

MINUTES
South Carolina Perpetual Care Cemetery
Board Meeting

10:00 a.m., Friday, May 13, 2016
Synergy Business Park
110 Centerview Drive, Kingstree Building Room 108
Columbia, South Carolina

Friday, May 13, 2016

1. Meeting Called to Order

The regular meeting of the South Carolina Perpetual Care Cemetery was called to order at 10:01 a.m. by J. W. Russ, Chair, of Conway. Other members participating during the meeting were: Russel Floyd, Vice Chair, of Spartanburg; John Bartus, of Mauldin; Rick Riggins, of Lancaster; Jacquelyn Petty, of Union; and Catherine Oates-Robinson of Columbia.

Staff members participating in the meeting included: Amy Holleman, Administrator; Norma McAllister, Program Assistant; Mary League, Advice Counsel, Office of Advice Counsel; Sharon Wolfe, Chief Investigator, Office of Investigations and Enforcement; 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: Greg Rollings, Stan Stone, and Andy Byrd of Cannon Memorial Park, Funeral and Crematories; Joe Owens, General Manager of Robinson Memorial Gardens; and William Roach of South State Wealth.

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, 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

Mr. Russ introduced himself, Board members, staff, Advice Counsel, and all other persons attending the meeting introduced themselves.

3. Approval of Excused Absences

Mr. Russ noted that Roger Finch was absent due to health issues.

MOTION

Mr. Riggins made a motion to excuse the absence.

Mr. Floyd seconded the motion, which carried unanimously.

4. Approval of Minutes for the March 3, 2016 meeting

Mr. Russ requested a motion be made regarding the March 3, 2016 minutes.

Ms. Oates-Robinson requested the minutes be approved correcting the spelling of her last name, "Oates-Robinson." Mr. Floyd requested that in section 9 of new business, "Mr." Petty be corrected to "Ms." Petty.

Mr. Floyd made a motion to change the verbiage in 9 A. second motion to "apply" instead of "extend" the AUP deadline.

Mr. Floyd requested that in 9 A. second motion the due date for the Agreed Upon Procedures be corrected to reflect June 30, 2016.

MOTION

Mr. Floyd made a motion to make the aforementioned changes.

Ms. Oates-Robinson injected to approve the minutes with corrections.

Mr. Bartus seconded the motion, which carried unanimously.

5. Chairman's Remarks – J. W. Russ

Mr. Russ commented, no remarks from the Chair.

6. Administrator's Remarks – Amy Holleman

Ms. Holleman introduced Norma McAllister, Program Assistant, to the Board.

A. Financial Statements

Ms. Holleman presented the financial statements to the Board to review. Ms. Holleman reported the February 2016 ending cash balance for the Board was -\$23,845.00. Ms. Holleman reminded the Board members that the amount specified in statute would be the renewal fee, as it was in 2015, for the year's renewals, which will be due by December 31, 2016.

B. North American Death Care Regulators Association (DCRA) Annual Meeting – Chicago, IL – August 2016

Ms. Holleman informed the Board that the North American Death Care Regulators Association's annual meeting is scheduled for August 9-12, 2016, in Chicago, IL. This year's annual meeting will be held at the same time and place as the Cremation Association of North America (CANA) annual convention. She asked the Board if they would like for her to attend the annual meeting

MOTION

Mr. Riggins made a motion to grant Ms. Holleman permission to attend the Death Care Regulators Association Annual Meeting in Chicago, Illinois in August 2016.

Mr. Bartus seconded the motion, which carried unanimously.

7. Reports

A. Inspection Report – Buddy Poole

Mr. Poole informed the Board that he and Mr. Adams conducted 29 inspections between February 24, 2016 and May 6, 2016.

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

The IRC recommended to dismiss case number 2015-14; initiate a formal complaint for case number 2015-26 and issue a Letter of Caution to case number 2016-1.

MOTION

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

Mr. Riggins posed various questions regarding the release of Information from the IRC reports. In response, Ms. League explained the purpose of the IRC report and offered a legal update at a later date. Ms. League stated matters of public records can be discussed at that meeting.

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

Ms. Wolfe stated the OIE Report was for information only.

1. 10 complaints
2. 4 active cases
3. 4 closed cases

D. Office of Disciplinary Counsel (ODC) Report– Presented by Amy Holleman

1. 1 open case
2. 1 pending action
3. 0 pending hearings
4. 0 pending final orders
5. 2 cases closed

8. Old Business

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

Mr. Russ reminded the Board the proceeding is being recorded, all witnesses must be sworn in before testifying and all remarks should be directed to the Chair.

1. Robinson Memorial Gardens – Easley

Mr. Joe Owens, General Manager, was present on behalf of Robinson Memorial Gardens. Mr. Owens, is requesting a change of Trustee approval and approval of their renewal.

Mr. Floyd recused himself from this matter.

Ms. Holleman confirmed the renewal application was complete and received in a timely manner; however, the response to questions 1 and 4 was “yes,” regarding failing to timely

remit required amounts to the care and maintenance trust fund and to any changes in the trustee of the care and maintenance trust fund.

Mr. Owens explained the renewal application was submitted in a timely manner; however due to an unforeseen trust fund issue the process was delayed. Mr. Owens stated the initial Trust fund provider, Merrill Lynch resigned as Trustee, without notice, mailing a check with the entire care and maintenance funds to the owners, naming Mr. Robinson as trustee of the account. Mr. Owens contends his knowledge of the transactions occurred in December 2015, in response, he immediately sought to locate a trust fund provider. Mr. Owens indicated the owners had tax concerns, which further delayed the process. As a result, they obtained legal counsel, who found the owners did not owe the IRS and did not have a penalty.

Mr. Owens stated South State Bank set-up and irrevocable perpetual care trust fund account with the Robinsons, honoring the original trust agreement as it relates to the initial trust. Mr. Owens stated South State Bank and the owners are currently in the process of removing Mr. Robinson as the trustee of the account.

Regarding the time between March and November, the monies were deposit in a lump sum into the account, per Mr. Owens. Mr. Owens stated documentation will support all earnings have remained in the account. Mr. Owens stated the owners have not deducted any earned interest from the account. Ms. Holleman directed the Board to the meeting packet for the statement providing the current ending balance upon submission and the deposit of the Merrill Lynch check.

Mr. Owens stated the full trustee issue will not be resolved until the IRS issue is resolved.

Ms. League suggested the resolution to this issue could be the approval of the renewal with conditions, approval of the transfer of the trust fund to South State Bank pending resolution of the tax issues, the institution of a new trust agreement with the finalization of the trust and a new trustee put into place.

Mr. Russ called for a motion to go into Executive Session to receive legal advice.

MOTION

Mr. Bartus made the motion.

Mr. Riggins seconded the motion, which carried unanimously.

Return to Public Session

Mr. Russ, stated, for the record, no votes were taken in Executive Session.

MOTION

Mr. Bartus made the motion that the Board return to public session.

Ms. Oates-Robinson seconded the motion, which carried unanimously

MOTION

Mr. Riggins made a motion which was read by the Advice Counsel.

Ms. League, stated the motion of the Board is to approved the transfer of trustee to South State Bank and to approve license renewal pending resolution of the tax

issues, institution of a new trustee and trust agreement. The licensee shall report back at the next subsequent Board meeting regarding the status update of the trustee and trust issue either by matter or personal appearance until the matter is resolved and until the matter is fully resolved no earning shall be taken out of the trust account.

Ms. Oates-Robinson seconded the motion, which carried unanimously.

Mr. Floyd returned to the meeting at 11:01a.m.

9. New Business

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

A. Ownership Change

1. Cannon Memorial Park – Fountain Inn – Stanley Stone

Mr. Greg Rollings, owner/seller, Mr. Stan Stone, and Mr. Andy Byrd, representative for the buyer, were present on behalf of Cannon Memorial Park. Mr. Greg Rollins requested approval of the change of ownership for Cannon Memorial Park, Funerals and Crematories.

Ms. Holleman reported the new owner application, as of date, currently needs, an updated Agreed Upon Procedures report, the financial statement of the purchaser, a certificate signed by the purchaser assuming liabilities of the existing cemetery company, and the development plans. Ms. Holleman said that staff received an email from Mr. Byrd on May 9, 2016, indicating there are no immediate plans for further development.

Mr. Byrd told the Board that the purchasers consist of the Cannon family and a small group of investors, with the majority of ownership belonging to Mike Cannon and the Cannon family.

Mr. Rollings spoke as the owner/seller. He stated an AUP that was completed two years prior and along with the current AUP is with the auditor for completion. He explained the AUP will be available at the middle of June. Mr. Floyd explained a sale triggers an Agreed Upon Procedures. Ms. Holleman agreed, citing Regulation 21-25 (1). Ms. Holleman stated the Agreed Upon Procedures should include from the dates of the last Agreed Upon Procedures through April 30, 2016. Ms. Holleman informed the Board the Agreed Upon Procedures should be completed a month prior to the final purchase.

The Board asked if the purchase agreement include language addressing the Agreed Upon Procedures and if that could affect the purchaser's decision to buy. Mr. Rollings said that it did.

Mr. Floyd questioned the size of the cemetery, which is 24.3 acres. Ms. Holleman informed the Board that the cemetery was grandfathered in and that the records indicate the cemetery was established in 1943. Mr. Floyd explained discrepancies were present in the previous purchase survey conveying 30 acres. The correct acreage is 24.3.

Mr. Floyd cited several issues with the submitted application trustee agreement and contract.

1. Reference to page 7 of the packet, Amended Trust Agreement, referencing

“Cannon Memorial Park and Mausoleum,” and Page 8, “reasonable costs of administering the care and maintenance of Cannon Funeral Home,” does not clearly define the trustee.

2. The definition of income in 3.10 is not an acceptable definition according to Statute
3. 4.2 on page 10, the definition of trust amount is the old amount, requires amending..
4. Change of Trustee or amended trust documents require approval by the Board, Page 13 (7.3) and Article VIII, Section 8.8. The change requires the consent of the South Carolina Perpetual Care Cemetery Board.
5. Page 77 – Title Insurance, the seller needs to provide new purchasers with a title stating no mortgages or liens on the property.
6. Page 168 in the packet, Agreement to Purchase Cemetery Interment Rights, Merchandise and Services, lacks the appropriate disclosures; therefore, the contract does not satisfy the statute, which renders it unacceptable.

Ms. League stated if a discrepancy was previously overlooked it doesn't mean it should be overlooked again.

Mr. Rollings requested the Board supply a statement of clarification regarding an acceptable contract inclusive of disclosures.

Mr. Russ called for a motion to go into Executive Session to receive legal advice.

MOTION

Mr. Floyd made the motion.

Ms. Riggins seconded the motion, which carried unanimously.

Return to Public Session

Mr. Russ, stated, for the record, no votes were taken in Executive Session.

Mr. Bartus made a motion to return to Public Session,

Mr. Floyd seconded the motion, which carried unanimously.

MOTION

Mr. Floyd made the motion which was read by the Advice Counsel.

Ms. League stated the application is conditionally approved pending the submission and acceptance of staff of the following:

1. Agreed Upon Procedures for years, 2014, 2015, and 2016 through April 30, 2016
2. The financial statement regarding Cannon Byrd, LLC
3. A certificate signed by the purchaser assuming liabilities of the existing cemetery company
4. A revised trust agreement that provides the current laws to include clarification that the care and maintenance trust is for the cemetery.

- A. Section 3.1 – Corrected definition of income
 - B. Section 4.2 – Updated Trust amount to reflect the current Statute.
 - C. Sections 7.3 and 8.8 – Revisions to reflect that those changes must have the consent of this Board to be made.
5. Certificate the cemetery property is mortgage and lien free and revision of the cemetery detailed sales contract purchase agreement to include the appropriate disclosures located on a template on the Board’s website.
 6. Final approval of the revised trust document will be provided to the Board
 7. Mr. Stone is approved as the manager.
- .. Mr. Riggins seconded the motion, which carried unanimously.

Further discussion clarified the motion, per Ms. League the items that are absent from the document requires amendment. Items that are present do not require revision/amendment. The Board referred Mr. Rollings to LLR website template for further information, compare the template.

Mr. Rollings requested an extension for the AUP deadline. The extension was not granted at this time.

B. Withdrawal of Mausoleum Funds

1. Hillcrest Cemetery – Conway

Ms. Holleman presented the request from Hillcrest Cemetery in Conway, SC for the approval to withdraw funds for the construction of the Maples Mausoleum. Mr. Russ asked if the same builder provided the services. Ms. Holleman answered, “no,” and listed the names on the invoices:

\$ 1,764.80	City of Conway
\$ 1,295.04	Ingram Construction Company
\$ 469.80	City of Conway Building Permit
\$15,900.00	Ingram Construction Company
<u>\$ 3,500.00</u>	Danny Hardee Electric
Total \$22,929.64	

MOTION

Mr. Floyd made a motion to approve the request for withdrawal of funds from the mausoleum fund account.

Mr. Petty seconded the motion, which carried unanimously.

10. Irrevocable Trust Accounts for Non-Active Licenses

A. South State Wealth

Mr. William Roach was present on behalf of South State Wealth. Mr. Roach requested that South State Wealth be relieved of the trust account for Barnwell County Memory Garden. The cemetery’s license was suspended in 2010 and revoked in 2012.

Mr. Roach stated the account currently carries a balance of appropriately, \$32,000 – \$33,000, invested in a money market and an interest bearing mutual account, generating a \$600.00 yearly interest income. Mr. Roach stated the bank typically charge a minimum fee of \$6,250 for an irrevocable trust account; however, the bank, accruing a loss, applied a

\$1,250.00 discount. Mr. Roach stated telephone messages to Mr. Kent, have gone unanswered.

Ms. Holleman stated for the records Mr. John Steven Kent, owner/manager was notified of the hearing.

Mr. Russ called for a motion to go into Executive Session to receive legal advice.

MOTION

Mr. Riggins made the motion.

Mr. Floyd seconded the motion, which carried unanimously.

Return to Public Session

Mr. Russ, stated, for the record, no votes were taken in Executive Session.

Mr. Floyd made a motion to return to Public Session,

Mr. Riggins seconded the motion, which carried unanimously

MOTION

Mr. Floyd made a motion to deny the request with the Advice Counsel stating the specifics for the denial.

Ms. League read the motion as follows:

The motion of the Board is to deny the request because there is no provision in statute or regulation that allow the Board to accept trust funds in escrow or to approve the resignation of a trustee.

Mr. Riggins seconded the motion, which carried unanimously.

Ms. League explained that Regulation 21-14 states the cemetery must make a written request to the Board to transfer a care and maintenance trust fund.

11. Trusting Requirements for Scattering Garden

A. Foundation Partners Group, LLC

Ms. Holleman informed the Board that staff received an inquiry from Foundation Partners Group about trusting requirements for scattering gardens. Ms. Holleman told the Board that she is beginning to receive quite a few inquiries on this matter.

Mr. Russ called for a motion to go into Executive Session to receive legal advice

MOTION

Mr. Floyd made the motion.

Ms. Oates-Robinson seconded, which carried unanimously

Return to Public Session

Mr. Russ stated, for the record, no votes were taken in Executive Session

Mr. Riggins made a motion to return Public Session

Mr. Floyd seconded the motion, which carried unanimously

MOTION

Mr. Floyd made a motion which was read by the Advice Counsel

Ms. League stated the response to the question brought to the Board is that scattering gardens are not regulated by the Board; therefore, there are no trusting requirements.

Mr. Riggins seconded the motion, which carried unanimously.

12. Executive Session

13. Public Comments (No Vote May Be Taken)

There were no public comments.

14. Adjournment

MOTION

Mr. Riggins made a motion the Board adjourn.

Ms. Oates-Robinson seconded the motion, which carried unanimously.

Chairperson Russ, after ensuring there being no further business to discuss, adjourned the May 13, 2016, meeting of the SC Perpetual Care Cemetery at 1:26p.m.

The next meeting of the SC Perpetual Care Cemetery Board is scheduled for 10:00a.m., August 4, 2016, at Synergy Business Park, 110 Centerview Drive, Kingstree Building Room 108, Columbia, South Carolina.