

NORTH CAROLINA CEMETERY COMMISSION

June 4, 2009

Special Teleconference Meeting

9:00 A.M.

Chairman Boscoe Fulcher called a special meeting of The North Carolina Cemetery Commission via teleconference to begin at 9:00 a.m. Thursday, June 4, 2009 in the Commission office at the Pinewood Building, Suite 100, at 1001 Navaho Drive, Raleigh, North Carolina. The Commission members participating were Chairman, Leonard J. 'Boscoe' Fulcher, Vice-Chairman, Andrew (Rusty) Tysor, Ralph Yates, Linda Cotten, Howard Huff, Frank Rose, Jr., Robin Lancaster, and David Brown. Michael 'Dicky' Powell was not on the call. The Commission's Attorney, Barry Bloch, Administrator, Jimmy Miller, Auditor, Brenda Jeffers, and Administrative Assistant Nancy Waggoner were present. There were several public observers both in attendance and on the call that were excluded during Executive Sessions..

The meeting was called to order by Vice-Chairman Rusty Tysor. A roll call was taken by Mr. Miller. Chairman Boscoe Fulcher was late participating on the call. Ralph Yates gave the invocation.

Vice-Chairman Tysor announced the Agenda Approval. Robin Lancaster made a motion to approve the agenda. Linda Cotten seconded the motion. All voted in favor.

The first item on the agenda was a reminder to the Commission members that if there were any known conflicts of interest or appearances of conflicts in regards to the matters being brought before them to let it be known in accordance with the Governor's executive order. Jimmy Miller read the Governor's Executive Order #1. There were no known conflicts.

Since there was no Old Business, the meeting moved on to New Business item (a.) which was Trustee activity not within General Statutes-courses of action. Jimmy Miller began with the history of what brought them to the meeting. On an annual basis each cemetery company is required to submit a Care and Maintenance Report. The Commission monitors these reports and the Trustee accounts, including how the funds are invested. Five Cemetery Companies and the Trustee were late in filing these annual reports. A late notice was mailed to them on March 26, 2009. The Cemetery Company reports were received in the Commission office, along with late fees, on April 9th, 2009. However, several parts of the reports were missing. The Merchandise and Services Trust was unaccounted for and there was no CPA audit of that Trust Fund. Under the auspices granted Mr. Miller in January of 2008, he issued them a 20-day letter allowing them 20 days to cure those items or the Commission would take the necessary action as authorized in the General Statutes. The letter was received on April 16th, 2009. The deadline of May 6, 2009 came and went without contact from the Trustee. At that time the legal complaint process began. On the 11th of May, 2009 Attorney Barry Bloch and Mr. Miller drew up a rough draft of the Complaint and furnished it to the Trustee via e-mail attachment. Shortly, thereafter the Trustee called Mr. Miller and agreed to meet. Mr.

Kyle Corkum and Steve Vining came to the Commission office on May 19, 2009 and met with Mr. Miller and Attorney Barry Bloch. During the course of the meeting the Trustee openly admitted that the Trust Funds for Pre-need items had been withdrawn from the fund, without approval by the Commission as required. Two (2) days after the meeting, Administrator Jimmy Miller and Auditor Brenda Jeffers went to the LandQuest Legacy/LQ Cemetery Funds offices look at all records of the Trustee as authorized by the NC General Statutes. Upon that review they found multiple withdrawals, in addition to four (4) promissory notes that appeared to be questionable. There did not appear that the notes were founded with any type of security nor was the promisee of the notes the same name of the Trustee. The courses of action as seen by Mr. Miller were to continue to file complaint or to discontinue the action. Barry Bloch felt they needed to go into Executive Session. Mr. Miller turned the meeting back over to Vice-Chairman to entertain any motions from members. Attorney Donald Hunt, Jr. spoke up and introduced himself and Attorney Kristen Atkins with his law firm as representatives for the Trustee and LandQuest Legacy. Steven Vining was present as general counsel and senior Vice President for LandQuest Legacy (LandQuest) , as well as Trustee for LQ Legacy Cemetery Trust Funds Management Company (LQ). Mr. Hunt asked the Commission members to defer the lawsuit until after the Trustee audit. The audit was underway by the firm of Dickson-Hughes and should be ready the week of June 15th. Mr. Hunt further argued that NC GS 65-66 Section (b) superseded Section (g) pertaining to bonds. He supported that LandQuest secured a \$2 Million bond to cover the liabilities for the merchandise and services previously covered by the Trust Fund. In addition, Mr. Hunt referenced the previous day's legal Appeal of HTCC before Judge Paul C. Ridgeway in Wake County Superior Court and stated that the decision may have some effect on the case at hand. He also cited NC GS 150B-22 to give LandQuest some time before filing a lawsuit. Mr. Hunt thanked Commission Members for their time and consideration. Vice-Chairman Tysor asked members if they had any questions for Attorney Hunt or Steve Vining. Frank Rose asked why the reports were not submitted on time. Mr. Hunt stated that it was pure error and gave his assurances that things were being taken care of. Linda Cotten asked for an explanation on withdrawing funds from the Trust fund after LandQuest was denied by the Commission. Mr. Hunt voiced a difference of interpretation of the Statute held by he and his client LandQuest Legacy. Jimmy Miller pointed out that LandQuest posted a bond in September, 2008, but withdrawals from the Trust Fund began June 27th, 2008. A check for \$100,000.00 was written to Albemarle Plantation Escrow. Mr. Hunt said that Albemarle was an investment and subsequently was repaid with interest. Steve Vining recalled a November 26, 2008 Gateway Bank statement that showed a deposit for \$100,000.00 plus interest. Jimmy Miller reminded members that at the October, 2008 Commission meeting LandQuest asked permission to take monies from the Trust fund, but they had already started to take it out in June, 2008. Ralph Yates wanted to know how Mr. Hunt was getting around the law. Mr. Yates read NC GS 65-66 (b)(4) which states; *“Withdrawals from a trust fund may be made by the depositor, but only with the written approval of the Commission.....Withdrawals may be made only upon delivery of the merchandise or services for which the funds were deposited, cancellation of a contract, the presence of excess funds in the trust account, or under other circumstances deemed appropriate by the Commission...”*. Mr. Hunt countered with NC GS 65-66 (g) which states *“In lieu of the deposits required under subsection (b) of this section, the cemetery company... may post with the Commission a good and sufficient performance bond by surety company...”*. According to the interpretation by Mr. Hunt, GS 65-66 (b)(4) only applies if there is no bond. He asked the Commission to postpone any decision they would make for two weeks until Judge Ridgeway decided the HTCC case with the same set of circumstances that was before him at that time. Chairman Boscoe Fulcher, who had belatedly joined the meeting, asked Barry Bloch if he could take part in the

discussion since he was a former employee of LandQuest Legacy. Barry Bloch referred to the Governor's Statement of Conflict. Vice-Chairman Rusty Tysor asked if there were any other questions. He then asked Barry Bloch what options were available. Mr. Bloch recommended that a motion to go into Executive Session be entertained. Linda Cotten made a motion to go into Executive Session. Frank Rose seconded the motion. All voted in favor. Public observers were excluded and members went into Executive Session at 9:46 a.m.

Executive Session ended at 10:46 a.m. Following a brief recess the Commission reconvened at 10:54 a.m. with a roll call by the Chairman, along with rejoining by public observers. After all attendees were accounted for, Administrator Jimmy Miller asked some very critical questions concerning use of the Trust fund money. On June 27th, 2009, \$100,000.00 was withdrawn and a check written to Albemarle Trust. Mr. Hunt said that Albemarle was an investment and subsequently was paid back with interest. On August 5th, 2008 there was a LQ Trust fund withdrawal of \$25,000.00 that was deposited into the LandQuest operating account and check #5006 was made out to Kyle Corkum, personally. Steve Vining stated that amount was part of the \$400,000.00 that was withdrawn, but did not say what the check was for. There were two (2) additional checks written to Kyle Corkum, for another \$25,000.00 and \$10,000.00 that no explanation was given. Mr. Miller pointed out that several other questionable checks were written, including one for \$11,153.00 to BB&T. Mr. Vining said that was either an insurance payment or premium on a bond. Per the NC Cemetery Act GS 65-61, no monies are to be withdrawn from the Care and Maintenance Trust account. Mr. Miller asked Steve Vining what was the amount of premium on bonds. Mr. Vining stated that he had no idea. Jimmy Miller next inquired if the Trustee was ready to restore monies to the Trust account and turn the trust funds over to a third party. Attorney Donald Hunt stated they were not. Next Attorney Bloch went into sources of concern by the Cemetery Commission. When Jimmy Miller went to the LQ Trustee's office to inspect its records, he was not furnished all Trustee documents as requested. The independent CPA audit has not been performed as required by law. The Trust funds need to be sequestered and some type of security needs to be put into place. Mr. Bloch asked Mr. Hunt what assurances the Commission had that there will be no further withdrawals. Mr. Hunt answered that going forward LandQuest Legacy would agree that no further money would be withdrawn during this specified timeframe. He added that the records were and are available, but must have been overlooked. He reported that the audit was in process. He also stated that LandQuest had no objection to separating the Trust funds; however, the Care and Maintenance and the Preneed Merchandise and Services accounts would take approximately two (2) weeks to divide. Mr. Hunt stated that all requested information would be provided as soon as possible. After a few more questions by the Commission, Frank Rose made a motion for Members to go into Executive Session. David Brown seconded the motion. Attorney Don Hunt asked expected duration of the Session. Attorney Barry Bloch said it should only be fifteen (15) to thirty (30) minutes. There was no further discussion. All voted in favor. Executive Session began at 11:25 a.m.

The Commission Members reconvened after the second Executive Session at 11:44 a.m. Jimmy Miller called the roll of Members and attendees. All were present along with public observers. Barry Bloch stated the motion to be considered by the Commission. The Commission would consider and resolve to enter into a standstill agreement with the following terms. The Commission would promise and commit to not file suit or seek legal relief according to it and under the Cemetery Act and the laws of the State of North Carolina between now and 9:00 a.m. on June 19th of 2009. In consideration for that agreement, he

proposed the following to LQ Legacy the corporate Trustee and its officers, and directors that they continue to cooperate with Mr. Miller's inspection and provide to him such documents and records of the Trustee and the affiliate businesses operating accounts as he may need to ascertain the use of money that's been withdrawn from the Trust accounts in the past 18 months since the inception of the corporate Trusteeship. That they continue to have the independent CPA audit prepared and delivered at the earliest possible date but if it's delayed for some reason they will need to request an extension of the standstill agreement so that the CPA report could be completed. The Commission would need an explanation of that reason from the CPA. That they would make no withdrawals from the existing Trust account during the standstill agreement without the permission of the Cemetery Commission and provide to the Cemetery Commission a current bank statement stating the current balance in that account and any transactions for the account since the last bank statement that Mr. Miller has received and inspected. That they provide to Mr. Miller such documentation as in their possession that shows how the money paid to Kyle Corkum in three (3) checks, two of which for \$25,000.00, one for \$10,000.00, the check to Mr. Joyner, and the check to BB&T Morganton to allow Mr. Miller to ascertain whether the expenditures were in compliance or in violation of the Cemetery Act. And, finally at the earliest possible time as recorded by your bank, to establish a separate Care & Maintenance Trust account and to deposit funds to that Trust account sufficient to satisfy the Cemetery Act and bring their five (5) cemeteries into compliance with the Cemetery Act and funds currently from the existing Trust account could be used to establish that separate Care & Maintenance Account. Mr. Bloch asked the Commission to consider those terms whether to make that proposal to Mr. Vining as representative of the corporate Trustee to bring the corporate Trustee into compliance during the term of the standstill agreement with the North Carolina Cemetery Act. It was so moved by Linda Cotten. Frank Rose seconded the motion. There was no discussion. All voted in favor. The second issue of New Business was included in the motion. Attorney Don Hunt stated that LQ Trustee would concur with the Commission's motion. This concluded the meeting.

Rusty Tysor made a motion to adjourn. David Brown seconded the motion. All voted in favor. The teleconference adjourned at 11:56 a.m.

CHAIRPERSON

DATE