr. Riggins".*
7. *On line 479, add "and" between "maintenance and merchandise" to read as "his care and maintenance and merchandise".*
8. *On line 481, delete "?" to read as "Taylor has made on vault, bronze and granite".*
9. *On line 490, change "Mr. Riggs" to "Mr. Riggins".*
10. *On line 517, after applicable add "because it contradicted the current statute".*
11. *On line 519, change "not" to "no" so it will read "was no longer applicable".*
12. *On line 522, change "vase" to "base".*
13. *On line 655, add "Mr. Floyd" so it should read "Mr. Floyd asked if everything".*

MOTION

Mr. Riggins made a motion the Board approve the minutes of the January 6, 2011 meeting with changes. Ms. Petty seconded the motion which carried unanimously.

5. President's Remarks – J. W. Russ

Mr. Russ welcomed everyone to the meeting.

6. Administrator's Remarks – Doris Cubitt

Ms. Cubitt informed the Board that LLR no longer introduce changes to the Statute or Regulations to Legislation. She stated that LLR's function is only to track changes to the Statute or Regulations. She stated they need to consult with their Representative or Association for any proposed changes.

7. Unfinished Business

1. Cemetery Equity Solutions (Failure to Comply with Board Order) – Adam Taylor – J W Russ
 - a. Forest Lawn Memorial Park of SC - Camden, SC
 - b. Crestlawn Memorial Cemetery of SC - Orangeburg, SC
 - c. Plantation Memorial Gardens of SC - Monks Corner, SC
 - d. Chatham Hill Memorial Gardens of SC - Cheraw, SC
 - e. Belleville Memorial Gardens of SC - Orangeburg, SC
 - f. Aiken Memorial Gardens of SC - Aiken, SC
 - g. Jessamine Memorial Gardens of SC - Aiken, SC
 - h. Memorial Gardens of Columbia - Columbia, SC

Mr. Rivers Stillwell with Nelson Mullins introduced himself as Mr. Adam Taylors' attorney. He stated that Mr. Taylor will update the Board on the general items regarding the cemetery and Mr. Stillwell will speak to the Board on the more difficult legal items. He stated that Mr. Taylor has been doing a lot of work at the cemetery. He is in the process of building two mausoleums and has replaced the floor in another one. At the last board meeting the Board was made aware of tax liens on the cemeteries. Mr. Stillwell stated that since the last Board meeting Mr. Taylor has found out that there were tax liens on the cemeteries for a total of \$130,000 which he has taken care of. Mr. Floyd asked how the tax liens were taken care of. Mr. Taylor stated they were paid off.

Mr. Stillwell then addressed the mortgages that were on the properties. He stated the mortgages on the cemeteries are not straight mortgages because they do not encumber the property. He stated that if you really look at the mortgage information it isn't a mortgage. They appear to be UCC's that secure rents and leases from the property. He stated they don't have rents and leases on the property. He stated whether those rents and leases lock down the sales revenue and merchandise revenue for the property. He stated there is an exemption for sale of property and related goods and services. In other words locks down a piece of revenue that the cemetery doesn't have and then exemptions the revenue they do have. Mr. Stillwell stated he isn't sure why that was put in except for the bank loaned the previous owner money and needed something in their file stating that the bank has security. He stated that is the worse security he has ever seen because it is fictional security. In the order it states to go out and discharge these liens. Mr. Stillwell stated that the bank in question has gone under, they are now defunct. So nobody has paid anything on these notes for years and no one has knocked on the door asking inquiring on where is their money. Outside of the context of the Board no attorney would advice their client to pay these liens because they would have to file a law suit to the successor bank which really doesn't know that these liens are out there. In the end Mr. Taylor would have to pay the liens off and would end up paying a lot more money than is necessary. Mr. Stillwell respectfully requests the Board amend the order to if the bank every shows up for these liens to be paid then Mr. Taylor and Cemetery Equity Solutions would be the responsible parties. Mr. Russ stated his understanding is UCC's are on furniture, appliances and such. Mr. Stillwell stated that is correct which is weird because the mortgage isn't filed in the mortgage book; it is filed in the UCC book like a sale of goods mortgage because it is in the other category. When you look at it the property description is the rents and leases from these properties.

Mr. Floyd asked Mr. Spoon if LLR should amend the Order. Mr. Spoon stated he believes that would be correct. He stated that Mr. Stillwell is referencing number one (1) on the Order. Which reads *"Applicant must provide evidence of the release or satisfaction of the aboved-referenced encumbrances within (60) days from the effective date of this Order or Applicant shall provide evidence of a bond in the amount of \$250,000.00 as evidence that Applicant has assumed responsibility for the encumbrances until such time as they have been discharged."* Mr. Spoon reminded the Board that the Order was written about fifteen (15) months ago when no one understood the UCC mortgages. The only thing that anyone was aware of was that the cemetery was encumbered which is in violation of the statute. Mr. Spoon stated that the Board needs to discuss modifying the terms of the Order. Mr. Spoon stated that his understanding is that Mr. Stillwell is requesting that the Board set that requirement aside since they are not true mortgages. Mr. Stillwell stated he requests that the Board release this requirement since the mortgages are UCC liens. He stated that if the bank ever comes to enforce that these liens be paid then Mr. Taylor would be held liable for paying the UCC liens not the cemeteries. Ms. Cubitt stated that the statute references in Section 40-8-90 (A) (4) (c) *"may not mortgage, lease, or encumber it."* Mr. Spoon stated that the Board may find that the UCC liens are not encumbered as the term is used in the statute. Mr. Floyd suggested that Mr. Stillwell make a list of things that he requests from the Board. Mr. Stillwell stated he would be happy to make a proposed list and forward to Mr. Spoon for review.

Mr. Stillwell stated that in February he sent a list to Mr. Spoon for the merchandise account to show that Mr. Taylor had delivered all the current bronzes and that the merchandise account was already caught up so they are trying to take the merchandise

account off the table since has been satisfied. He stated that there is between \$400,000 and \$500,000 currently in the merchandise account which he doesn't have hard copies with him. Mr. Floyd asked if Mr. Taylor knows what that amount off sets. Mr. Taylor stated he does not know what the offset is however he has delivered bronze purchased thru Mike Graham and Associates at his cost which is between \$500,000 and \$600,000. Mr. Floyd stated the question is what the overall merchandise liability is. Mr. Taylor stated what he has done is go thru the contracts and any bronze that was paid out then it was delivered even though they never received the revenue which was around \$500,000. Ms. Cubitt suggested that Mr. Taylor provide documentation for support this.

Mr. Floyd stated that it is good that there is around \$400,000 to \$500,000 in the merchandise account. However the issue is if the care and maintenance trust fund and merchandise account were being funded and funded properly by the previous owner. Mr. Stillwell stated that the Order stated that there needs to be a bond in the amount of \$500,000 for the merchandise account. So Mr. Taylor will provide evidence to support that there is \$400,000 to \$500,000 in the account which should offset the requirement to have a bond. Mr. Floyd stated that we don't know if the merchandise was properly funded since no audit has been performed to demonstrate what is really suppose to be in the account. Mr. Stillwell agreed that is correct that we don't know what the previous owner did regarding the merchandise account. He stated that is the problem going back and figuring out what was owed. He stated that the figures that Mr. Holloway came up with were using methodology where he had to make assumptions. He stated this is the best information they have because no one knows every single sale the cemeteries have had in the previous years.

Mr. Stillwell stated that Mr. Taylor would like the chance to work with Mr. Holloway again regarding the care and maintenance trust fund and the merchandise account to make sure that the information is correct. Mr. Floyd stated that Mr. Holloway doesn't have access to the cemetery's records which is ultimately where the answer is. Ms. Cubitt stated that she doesn't believe that it is Mr. Holloway's job to make sure the figures are correct. She stated that it is the responsibility of Mr. Taylor and his staff to go thru the files and provide the documentation to support those figures so Mr. Holloway can review to see if that is accurate.

Mr. Stillwell stated that if you have distressed properties that a bonding requirement such as this would be a practical bar to new ownership because the new owner would be assuming the liability. Mr. Floyd stated that Mr. Taylor may want to provide monthly or quarterly reports to the Board to show that he is paying the merchandise out of pocket until the merchandise liability can be obtained. Mr. Taylor stated that monthly is a bit much so he asked if quarterly or every six months would be ok with the Board. Mr. Floyd suggested that Mr. Taylor submit quarterly reports to the Board showing what he is paying out of pocket until the merchandise liability can be obtained. Mr. Stillwell stated he will submit a formal request with the proposed changes to the order.

Mr. Stillwell stated that the last time he appeared before the Board he wasn't sure what the efforts were regarding the bond issue so he looked into the issue and found three different avenues regarding complying with the bond requirement per the Order. He stated he was looking at two bonds and one letter of credit. He stated this is the general jest of a bond or letter of credit because it doesn't make any difference. He stated you have to have a dollar for dollar security somewhere for that bond. He stated this is the world for banking today if you are going to get surety on down a dollar then you are

going to put a dollar somewhere else. So you are locking down dollar for dollar and secondly you will have to have a personal guarantee. He stated that is Mr. Taylor's personal guarantee out of his pocket. Mr. Stillwell stated he provided one bond out of Virginia for a fidelity bond which has the same requirements and for the bond they will have to have audited financial statements. Mr. Stillwell stated there is no such thing as auditable financial statements for these cemeteries for previous years. Mr. Floyd asked if Mr. Taylor received the files for the cemeteries. Mr. Taylor stated yes he received the files but not any audited financial statements nor financial information on the company which is what the bank is requiring for the bond. Mr. Stillwell stated that they also gave him information on a general commercial surety bond which will have the same requirements: PG, Mr. Taylor's financial statements and audited financial statements for the cemeteries and the letter of credit was the same thing. He stated he finally found a bank that still does letter of credit however it is like gap financing when you buy property and flip it immediately like it is a sixty (60) day gap thing. He stated that wouldn't serve this purpose which left them stuck on the bond issue. He stated that it didn't leave him a legal impossibility but a practical impossibility. The second piece of the bond issue is the amount of the bond. The question is if a weighted average was used or not when figuring the amount. Mr. Stillwell provided supporting documentation to the Board to support the way it should have been figured to ensure the amount is correct in the Care and Maintenance Trust Fund. He stated that it shows that the accounting that was used before was based on the current lot sales price of \$1,500. So by the current statute the minimum deposit in the Care and Maintenance Trust Fund would be 10 percent of \$150. So the \$150 was used as the number and went over the 35,000 lots through the years. He then stated a 10 percent discount was applied at some point. He stated the figure that Mr. Holloway came up with was \$4,003,000 but using his calculations it should be \$5,250,000 not \$4,003,000. He stated that is more money than should have been trusted based on the minimums due over the decades since the cemeteries were in existence. He stated he has the minimum amounts deposited in the trust over the decades which were \$40 or 10 percent. He stated the current statute states \$40 and in the 1980's it was \$20. He also stated in the 1950's, 1960's, 1970's and some of the 1980's it was only \$6 or 10 percent. He then asked Mr. Taylor what lots were selling for in those years and Mr. Taylor looked at some contracts and stated in the 1950's the lots were selling for \$71 which would make the minimum amount to be deposited of \$7. He then stated in the 1970's for what the lots were selling for the deposit amount would be \$20. He stated if you equal the 35,000 evenly over the years and take the minimum per decade due to be deposited that would only equal \$640,000. He then stated that if you use the current minimum of \$40 that would only add up to \$1,004,000. He stated what he submitted to the Board is the current trust amount of \$1,001,000. Mr. Taylor stated that the trust fund was at \$2,000,000 but in the past few years with the down in the economy, the investment amounts have dropped dramatically. Mr. Floyd asked if the amount has gone up in the last couple of years. Mr. Taylor stated it hasn't, in fact since it is in a money market fund is a negative with the Administrative fees which is why they are working on put it in a performing account. Mr. Stillwell stated that the \$4,003,000 is a figure based on if every lot sold this decade. He stated the cemeteries were selling a package deal for \$1,195 which the lot itself was \$0. So even if you calculate the lots sold based on the current charges they should only deposit \$40.

Ms. Cubitt stated that the Board didn't know that the figures would be questioned at this point so Mr. Holloway wasn't invited to the Board meeting. So she suggested that we have Mr. Holloway attend the next Board meeting so he can discuss the figures that he came up with. Mr. Stillwell stated that is working with Mr. Holloway on other cemeteries

for another client so he will be happy to work with him and present something to the Board at the next Board meeting when Mr. Holloway is present. Mr. Floyd stated that Mr. Holloway went to the cemeteries to come up with some figures to what the liability was until Mr. Taylor found out what the correct liability is. He stated that the Board and Mr. Taylor needed to know what the liability is for the Care and Maintenance Trust fund and Merchandise account. Mr. Taylor stated internally they are going through the contracts for all eight cemeteries which is very difficult because of the shape the cemeteries where in. He stated that he has invested in a system that will account for the records but it will take some time to enter in all the information and making sure it is correct for each contract which is what they are currently doing. He stated that it will need to be done eventually anyway because their home office should be able to access that information. He stated that he believes they know more now than the past owner did for the past two years. Mr. Taylor stated that he only uses external accounting so once all the information is gathered then it will be very easy to do the internal accounting.

Mr. Russ stated the issue is when the Board will know what the liability is. Mr. Taylor stated that the original Order stated within sixty (60) months from the effective date of the Order. Mr. Stillwell stated that is what he was stating before that the amount is got to be in between the \$640,000 and the \$1,004,000 or very close and Mr. Taylor is already at \$1,001,000. So he believes they can get with Mr. Holloway and find out that they're accounts are already funded correctly or close. Mr. Taylor inquired if it is public record to see if a cemetery was established in 1956 and what may be currently in their trust account which the Board should have for every cemetery across the state since they are requesting it from him for his cemeteries. Mr. Floyd stated that the Board doesn't have any records of those records since the Board was disbanded in 1990. Mr. Taylor then asked if the Board doesn't have the records for the other cemeteries then why are they requiring it of him. Mr. Floyd stated that was the purpose of the Agreed Upon Procedures which provided a certain amount of assurance to verify the balance which went back to 1991 through 2002. Mr. Floyd also stated that you could not use that anyway because every cemetery had different sales programs. Mr. Floyd asked how they came up with the 35,000 lots. Mr. Taylor stated they counted them from the lot cards for all eight cemeteries which came to a total of 35,136 for all eight cemeteries.

Mr. Spoon stated that number 2 of the Order *"Applicant must, at the time of acquisition of the above-referenced properties, assume responsibility for any and all deficiencies in the Care and Maintenance trust accounts, merchandise accounts and for all opening/closing liabilities and obligations"* is no longer an issue. He stated that number 1, 3 and 4 of the Order are the items still in question which are what he will work with Mr. Stillwell in amending as well as correspondence between Mr. Stillwell, Mr. Jim Holloway and Mr. Spoon to come up with the different figures based off the bank statements once provide. Mr. Spoon then stated that in item 3 which a bond requirement is. He stated the original Order stated that the *"Applicant may request modification of the respective amounts of the required bond upon submission of documentation satisfactory to the Board, including, but not limited to, submission of required agreed-upon-procedures"*. He stated that it may be legally and practically impossible as the case maybe. However item may not be possible but item 4 ties into it which states *"Applicant must provide evidence satisfactory to the Board that he has placed the required amounts in the Care and Maintenance and the Merchandise accounts within sixty (60) months from the effective date of this Order"* which is the amount that is in dispute. Mr. Spoon stated that if the Board comes to some type of agreement on item 4 it maybe that item 3 becomes a

mute point. He stated that item 3 is short term and item 4 is long term, he stated that item 4 has a 5 year horizon on it and item 3 is right now. Mr. Stillwell stated that they would work on the \$4,003,000 number to put a finer point on it and ask that the Board not require that the merchandise account be bonded since it has been satisfied and they will provide documentation to support that. Then they would say that the PC not be bonded but they have five (5) years to get it where it needs to be. Mr. Russ asked if the agreed upon procedures have ever been done. Mr. Taylor stated that is what they are working on internally now. Mr. Taylor stated that he will work on getting all the supporting documentation to Mr. Stillwell so Mr. Stillwell will be about to include that information with the proposed Order changes and send to Mr. Spoon so the Order may be amended if possible. Mr. Floyd stated that Mr. Taylor needs to provide the documentation for preneed bronze that has been provided. Mr. Taylor stated that he understands that the Board wants to see the figures and documentation for what he has provided for bronze out of pocket.

Mr. Floyd stated he believes that it makes it easier for the Board if Mr. Stillwell makes a formal request with the proposed changes to the Board so the Order may be amended as it pertains to the current Order. Also including the figures and documentation for what he has provided for bronze out of pocket for review by Ms. Cubitt and Mr. Spoon.

Break 11:18 am to 11:32 am

MOTION

Mr. Riggins made a motion to have a brief break. Mr. Finch seconded the motion, which carried unanimously.

2. StoneMor – Franklin G. Daniels, Esq – J W Russ
 - a. Contract Disclosures
 - b. Vault Policies

Mr. Floyd stated that he believes it may be helpful for a someone from StoneMor explain to the Board their practices and procedures for pre-burial of vaults, initial and final opening and closing and the interment charge since they seem to be different than the cemeteries that the Board is experienced with. He then stated that he would refer them to the Boards website to the template for disclosures since StoneMor's contract doesn't really follow what the Board requires. He stated that the statute is clear on certain disclosures that are required whether they are on the contract or if they accompany the contract.

Mr. Daniels stated when StoneMor purchased these cemeteries back in 2006 or 2007, all documentation was submitted to the Board which was approved but the files were lost due to a move. He stated that the issues regarding the contracts have never been raised until December 7, 2009. Since that date they have been trying to work to get this matter resolved and has been working with Mr. Russ regarding the contracts and has made several revisions. He stated that StoneMor was suppose to appear before the Board in November 2010 however he received an email from Ms. Cubitt and Mr. Russ referring to when the next Board meeting would be and stated that she had spoken to Mr. Russ and he had reviewed the contract and disclosures and he is comfortable with the disclosures and since there are no issues with the contract they will not need to appear before the full Board. Mr. Daniels email back stating that he would still like to attend the meeting anyway because of all the controversy on this issue so StoneMor can

make sure the issue is resolved. He stated that StoneMor's position is that many of the issues with the contracts are not in regards to law however they were trying to comply. He stated that after speaking to Mr. Floyd that there may be other issues regarding the contracts. Mr. Daniels stated that in good faith StoneMor has tried to comply with the Board's requests for changes to the contract but it is his understanding that StoneMor has used the Board's template. He stated that he believes there is a difference in using the template as a model. Is the Board looking to make sure that the disclosures are in the same place on StoneMor's contract as the template or is the Board looking to make sure that the disclosures are covered on the contract. He stated that they created the separate disclosure document which they have in bold that the customer shouldn't sign the contract until they have read the disclosure statement which includes the pre-installation of vaults. He stated that Mr. Floyd had discussed an issue that he saw in regards to the warranty. Mr. Daniels stated that the warranty is not covered on the contract but it is covered on the disclosures. He stated that in the conversations that he has had with Mr. Russ that issue had never arose that it needed to be in a certain spot on the contract. Mr. Russ just stated that the disclosures needed to be covered for consumer protection. Mr. Floyd stated specifically regarding the warranty, the Board does want it in the same place it is on the template for the simple reason that when you buy a product (vault) it needs to disclose if it is protective or non-protective or if it has a warranty or not. He stated printing on the back that none of the products have a warranty doesn't satisfy the disclosure that the statute requires. He stated the consumer isn't going to look on the front of the contract and see that they have the product but on the back of the contract it stated that it doesn't have a warranty. Mr. Floyd stated another missing item on the contract is the Care and Maintenance installation as to what the fees are and what it trusted which he doesn't see on that contract. He stated on the template the Board uses clearly states installation, short term care and long term care and how much it is per square inch. He said the template makes it very clear to the consumer what it is. He stated those are just two examples that he has found.

Mr. Floyd stated in regards to their practices they have on the contract item 3 (J) which states initial fee for interment then item 3 (K) has final interment/entombment/inurnment fee he stated that isn't a practice that SC is familiar with. He stated the statute states any charge required by buying an interment right needs to be disclosed at the time the interment right is purchased. He stated that it suggests to him that when you purchase a grave space there is a two tier fee structure for interment fees. He again stated that he isn't familiar with this practice and that is why he suggested that someone with StoneMor explain their practices to the Board.

Mr. Daniels stated in the spirit of what Mr. Floyd was saying that he understands that is for consumer protection by having the disclosures posted on the contract. He stated that the Board is basically saying that the disclosures that are listed on the contract are irrelevant unless they are listed under merchandise then no one will read it. When it is required by law that all the other provisions/disclosures as well as the separate disclosures that they may not read it. He stated regarding the contract and disclosures they can work on getting some of the wording corrected however it is the responsibility of the person entering into a contract to read through it before signing it. He stated that there are many other disclosures which are not specifically listed. He stated item 13 on the contract regarding the warranty would go further than just the vault but you may say that is the only item that is important. He stated the way StoneMor disclosed it was in general that anything the customer would get there isn't a warranty in respect to any of those. He stated that if they have it there on the back of the contract then there isn't a

warranty on any other services or products in pursuant to this contract the statute requires a specific warranty regarding the outer burial container/vault.

Mr. Floyd stated specifically he was referring to out of burial containers in the statute is clear that they have to disclose whether it is protective or whether it has a warranty. He stated that it just seems logical that spirit of the statute that you don't sell it on the front and on the back state that it doesn't have a warranty. He believes that it is consumer friendly where you list the services and products and state whether it is protective or not and has a warranty or not. He stated that is where a consumer would expect to see it. He stated that StoneMor can put it in both places if they would like. He stated the statute is clear and the Board's position is that the warranty needs to be by the merchandise. Mr. Daniels asked if Mr. Floyd has reviewed the separate disclosures regarding outer burial containers. Mr. Floyd affirmed that he had reviewed the specific disclosure document. He stated no other cemetery in SC does that except StoneMor. He stated that he knows that the state of Alabama required them to do this so that is why they have that specific disclosure however there are other disclosures that are required by the state per the statute in regards to charges that are required and charges that may be required. He stated that is why using the Board's disclosure template from the website would be helpful. Mr. Daniels stated part of what the Board is talking about is some provisions in the contract that may need to be worked out. He stated that the Board has made numerous references to that StoneMor is the only cemeteries in SC that has that practice he stated he doesn't know if that is correct or not since he doesn't represent other cemeteries so the Board would know better than he would. He stated that the general practice of what StoneMor does whether it is lawn crypts or pre-need installation of vaults it seems that the Board is opposed to that. Mr. Floyd stated that is just a practice that the Board is unfamiliar with so that is why they are asking that someone from StoneMor to explain the practice to them. Mr. Floyd stated that since Mr. Daniels specifically brought up disclosures about the vault. He stated that he the Seller should explain the available options and benefits of the installation of the Outer Burial Container before need instead of installing the Outer Burial Container at need. The Board thinks to make that statement relevant then they should state what the pro's and con's are so the Board will know what the consumer is being told and the consumer understands. Mr. Floyd stated that the disclosure document looked good except that it didn't have the name of the cemetery or the pro's and con's of this practice on it.

Mr. Riggins inquired if they installed a protective vault would it be protective after it is put in the grave after the first time. Mr. Floyd stated that goes back to StoneMor's practice and back to what the contract states that they do not have a warranty any outer burial container. Mr. Daniels stated that they do not warranty but they are responsible for any type of water seepage, if there is any type of issue or problem with the vault at the time of that it is taken up. Mr. Daniels stated he will review the process as he knows it but keep in mind he is StoneMor's attorney, not in the cemetery business so if he refers to something that is wrong please forgive him since this isn't his area of expertise. He stated that when a vault is pre-buried they bury the vault whether it is protective or non-protective and the vault lid and 1/3 to 1/2 of the bottom is shrink wrapped but not sealed and when burial is needed they cemetery will dig 10 inches from the lid, place the remains and then seal. He stated that he believes in the contract that they have it where the funeral director, family or anyone on behalf of the family can come out and inspect the vault after it is opened and prior to burial to make sure everything is ok. He stated that if anything is wrong then it is StoneMor's responsibility to fix it or replace it. He stated that is the general procedure. He stated StoneMor has a very unique structure

which allows them to take advantage of certain tax provisions if a person elects choosing pre-need that is very favorable to them. He stated that many other businesses are not setup in that manner so they can't do that. He stated that there are other reasons that it isn't just from a tax perspective but are other pro's to the consumer and it is the consumer's choice whether they want it or not. He stated he isn't sure of the percentages throughout the country however he believes they are in 28 states that these are being used and are not having problems with them. He stated he understands that would be good for StoneMor to explain that to the Board since SC doesn't currently use that practice. He stated that he isn't aware of any other practices that StoneMor has except the pre-need burial. Mr. Riggins stated to him it appears that it would be more expensive to bury the vault as far as the warranty and everything. Mr. Floyd stated that there is a difference between warranty and whether or not StoneMor is responsible for cleaning it up and fixing it if it breaks prior to the burial. Regarding the issue with the warranty Mr. Daniels stated StoneMor actually makes a lot of their own vaults where other people may purchase vaults from another company. Mr. Floyd stated that vaults from another company typically has a warranty which is why the statute wants it disclosed if it has a warranty or not so the buyer can compare. He stated that typically a product without a warranty doesn't usually cost as much as a product with a warranty.

Mr. Floyd stated on the back to the contract under Interment/Entombment/Inurnment fees on the second line, "The Initial Fee for Interment relates to the charge for excavation of the burial site incident to the installation of the outer burial container." He stated he didn't understand the meaning of "incident to the installation" and he also doesn't understand the "initial fee vs the final fee". Mr. Daniels stated for example it was \$1,000 which is the initial fee for digging out the area for the vault to be placed in and a minimum fee at the end that is the final phase of that. He stated that StoneMor has stated to him is that the cost in the end is the same whether the vault is installed pre-need or installed later per the contract. Mr. Riggins stated he disagrees because when you bury it at the time of death you dig the grave, place the vault and remains, then fill the grave in and you are done. But if you have a pre-need burial then you are digging the grave, placing the vault, filing in the grave, then re-digging the grave, placing the remains, then filing in the grave for the second time so there has to be more cost in digging the grave twice. Mr. Daniels stated that the cost in digging the grave twice may be more however there is no cost difference for the consumer. Mr. Floyd stated that is part of the practice that the Board needs to understand from StoneMor. Mr. Floyd asked is the installation of the vault the same as the burial of the vault. Mr. Daniels' understanding is that they are two different phases for that. He stated that when they are burying the remains that is when they are sealing the vault which he believes is the burial of the vault. Mr. Floyd stated that on the contract on the back under Outer Burial Container states "The delivery and installation of Outer Burial Container(s) at Seller's Cemetery only is included in the purchase price". So his understands is that they are saying that the installation is included however it isn't clear where the initial fee for interment and final fee for interment and how that relates. He stated the way that usually works is when you buy a grave space they have to disclose to the purchaser that there is an interment fee and today it is this much. So not knowing how StoneMor's practices are how they work and how it relates to the pre-burial and at-need of the vault which has an impact on what should be disclosed.

Mr. Floyd then stated on the back of the contract under Bronze Memorials and Monuments, 7th and 8th line down states "If the Bronze Memorial or Monument is not ordered within thirty (30) days of the signing of this Agreement, Seller further agrees to

pay to the Trustee of the Merchandise Trust Fund, such amount equal to or greater than the minimum standard required by the law of the State in which the place of interment is located". He stated that is incongruent with the state law. He stated the trigger for funding is after it is paid in full not after it is contracted for. He stated the consumer will think that it will be funded at the time it is ordered not when paid in full as is should be per statute.

Mr. Floyd stated on Other Provisions, number 2 "When a Purchaser agrees to purchase an Outer Burial Container, the Outer Burial Container shall be installed in or on the Purchaser's burial space within 18 months after the effective date of that Agreement". He stated that contradicts the disclosure for the consumer to choose pre-burial or not.

Ms. Cubitt asked for clarification for item 3 on the contract, which states on one column is for LLC and the other column is for Company. She stated also at the bottom of the contract it states "The LLC and the Company shall each remain secondarily liable to the other for the sales of items and services provided by one another pursuant to this Agreement; however, Purchaser shall not be required to exhaust any remedies against the LLC or the Company before proceeding against the other". Ms. Cubitt asked is it like the transaction if between two different companies. Mr. Daniels stated yes they are two different providers for different services. He stated that the services A through E are provided by the LLC provider and F through N is provided by the Company. Mr. Floyd stated so merchandise F through N is provided by the Company. Mr. Daniels stated that is correct. Mr. Floyd asked if he knows why. Mr. Daniels stated he doesn't know why however he will be happy to get an answer to that question give it to the Board at the next Board meeting. Mr. Floyd asked Ms. Cubitt from a CPA stand point is that a problem. Ms. Cubitt stated we issue the license to one entity and the LLC is an entity and the Company is a separate entity so does it require just one license or two which she is unsure about. Mr. Floyd stated that it isn't typical from what the Board is use to seeing. He stated it's not wrong, it is just different. He stated he is sure there is a reason for it he is just unsure what they are accomplishing. He stated based on what Ms. Cubitt stated doesn't that mean the Company isn't licensed so they cannot sell these items. Mr. Daniels stated that his understanding is that they are licensed for every Company and LLC that they are required to by SC Law. He stated that he can get clarification if the Board requires.

Mr. Daniels stated he will work with StoneMor to address those issues that were raised by the Board and they will try to accommodate the Board's request. He will come to the next Board meeting and have a representative on behalf of StoneMor present to answer any questions that may arise. He stated that if the Board has any other request please send him an email so he can work with StonrMor on those items as well so they can be prepared for the next Board meeting. He stated that it may even be helpful to get a memorandum prepared from StoneMor on their practices and procedures on how they conduct business in SC.

3. Garden of Devotion Cemetery, Inc. – Hemingway, SC - (ownership structure & manager change) – J W Russ

Since no one was present on behalf of the cemetery the Board could not rule on the application or proposed manager change.

Ms. Cubitt stated they also sent in a modified trust agreement showing that it is irrevocable. The Board did review the amended Trust Agreement that was submitted. Mr. Floyd stated that when the board refers to irrevocability that means the principle. He then stated that he believes the Trust Agreement isn't using the proper language because it reads as if the cemetery can never amend their trust document again without going to extraordinary links to change it. Mr. Spoon stated from his understanding there is a difference from what the statute requires as far as having an irrevocable trust verses not ever being able to change it. Mr. Floyd stated the Boards concern is the irrevocability of the principle (use of the income).

Mr. Russ stated that at his cemetery they were trying to switch their Merchandise Trust Fund over to a Merchandise account. However the bank attorneys has informed them that if they want to change they will have to go before probate court so the court can issue an order allowing them to change from a irrevocable Merchandise Trust Fund to a Merchandise account consistent with state statute.

Mr. Floyd stated item 4 on the Trust Agreement states *"Any of the net income to which the Garden of Devotion, Inc. may be entitled but which is left with the Trustee may be invested and managed by the Trustee as invested income, which the Garden of Devotion, Inc., can demand and receive from the Trustee at any time or as soon as the said invested income can be made available by the Trustee"*. He stated that the Board has ruled in the past that they can't do that. Mr. Floyd asked why the cemetery amended the Trust Agreement instead of a new Trust Agreement. Ms. Cubitt stated that the Board staff contacted Ms. Pat Tyler regarding the trust amendment instead of a new trust document. Ms. Tyler stated that the bank attorneys advised Mr. Ralph Harrell (President for Garden of Devotion) that it would be better to submit a trust amendment verses a new Trust Agreement. The question arose when was the original Trust Agreement signed and Ms. Cubitt stated that the year was 1996. Mr. Floyd stated that it doesn't appear that the trust document defines net income other than allowing it to be set aside and ask for it later and the Board has stated that they can't do that. He stated they need to add something about distributions so they can define net income. Mr. Spoon stated that the cemetery and bank need to work on the proper language on the amended trust agreement to bring it up to speed with the current statute.

Mr. Russ asked if all other documents are in order for Garden of Devotion. Ms. Cubitt stated that they still need to send in their annual reports for 2009 and 2010 and the agreed upon procedures.

MOTION

Mr. Floyd made a motion the Board table cemetery application until the next board meeting when someone on behalf of the cemetery will be present. Mr. Finch seconded the motion which carried unanimously.

4. Anderson Memorial Gardens (New Manager Approval & Fine Forgiveness Request) – Anderson, SC – Stephen Lowe – J W Russ

MOTION

Mr. Floyd made a motion the Board table this until the next board meeting when someone on behalf of the cemetery will be present. Mr. Riggins seconded the motion which carried unanimously.

5. Faith Memorial Gardens (Sale – Trust Fund Approval and Transfer) – Florence, SC – Kathryn Griggs – J W Russ

Mr. Floyd asked didn't the Board at some point request that the trustee state the beginning and ending balances in their trust fund? Ms. Cubitt stated that the Board requires the releasing bank send a letter showing the balance to be transferred and the receiving bank to send the trust affidavit showing the amount received after the transfer has occurred.

MOTION

Mr. Floyd made a motion the Board approve the trust transfer from Wells Fargo to First Federal after the proposed changes have been made to the trust agreement. Mr. Riggins seconded the motion which carried unanimously.

Mr. Floyd stated that he has some issues with the Trust Agreement. Ms. Cubitt stated that this is the template provided to Faith Memorial Gardens since this is what the Board has been using. Mr. Floyd stated it cannot be because there are problems with it. Mr. Floyd stated under Disposition of Principal and Income. It states "Trustee shall administer and manage the Trust Fund, collect the income therefrom, and, after payment of all administrative fees and perpetual care costs, apply and dispose of the net income of the Trust Fund in the following manner". He stated his interpretation of the statute is that if there is enough income left in the fund then the cemetery can pay the administration fees, however the administration fees must not come off the top. Ms. Cubitt stated the most the cemetery can take is the net income per statute "Section 40-8-110 (B) or who makes the deposit, an instrument in writing which shall specifically state that the net income of the care and maintenance trust fund must be used solely for the care and maintenance of the cemetery, for reasonable costs of administering the care and maintenance, and for reasonable costs of administering the trust fund".

She then stated if there isn't enough money in the fund the cemetery will have to pay the administration cost out of pocket per statute "Section 40-8-110 (E) The fees and other expenses of the trust fund may not be paid from the corpus. To the extent that the net income is not sufficient to pay the fees and other expenses, they must be paid by the cemetery company". She stated there was a Scribner's error in the statute. It is suppose to state "may not be paid from the corpus". Mr. Floyd inquired what if they strike "after payment of all administration fees and perpetual care cost" so it will then read "collect the income therefrom, and, apply and dispose of the net income of the Trust Fund in the following manner".

Mr. Floyd then stated on page 5 under Limitation of Powers it states "Notwithstanding anything contained to the contrary, no powers enumerated or accorded to Trustee generally pursuant to law shall be construed to enable the Grantor, or the Trustee or either of them, or any other person, to sell, purchase, exchange, or otherwise deal with or dispose of all or any parts of the corpus of income of the trusts for less than an adequate consideration in money or moneysworth, or to enable the Grantor to borrow all or any part of the corpus or income of the trusts, directly or indirectly, without adequate interest or security". Mr. Spoon stated that paragraph is regarding two things: disposing of the corpus of income of the trust and taking a loan out against the trust account. He stated that isn't in the Trust template the Board has been using. Mr. Spoon suggested they strike "for less than an adequate consideration in money or moneysworth" and "without adequate interest or security". So it should read as "Notwithstanding anything

contained to the contrary, no powers enumerated or accorded to Trustee generally pursuant to law shall be construed to enable the Grantor, or the Trustee or either of them, or any other person, to sell, purchase, exchange, or otherwise deal with or dispose of all or any parts of the corpus of income of the trusts for less than an adequate consideration in money or moneyworth, or to enable the Grantor to borrow all or any part of the corpus or income of the trusts, directly or indirectly”.

Mr. Floyd asked if this is the only Trust document they have submitted because it doesn't address distributions (how they handle earnings and income). He stated the Board has seen how other cemeteries want to define net capital gains as part of earnings so they can distribute it. He that should be added to the Trust Agreement and suggested that the Board staff find a Trust Agreement that has been accepted by the Board and get the Cemetery to use the same language on their Trust Agreement.

MOTION

Mr. Floyd made a motion the Board accept the Trust Agreement with the proposed changes. Ms. Petty seconded the motion which carried unanimously.

New Business

1. IRC – Sharon Wolfe

Ms. Wolfe stated that the Office of Investigations and Enforcement (OIE) had received 12 new complaints. She then stated that OIE received 27 complaints in 2010 and at this time 26 of the 27 complaints have been closed.

Ms. Wolfe then explained the complaint process. She stated when a complaint is received it is logged as an open case, investigated, sent to IRC, dismissed or hearing before the Board.

MOTION

Mr. Riggins made a motion the Board accept the IRC report. Mr. Floyd seconded the motion which carried unanimously.

2. Inspection Report – Doris Cubitt
No inspection report at this time.

3. OGC – Christa Bell
No report at this time.

4. Present Plaque to Thomas Johnson's family for years of service

Mr. Russ presented the plaque before the board for Mr. Thomas Johnson for his years of service. He read the letter before the board that he sent to Mr. Johnson's widow Ms. Carolyn E. Johnson.

“On behalf of the SC Perpetual Care Cemetery Board, we would like to present you with a plaque in recognition for your husbands, Mr. Thomas Johnson, years of service.

The SC Perpetual Care Cemetery Board was honored to have Mr. Johnson. He was a man that I learned to respect and was proud to have on our board. Equally important to

me was the fact that he became a dear friend. He was a man that I came to trust for his integrity and advice. I thank God for allowing me the honor of getting to know him.

I believe that others saw him in the same manner as I. He was a shining beacon of light to those who knew him. His leadership abilities and wisdom were so apparent to me and others. He made a difference in this world. What a wonderful statement pertaining to him that you and his family can be proud of.

In closing I know I speak for the Board and Staff here at LLR in expressing our sympathy for you and his family.

May God grant you peace and our prayers will continue to be lifted up for you and his loved ones."

Mr. Russ suggested that the board mail the plaque with a letter signed by each board member to Ms. Johnson.

5. All cemeteries to submit updated Policies and Procedures for Board review

Ms. Cubitt suggested that the board make a policy that requires each cemetery to send in updated policies/procedures to make sure each cemetery is in compliance with the statute per Sections 40-8-90 (4) (d), 40-8-100 (H), 40-8-100 (c), 40-8-100 (f) and 40-8-100 (g).

Mr. Russ stated that he is unsure if the board needs to do that at this time.

Ms. Cubitt stated she will do more research and present to the board at a later date.

6. All cemeteries to submit updated Disclosures and Sales Contracts for Board review

Ms. Cubitt suggested that the board make a policy that requires each cemetery to send in updated disclosures and sales contracts to make sure each cemetery is in compliance with the statute.

Mr. Russ stated that he is unsure if the board needs to do that at this time.

Ms. Cubitt stated she will do more research and present to the board at a later date.

7. SunTrust Bank – (Trust Fund Transfer Request) – Columbia, SC – J W Russ

- a. Elmwood Memorial Gardens, Columbia, SC
- b. Bush River Memorial Gardens, Columbia, SC
- c. Southland Memorial Gardens, West Columbia, SC

Mr. Floyd stated that the letter is dated on March 4, 2011 and the affidavit is dated for June 15, 2007. He stated that these cemeteries are older that that so he is unsure why the affidavit has 2007. Ms. Holleman stated that the cemeteries were sold in recent years and the Board approved the transfer of these funds. She stated that they were premature in submitting the trust affidavits this time. She stated part of the requirement is once the funds are transferred from the current trustee to the new trustee both trustees must submit documentation to support that the amount that was transferred is the same amount that was received by the new trustee. Ms. Holleman stated that the

Board can disregard that information since they will have to submit new affidavits for each cemetery to reflect the amounts transferred. Mr. Floyd stated so Board staff does see that information to make sure that the cemeteries are transferring the correct amount. Ms. Holleman stated yes that is correct however since the transfer hasn't been approved yet they are not required to submit the trust affidavits until after the transfer has occurred.

Mr. Floyd stated on page 9 of the transfer packet, under the 4th Whereas, "such income and net principal gains being referred to hereinafter as "Earning". Ms. Cubitt stated that the Board reviewed these trust documents within the last two years when they transferred to Regions Bank. She stated the only thing that is happening now is transferring from Regions Bank to SunTrust Bank. Mr. Floyd stated that the trust document was in violation of the statute because on the trust agreement they are referring to the "net capital gains as earnings". He stated they defined that as earnings which may cause trouble somewhere else. He stated it makes reference to filing trust documents in the state of Missouri for some reason. Ms. Cubitt stated that Keystone may be incorporated in the state of Missouri.

Mr. Floyd then referenced on page 12, under number 3, "as Income" he stated that it makes reference to treating the income or principal, or partly one and partly the other, in accordance with usual and customary accounting practices of Trustee. He asked if all banks will define net income the same way. Ms. Cubitt stated she doesn't believe the banks will define it the same way. So Mr. Floyd stated so the Board doesn't want to allow that definition so they need to make an amendment. He then stated on the same page, under number 10, "reserves, out of income" is inconsistent.

MOTION

Mr. Floyd made a motion the Board approve the trust transfer from Regions Bank to SunTrust Bank after the proposed changes have been made to the trust agreement. Once the transfer has occurred then each trustee will submit an affidavit reflecting the amount transferred. Mr. Riggins seconded the motion which carried unanimously.

8. Consideration of moving July 7, 2011 Board Meeting Date to Tuesday, August 24, Wednesday, August 31, Wednesday, September 7, or Thursday, September 8, 2011.

MOTION

Mr. Floyd made a motion the Board meeting date be changed to September 7, 2011. Ms. Petty seconded the motion which carried unanimously.

Public Comments

Mr. Floyd inquired on Greenhaven Natural Preserve Cemetery. Ms. Cubitt stated that the board is waiting on the conservation easement. She stated that the attorney representing Greenhaven Natural Preserve Cemetery was in a car accident so they will appear before the board at a later date.

Adjournment

MOTION

Mr. Finch made a motion the Board adjourn. Ms. Petty seconded the motion which carried unanimously.

The June 8, 2011 meeting of the SC Perpetual Care Cemetery Board adjourned at 1:23 p.m.

The next meeting of the SC Perpetual Care Cemetery Board is scheduled for September 7, 2011.