

MINUTES
South Carolina Perpetual Care Cemetery Board
Board Meeting
10:00 a.m., March 3, 2015
Synergy Business Park
110 Centerview Drive, Kingtree Building, Room 108
Columbia, South Carolina

1. Meeting Called to Order

J. W. Russ, chairman, of Conway, called the regular meeting of the SC Perpetual Care Cemetery Board to order at 10:15 a.m. Other members attending the meeting included Russel Floyd, vice chairman, of Spartanburg; Rick Riggins, of Lancaster; and Roger Finch, of Easley (attended the meeting by phone).

Members absent from the meeting included John Bartus and Jackie Petty.

Staff members participating during the meeting included: Ernest Adams, Inspector, Office of Investigations and Enforcement; Doris Cubitt, Administrator, Accountancy and Geologists; Sharon Cooke, Investigator, Office of Investigations and Enforcement; Sandra Dickert, Administrative Assistant; Amy Holleman Interim Administrator; Mary League, Office of Advice Counsel; Tracey Perlman, Attorney, Office of Disciplinary Counsel; and Buddy Poole, Inspector, Office of Investigations and Enforcement.

Members of the public attending the meeting included: Bob Coble, Bill Gaffney, Vince Graham, Tamala Randolph, Felicia Smith, Porter Stewart, Robin Thomason and Robert Thomason.

Public Notice

Mr. Russ announced that public notice of this meeting was properly posted at the SC Perpetual Care Cemetery Board office, Synergy Business Park, Kingtree 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.

Mr. Russ stated Mr. Finch, Board member, is attending the meeting by telephone in order to give the Board a quorum.

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 members of the public attending the meeting introduced themselves.

3. Approval of Excused Absences

MOTION

Mr. Floyd made a motion the Board approve excused absences for Jackie Petty and John Bartus. Mr. Riggins seconded the motion, which carried unanimously.

4. Approval of Minutes for the November 19 & November 20, 2014 meetings

Mr. Floyd made the following changes to the November 19 and November 20, 2014 meeting minutes:

Page five, line 213, under motion heading, delete the reference to ~~Sections 40-1-110(1)(F), 40-8-130(A)(1), and 40-8-150(6)~~ from the motion.

Page seven, line 320, under motion heading, delete the reference to ~~Section 40-8-130(A)(1)~~.

Page nine, lines 395 – 396 delete all of the first sentence.

Page ten, under motion heading, line 450, insert 'deposit funds from all new plot sales in accordance with the statutory requirements.' In the next sentence strike the word ~~before~~ and insert 'at the next scheduled board meeting to provide requested financial information.' The sentence will read, 'Respondent is to make a deposit of \$800.00 monthly into the trust fund, deposit funds from all new plot sales in accordance with the statutory requirements and appear at the next scheduled board meeting to provide requested financial information.'

MOTION

Mr. Riggins made a motion the Board approve the minutes of the November 19 and November 20, 2014 meetings as amended. Mr. Floyd seconded the motion, which carried unanimously.

5. Chairman's Remarks – J. W. Russ

Mr. Russ made no remarks at this time.

6. Administrator's Remarks – Amy Holleman

7. Ms. Holleman stated she is now the Interim Administrator as agency changes have moved Mrs. Cubitt to the Administrator for Accountancy and Geologists.

A. Financial Statements

Financial (budget) statements were included in the members' packets. Ms. Holleman believes the November 2014 is the last figures it shows and does not include the renewals which ran through December 31, 2014.

Ms. Holleman stated the Statement of Economic Interest forms are due to the State Ethics Commission no later than 12:00 noon on March 30, 2015. She asked the members to notify her once they have submitted the forms to the State Ethics Commission. She will be sending an email toward the end of the month to remind members to file the forms.

8. Board member inquiries response protocol and authority - Advice Counsel

Ms. Mary League, of the Office of Advice Counsel, stated the information is about to convey is informational only and not corrective.

Ms. League stated the chief advice counsel has asked the advice attorneys to remind all board members of the appropriate protocols and extent of authority pertaining to inquiries from the public or the media and commenting on legislation.

Board members who have been contacted by the media requesting a response should coordinate a response with Lesia Kudelka, of the Office of Communications, to ensure the response is appropriate to be made and made in accordance with how the full board has spoken on the matter in public session. No one member speaks on behalf of the full board.

Board members should also coordinate a response with Lesia Kudelka, of the Office of Communications, when approached by a member of the public. Any inquiries should be forwarded to the Administrator. If the administrator or advice counsel cannot answer the question, the administrator will contact the chairman for a response. However, if the chairman cannot answer the question or clarity is needed, the question would be brought before the full board.

The Cemetery Board does not have the authority to lobby for legislation. While some boards have this authority written in the practice act, this board does not and this board is in the majority of LLR boards. As a board member an individual member cannot give an opinion or testify in a hearing before the State Legislature. However, it does not mean that the individual member cannot speak or offer testimony as long as the member clarifies that he/she is speaking on his/her own behalf.

9. Reports

A. Inspection Report – Ernest Adams 33 inspections between Nov 14, 2014 thru Feb 24, 2015

Mr. Poole stated he and Mr. Adams had conducted 33 cemetery inspections between November 14, 2014 and February 24, 2015.

B. Investigative Review Committee (IRC) Report – Sharon Wolfe

1. February 11, 2015 IRC report

Sharon Cooke, of OIE, presented the members with the February 11, 2015 IRC report.

MOTION

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

C. Office of Investigation and Enforcement (OIE) Report – Sharon Wolfe

Ms. Cooke stated OIE has received six cases between January 1, 2015 and February 19, 2015. One case is active, two cases were do not open, and three cases are pending board action. During that same time period ten closed cases and three do not open cases, for a total of 13 cases. OIE currently has three open cases at this time.

D. Office of Disciplinary Counsel (ODC) Report – Tracey Perlman

Ms. Perlman stated the Office of Disciplinary Counsel currently has 21 open cases regarding cemeteries. Eight cases are pending action, 11 cases are pending hearings, and two cases are pending action from the Administrative Law Court (ALC)

10. Approval of Consent Agreement (CA) - Tracey Perlman

A. Case No. OIE – 2014-3

Ms. Perlman presented the members with a consent agreement regarding case number OIE 2014-3 and asked that the Board approve the document.

MOTION

Mr. Floyd made a motion the Board approve the consent agreement. Mr. Riggins seconded the motion, which carried unanimously.

11. Disciplinary Hearing

A. Case No. OIE - 2011-21

Ms. Perlman stated she has asked for a continuance in the matter of case number OIE 2011-21. She noted there the continuance was unopposed by the Respondent.

12. Old Business

A. Westview Memorial Park

This proceeding was recorded by a court reporter should a verbatim transcript be necessary.

Robert Thomason and Robin Thomason made the following report to the Board.

To the best of their knowledge they have all of the documents as required by the Board.

The Thomason's have gathered financial information from 1991 forward regarding the trust fund. He further stated Mrs. Cubitt has produced a spreadsheet from 1991. The Agreed Upon Procedures was presented from 1991 to 2012. The annual report from 2013 was also presented.

Mrs. Cubitt stated the Agreed Upon Procedures for the years 2013, 2014, and 2015 will be due in 2016. She has produced a spreadsheet outlining the summary of amounts which needed to be deposited from 1991 to 2012. Sometimes the distributions plus what was paid in fees was greater than the income. In some years distributions were overpaid and some years distributions were underpaid.

They have negotiated with Palmetto Trust with a 50% reduction in trust fees. They have also negotiated with a CPA instead of the trust department to produce the annual returns. They have included statements from Palmetto Trust which shows the activity of the trust account and illustrates the contributions made.

Financial information shows they have made the board required \$9,800.00 contribution to the trust fund.

The cemetery does not have a merchandise trust fund as they deliver the merchandise once it has been ordered.

MOTION

Mr. Floyd made a motion the Board enter executive session to seek legal advice. Mr. Riggins seconded the motion, which carried unanimously.

MOTION

Mr. Floyd made a motion the Board move out of executive session. Mr. Finch 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, the Board accept the financial information provided, Westview must update the care and maintenance trust agreement, and the monthly arrearage payment is reduced to \$650.00, Westview must provide acceptable quarterly reports of deposits into the care and maintenance trust fund until the arrearage is satisfied.

B. New ownership

1. Sunset Memory Gardens

This proceeding was recorded by a court reporter should a verbatim transcript be necessary.

Ms. Holleman stated Ms. Smith has delivered all missing documentation except for an updated trust.

Mrs. Cubitt stated they have provided staff with the Agreed Upon Procedures, which looks fine. However, upon her review of the Agreed Upon Procedures the disbursements and fees are greater than income. According to statute the owner would need only to take out up to the income amount and then the cemetery itself would need to pay the difference. Because it is was a change of ownership now she only 2013 and ten months of 2014 to review she could not provide the Board with a good schedule of fee payments over the years. She spoke with Mike Evans, CPA and explained the statute. However, she believes Ms. Smith may be changing CPAs. The trust agreement needs to be updated. She believes if the forms were updated it may clarify what the cemetery owners need.

Felicia Robinson Smith and Porter Stewart, Esquire, offered the following testimony.

The board reviewed a revised purchase agreement with disclosures which Ms. Smith submitted approximately two weeks ago.

The application is not actually a change of ownership it is a change control of the company due to a reduction of shareholders. The corporation remains the same.

The original trust agreement was executed in December 1967 and has continuously been in effect since that time. The original trust agreement was with First National Bank, which is now Wells Fargo. Wells Fargo does not want to negotiate the trust agreement. However, a local bank, Dedicated Community Bank, within that community has agreed to provide a trust agreement for the cemetery. Mr. Stewart spoke with Mr. Jim Ivey.

The original application stated there were 40 acres; however, Ms. Smith wanted 30 acres for perpetual care in accordance with the statute.

MOTION

Mr. Floyd made a motion the Board enter executive session to seek legal advice. Mr. Riggins seconded the motion, which carried unanimously.

MOTION

Mr. Floyd made a motion the Board move out of executive session. Mr. Finch seconded the motion, which carried unanimously.

Mr. Russ noted for the record no official action was taken during executive session.

MOTION

Mr. Riggins made a motion, read by advice counsel, Mary League, the Board approve the application pending verification of the transfer of trustee and approval by the Board of the trust agreement to be reviewed by Mr. Floyd. Mr. Floyd seconded the motion, which carried unanimously.

13. New Business

A. Expansion of Historical Cemetery

This proceeding was recorded by a court reporter should a verbatim transcript be necessary.

Ms. Holleman stated at first staff believed that the historic cemetery was owned by the l'On Group, which wants to expand the cemetery to sell plots to the public. The l'On Group has maintained, restored, and cared for the historical cemetery for the past twenty years; however, the descendents of those buried in the cemetery actually own the cemetery.

Vince Graham, of the l'On Group in Mt. Pleasant, offered the following testimony.

The l'On Group has been involved in building a neighborhood in Mount Pleasant area for the past twenty years. The neighborhood is named for Mr. Jacob Von l'On and includes a mix of houses, schools, churches and commercial as well as the l'On Cemetery.

The l'On Group restored the cemetery in 1996 after years of being vandalized. The historic cemetery rests on approximately one-third of an acre. The l'On Group owns the rest of the property which surrounds around the cemetery and is one-third of an acre, which is zoned civic/community. The l'On Group is looking a expanding the cemetery to possibly become a public cemetery to include not only individuals from the neighborhood but other individuals as well.

Over the years the l'On Group has received several individual requests to be buried in the cemetery. However, since the cemetery is a historical cemetery no further burials can take place.

The owner of tax record for the cemetery is an entity led by David Maybank. Mr. Graham is unsure if the entity is a corporation or some other type of entity but knows the entity pays taxes to Charleston County.

MOTION

Mr. Floyd made a motion the Board enter executive session to seek legal advice. Mr. Riggins seconded the motion, which carried unanimously.

MOTION

Mr. Riggins made a motion the Board move out of executive 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. League advised Mr. Graham the Board believes, based on the information presented during the meeting, since the expansion area would not be used for family burial that this would be a new public cemetery based under the statutory definition. Since this cemetery is a new public cemetery, under Section 40-8-240, it would have to meet all of the statutory requirements including minimal acreage, which this cemetery does not meet.

Family burial grounds and church cemeteries, which do not offer perpetual care, are not considered new public cemeteries. If the property were deeded to a municipality the cemetery could become an exemption; however, then it would not be under the l'On Group's control.

14. Public Comments

No public comments were made during this meeting.

15. Adjournment

MOTION

Mr. Riggins made a motion the meeting be adjourned. Mr. Floyd seconded the motion, which carried unanimously.

The March 3, 2015 meeting of the SC Board of Perpetual Care Cemetery adjourned at 12:44 p.m.

The next meeting of the SC Perpetual Care Cemetery Board is scheduled for **May 28, 2015.**