

**MINUTES**  
**South Carolina Perpetual Care Cemetery**  
**Board Meeting**

10:00 a.m., Thursday, September 3, 2015  
Synergy Business Park  
110 Centerview Drive, Kingstree Building Room 108  
Columbia, South Carolina

**Thursday, September 3, 2015**

**1. Meeting Called to Order**

J. W. Russ, Chair, of Conway, called the meeting to order at 10:08 a.m. Other members participating during the meeting included: Russel Floyd, Vice Chair, of Spartanburg; Roger Finch, of Easley; and, John Bartus, of Mauldin.

Staff members participating in the meeting included: Monaca Harrelson, Administrative Assistant; Amy Holleman, Administrator; Mary League, Advice Counsel, Office of Advice Counsel; Sharon Cook, Investigator, Office of Investigations and Enforcement; Tracey Perlman, Disciplinary Counsel, Office of Disciplinary Counsel; Buddy Poole, Inspector, Office of Investigations and Enforcement; and, Ernest Adams, Inspector, Office of Investigations and Enforcement.

Members of the public attending the meeting included: Robin Thomason and Robert Thomason of Westview Memorial Park, Todd Hardee of Faith Memorial Gardens, Judy Garhill of Kistler Hardee Funeral Home, Romalithia Coleman, Bill Gaffney of Mountain View Memorial Park, Kathryn Griggs of Faith Memorial Gardens, Wilbur and Retha Brown of Brown & Co., Sinclair Frasier and Alonzo Graham of Rest Lawn Memorial Park, Felecia Smith and Commodore Charles of Sunset Memory Gardens, Ronnie Sabb of The Law Office of Ronnie Sabb, and Tamala Randolph of StonMor.

**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. Holleman please introduce herself and her staff. Mr. Russ asked that all other persons attending the meeting introduce themselves.

**3. Approval of Excused Absences**

Rick Riggins, of Lancaster, and Jacquelyn Petty, of Union, were granted excused absences.

**MOTION**

Mr. Finch made a motion that the Board approve Mr. Riggins' and Ms. Petty's absences. Mr. Bartus seconded the motion, which carried unanimously.

#### **4. Approval of Minutes for the May 23, 2015 meeting**

##### **MOTION**

Mr. Floyd made a motion the Board approve the minutes of the May 23, 2015 board meeting. Mr. Bartus seconded the motion, which carried unanimously.

#### **5. Chairman's Remarks – J. W. Russ**

Mr. Russ thanked everyone for attending the meeting.

#### **6. Administrator's Remarks – Amy Holleman**

##### **A. Financial Statements**

Ms. Holleman presented the financial statements to the Board for their review. Ms. Holleman noted the June 2014 ending cash balance for the Board was -\$6,501.03, the ending balance for June 2015 was -\$17,187.51, and the July 2015 balance was -\$23,511.18.

##### **B. Fee Increase**

Ms. Holleman asked the Board to consider going back to the license renewal fees stated in Section 40-8-80, which are \$850 annually for cemeteries greater than ten acres and \$400 annually for cemeteries less than ten acres.

The Board asked Ms. Holleman to further research their financials, discuss with Director Taylor, and then present her findings to the Board.

#### **7. Reports**

##### **A. Inspection Report – Buddy Poole**

Mr. Poole stated there were 37 inspections from May 22, 2015 through August 27, 2015.

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

Ms. Wolfe reported that the IRC reviewed two cases, Numbers 2014-24 and 2015-10, where dismissal is recommended.

##### **MOTION**

Mr. Bartus made a motion the Board dismiss Case Numbers 2014-24 and 2015-10. Mr. Floyd seconded the motion, which carried unanimously.

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

Ms. Wolfe reported that of cases received from January 1, 2015, through August 26, 2015, there are nine active investigations, ten active cases, seven do not open cases, one case pending Board action, and one case pending IRC. So far for from January 1, 2015, through August 26, 2015, there have been 27 cases closed with seven do not open cases for a total of 34 cases.

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

Ms. Perlman reviewed the Office of Disciplinary Counsel case log for the Cemetery Board and informed them that there are currently seven open cases. She stated that two are pending hearings, three are pending final order hearings, 14 cases are closed, and two cases have appealed.

## 8. Memorandum of Agreement (MOA) - Tracey Perlman

### A. Case No. OIE – 2014-1 – Westview Memorial Park

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

Ms. Perlman reviewed the Memorandum of Agreement (MOA) for the record.

1. On November 3, 2010, Respondent appeared before the Board for its failure to furnish financial reports for the years 2004-2009 and Agreed upon Procedures for the years 1991-2006. At the conclusion of that hearing the Board issued an Order finding the Respondent in violation of the Act and allowing Respondent ninety (90) days to submit the outstanding reports. See Board Order dated December 21, 2010 ("Order") attached and incorporated herein as **EXHIBIT #1**.
2. On or about June 13, 2011, the Board notified Respondent that, due to its failure to comply with the terms of the Order, its license was suspended. The Board specifically instructed Respondent to cease and desist from entering into new sales or sales contracts until Respondent was fully compliance with the Order's terms and appeared before the Board for reinstatement. A copy of letter from the Board to Respondent is attached and incorporated herein as **EXHIBIT #2**.
3. On or about July 5, 2011, Respondent entered into a sales agreement with Complainant for the burial of Walter Martin ("Complainant's Brother"). On or about August 8, 2011, Respondent accepted final payment for the burial of Complainant's Brother from Complainant. See Purchase Agreement and Payment receipt attached and incorporated herein as **Exhibit #3**.
4. During the investigation conducted based on the Complaint, the investigator for the cemetery board found that Respondent continued the contract for merchandise and services during the entire period of its suspension. The investigator found the Respondent entered into at least seventy-seven (77) contracts from the period of July 2011 through May 13, 2014. See Copies of Purchase and Security Agreements attached and incorporated herein as **Exhibit #4**.
5. Additional contracts were entered into between May 14, 2014 and the reinstatement of Respondent's license on August 9, 2014.

**RESPONDENT ADMITS** that the aforementioned acts of Respondent present grounds that constitute misconduct and are a violations of the following:

1. Respondent is in violation of **S.C. Code Ann. § 40-1-30** in that Respondent engaged in a profession or occupation regulated by a board or commission administered by the Department of Labor, Licensing and Regulation without holding a valid authorization to practice as is required by statute or regulation;

2. Respondent is in violation of **S.C. Code Ann. § 40-1-110(1)(e)**, in that Respondent has obtained fees under fraudulent circumstances;
3. Respondent is in violation of **S.C. Code Ann. § 40-8-150(7)**, in that Respondent acted in a fraudulent manner, whether the same or different in character than specified in this section.

**THE STATE CONTENDS BUT RESPONDENT DOES NOT ADMIT** that the aforementioned acts of Respondent are in violation of:

1. **S.C. Code Ann. § 40-1-110(1)(f)** establishing that Respondent has committed a dishonorable, unethical, or unprofessional act that is likely to deceive, defraud, or harm the public;

**IN MITIGATION, RESPONDENT ASSERTS THE FOLLOWING:**

1. At all times relevant to the matter at hand, Respondent has been forthcoming of the facts and has made no attempt to conceal its actions.
2. Respondent has taken full responsibility for the violations stated above.
3. Respondent has appeared before the Board twice regarding accounting issues related to the violations at hand.
4. Respondent has completed all requirements set forth by the Board for reporting and properly funding its trust accounts.
5. Respondent has submitted a request to have Robin Thomason recognized as the new manager of record; the Board approved that request.
6. Respondent's license has been restored to "Active" status and remains in good standing

**MOTION**

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

**Return to Public Session**

**MOTION**

Mr. Floyd made a motion that the Board return to public 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**

Ms. League read the motion for the record: Chairman Russ made a motion that the Board issue a Public Reprimand and that Respondent's license shall remain in probationary status for two (2) years from the date of this Order. If any additional violations occur, including failure to comply with Board Order, Respondent's license will be immediately administratively suspended pending compliance with Order of Board. Mr. Finch seconded the motion, which carried unanimously.

### Break

Mr. Russ stated that the Board will break for a 10 minute recess.

## 9. Disciplinary Hearing - Tracey Perlman

A. Case No. OIE – 2011-21 – Rest Lawn Memorial Park of Lake City

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

Mr. Sabb, Esq. appeared on behalf of the Respondent, Rest Lawn Memorial Park, Retha B. Brown, Wilbur B. Brown, and Greater St. James AME Church.

The witnesses for the case were Romalithia Coleman, Retha B. Brown, Wilbur B. Brown, and Rev. Sinclair B. Frasier, Sharon Cook, Sharon Wolfe, Amy Holleman.

Ms. Perlman reviewed the formal complaint.

1. On or about May 20, 2010 Complainant purchased Plot #134-C3 at Respondent Cemetery. See deed signed by Retha B. Brown and Wilbur B. Brown for Respondent, attached to and incorporated herein as **Exhibit #1**.
2. In May 2011, Complainant discovered that Mrs. Magaline Robinson had been buried in Plot #134-C3 which Complainant had previously purchased. Upon information and belief, Mrs. Robinson was supposed to be buried in Plot #137.
3. Complainant requested that Respondent relocate Mrs. Robinson to the correct plot. Respondent refused to do so.
4. In response to questions from an investigator with the South Carolina Department of Labor, Licensing and Regulation (hereinafter "LLR") Retha B. Brown claimed that she no longer had control of the cemetery. Ms. Brown stated that the Greater St. James AME Church had been in possession of the cemetery since March 31, 2011. See November 17, 2011 letter from Retha B. Brown attached to and incorporated herein as **Exhibit #2**.
5. Attached to the November 17, 2011 letter from Ms. Brown was a Limited Warranty Deed purporting to transfer ownership of Rest Lawn Memorial Park of Lake City from Wilbur b. Brown and Retha B. Brown to the Greater St. James AME Church. See Limited Warranty Deed dated March 31, 2011 attached to and incorporated herein as **Exhibit #3**.
6. In response to questions from an LLR Investigator, Reverend Sinclair C. Frasier of the Greater St. James AME Church sent a letter apologizing for an inconvenience to Complainant. See November 15, 2011 letter from Reverend Frasier attached to and incorporated herein as **Exhibit #4**.
7. On December 21, 2011, Hele T. McFadden, attorney for Respondent, returned Respondent's license to LLR. See December 21, 2011 letter from Helen T. McFadden attached to and incorporated here as **Exhibit #5**.

8. On May 3, 2012, and LLR investigator visited Respondent and observed that the cemetery grounds were not well maintained. See photographs of the area attached hereto and incorporated herein as **Exhibit #6**.

9. On May 22, 2012, the Board requested that Respondent's records be brought up to date by the filing of Agreed Upon Procedures for the years 2006-2010, the 2011 Merchandise Account Fund, and the 2011 Care and Maintenance Annual Report. See May 22, 2012 letter from Amy Holleman, Administrative Assistant to the Board Administrator, attached to and incorporated herein as **Exhibit #7**.

As a result of the facts above, the Respondent has violated the following laws governing the practice of cemetery and perpetual care in this state:

1. Respondent is in violation of **S.C. Code Ann. Section 40-8-40**, in that Respondent transferred and assigned a perpetual care cemetery in violation of this statute.
2. Respondent is in violation of **S.C. Code Ann. Section 40-8-100(A)**, in that Respondent failed to maintain a record of every lot owner and every burial in the cemetery showing the date of purchase, date of burial, name of person buried and the lot owner, and space in which the burial is made.
3. Respondent is in violation of the **S.C. Code Ann. Section 40-8-100(B)**, in that Respondent failed to record each written complaint received, action taken, and disposition of the complaint.
4. Respondent is in violation of **S.C. Code Ann. Section 40-8-110(D)**, in that Respondent failed to furnish adequate financial reports with respect to the care and maintenance trust fund within ninety days after the end of the calendar or fiscal year for the year 2011.
5. Respondent is in violation of **S.C. Code Ann. Section 40-8-110(G)**, in that Respondent failed to furnish adequate financial reports with respect to the merchandise account fund with ninety days after the end of the calendar or fiscal year for the year 2011.
6. Respondent is in violation of **S.C. Code Ann. Section 40-8-150(2)**, in that Respondent failed to submit the required Agreed Upon Procedures for the years 2006-2010.
7. Respondent is in violation of **S.C. Code Ann. Section 40-8-220(b)**, in that the cemetery was not being properly maintained and did not have a cared-for appearance.
8. Respondent is in violation of **S.C. Code Ann. Section 40-1-110(1)(f)**, in that Respondent has committed a dishonorable, unethical, or unprofessional act that is likely to deceive, defraud, or harm the public by allowing the remains of a deceased person to be buried in a plot reserved for another customer and, upon notification of this error, refusing to relocate the remains to the correct place.

### **Lunch Break**

#### **MOTION**

Mr. Russ made a motion the Board break for lunch at 1:37 pm and to reconvene at 2:30 pm. Mr. Floyd seconded the motion, which carried unanimously.

Mr. Russ called the meeting back to order at 2:45 pm.

## **Executive Session**

### **MOTION**

Upon closing arguments from both the State and opposing counsel Mr. Russ called for a motion to enter into Executive Session for legal advice. Mr. Bartus made the motion, Mr. Floyd seconded the motion and it carried unanimously.

## **Return to Public Session**

### **MOTION**

Mr. Floyd made a motion that the Board return to public 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. Bartus made a motion, read by Legal Counsel, Mary League, that Respondent violated Sections 40-8-110(D), 40-8-110(G), and 40-8-150(2). Ms. League noted that Section 40-8-40 does not preclude assignment of the cemetery itself only precludes assignment of the license. The Board feels the appropriate sanction is a Public Reprimand. Mr. Floyd seconded the motion, which carried unanimously.

## **11. Old Business**

### **A. Ownership Change / Change of Trustee**

#### **1. Sunset Gardens Memorial Park – David T. Burnett**

Mr. Burnett stated that in the May 2015 Board meeting he had requested a change of ownership but was made aware that additional documents were needed. He has submitted the documents to Board staff, who feel that everything is in order. He is now asking the Board to approve his licensure and the transfer of the trust fund

### **MOTION**

Mr. Floyd made a motion to approve the licensure and transfer of trust fund, Mr. Bartus seconded, and the motion carried unanimously.

### **B. Update of Rules and Regulations**

#### **2. Sunset Memory Gardens – Felicia Smith**

### **MOTION**

Upon review of the updated Rules and Regulations for Sunset Memory Gardens Mr. Floyd made a motion to accept the changes, Mr. Bartus seconded, and the motion was carried unanimously.

## **12. New Business**

### **A. Ownership Change / Change of Trustee**

#### **1. Faith Memorial Gardens – J. Todd Hardee**

Mr. Hardee appeared before the Board to request a change in ownership for Faith Memorial Gardens. Staff noted that Mr. Hardee still needs to provide updated Agreed

Upon Procedures and a clean title to the property. Mr. Floyd asked for clarification of the installation fees and the reference to a different charge for outside vendors.

### **Executive Session**

#### **MOTION**

Mr. Russ called for a motion to enter into Executive Session for legal advice. Mr. Bartus made the motion and it carried unanimously.

### **Return to Public Session**

#### **MOTION**

Mr. Floyd made a motion that the Board return to public 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 to approve licensure pending provision of accurate Agreed Upon Procedures, a clean title to the property, and further information on installation fees. Mr. Hardee would not need to appear before the Board if Staff approves of these documents.

### **13. Agreed Upon Procedures and Perpetual Care Fund**

Jan Wilkinson of Trust Advisors, Inc. asked the Board if audit fees could be paid out of the Perpetual Care fund.

#### **MOTION**

Mr. Floyd made a motion that Agreed Upon Procedures could not be paid for from the Perpetual Care fund. Mr. Bartus seconded, and the motion carried unanimously.

#### **MOTION**

Mr. Floyd made a motion to not address Agenda Item #14, Advice Legal Counsel Review, and move it to the next meeting. Mr. Finch seconded, and the motion carried unanimously.

### **15. Public Comments (No Vote May Be Taken)**

No public comments.

### **16. Adjournment**

#### **MOTION**

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

The November 20, 2014, meeting of the SC Perpetual Care Cemetery Board adjourned at 6:06 p.m.

The next meeting of the SC Perpetual Care Cemetery Board is scheduled for November 18, 2015.