

NORTH CAROLINA CEMETERY COMMISSION

January 19, 2011

9:00 A.M.

The North Carolina Cemetery Commission held a meeting on Wednesday, January 19, 2011 in the Wood Oak Building, Suite 242, at 1100 Navaho Drive, Raleigh, North Carolina. The Commission members in attendance were Chairman, Gantt Stephens, Vice-Chairman, Glenn Cutler, and Members Linda Cotten, Ralph Yates, Michael ‘Dicky’ Powell, William ‘Bill’ Gaffney, Leonard J. “Boscoe” Fulcher, and David Brown. Member Frank Rose, Jr. was absent. The Commission’s Administrator Jimmy Miller, Auditor Brenda Jeffers, and Administrative Assistant Nancy Waggoner were present. Attorney Anne Brown and Attorney Faison Hicks from the Department of Justice provided legal representation. Numerous interested parties also attended the meeting.

The meeting was called to order by Chairman Gantt Stephens. Commission Members then observed a brief Moment of Reflection in silence. That was followed by the Agenda Approval. Chairman Stephens proposed to strike Items 6.a. and 6.b. pending further review. He also made one addition to New Business, the Oakwood appeal, which then became Item 6.a. Boscoe Fulcher moved to accept the Agenda. Glenn Cutler seconded the motion. All voted in favor. Chairman Stephens next announced the Reading and Approval of the Minutes of the October 20, 2010 meeting. Linda Cotten had two (2) changes. On the third page, in the second full paragraph; Ms. Cotten asked Mr. Bunting if he had written a formal letter to the Commission since the last meeting, not to the editor. On page 4 (four) midway through the first paragraph, Frank Rose felt that their input should be included in their ‘recommendation,’ instead of the word ‘motion.’ Glenn Cutler made a motion to approve the minutes with the noted changes made by Ms. Cotten. David Brown seconded the motion. All voted in favor

- I. **CONFLICTS OF INTEREST:** The first item on the agenda was a reminder from Administrator Jimmy Miller to the Commission Members that if there were any known conflicts of interest or appearances of conflict in regard to the matters being brought before them to let it be known at that time in accordance with the Governor’s Executive Order. Glenn Cutler recused himself from the Old Business Item 5.a.3., regarding Pamlico Memorial Gardens. Bill Gaffney stated that he may have a conflict with Item 5.a.1., the special audit of Forest Lawn, Hendersonville, but felt that he did not need to recuse himself at that time. There were no other known conflicts.
- II. **ADMINISTRATOR’S REPORT:** The second item on the agenda was the Administrator’s Report. Administrator Jimmy Miller began the report by talking about the Budget. Mr. Miller had previously sent the Members a copy of his report with the Budget attached. He said not much had changed with regard to expenditures and they were keeping their head above water, just barely based on the money in the bank and with the income received from assessments. Boscoe Fulcher asked Mr. Miller to explain how the Budget situation with the State affected the Budget so far. Mr. Miller stated with the passage of the 2009-2010 Appropriations Bill by the Legislature they were alleviated of the \$259,000+ they had carried forward in the Bank. That Bill also had a provision that allowed the State to take any monies that exceeded \$50,000 at the end of each successive fiscal year ending on June 30th. Bill Gaffney asked if monies

were taken out by the State on June 30th, 2010. Mr. Miller stated they had not because there was not more than \$50,000.00 in the bank at that time. Ralph Yates said he did not think it was fair for the State to take money that the cemeteries paid in for the Commission to operate, when they could barely function as it was. Mr. Miller reminded Members that at that same timeframe a year prior, the Commission was operating in the red. The operating capital at meeting time was about \$46,000.00. Mr. Miller explained to them that the payroll, rent, telecommunications bill, and other expenses needed to come out of that \$46,000.00. Mr. Miller then announced that all 176 cemetery licenses had been issued for the year. There were a few that straggled in the last few days of the year. Next was the Audit report. There were actually 7.9 audits completed since the last meeting. Mr. Miller was just waiting for the report from the last audit. The audit cycle at that point was about 6 years, as compared to 11-12 years four years prior when Mr. Miller first arrived. A discussion occurred after that concerning the length of time in between audits, what should be done, and why things aren't different. The desired timeframe was 2 years. Dicky Powell brought up the fact that a contributing factor was Change of Control audits. Every time there was a Change of Control, an audit was done. Some cemeteries have been audited 5 times in a 10-year period. Boscoe Fulcher asked Mr. Miller if he was performing audits. Mr. Miller answered that he did so as time permitted. He stated that he last performed the special audit of Forest Lawn Memorial Park in Hendersonville in November, 2010. Bill Gaffney informed Members that the N. C. Department of Revenue gives taxpayers 3 years to audit, then they forgive, except if fraud was involved. Mr. Gaffney asked if the Cemetery Commission could just go back forever. Mr. Miller said that the Cemetery Act neither allowed nor approved. Linda Cotten queried what the solution could be. Mr. Fulcher said he guessed they would discuss it another time. The status of the 2010 Annual Care & Maintenance reports was to follow. Mr. Miller said he received only one report so far. On complaints, there were only 6 responses due. The Website (www.nccemetery.com) training session was being held the same day as the meeting. After training, the staff would be able to have more control over the content and add and change items. Bill Gaffney wanted to go back to audits. Mr. Gaffney said that he knew Mr. Miller was concerned with audits and so was he. He mentioned to Members that Mr. Miller would be meeting with Lamar Johnson, a CPA, John Lindsay, and Glenn Cutler the next day to come up with a better system of reporting and finding errors. Glenn Cutler reminded Members that they did discuss at length about audits at the last meeting; how they define them; do they define them in a way that's their own burden; and are they setting themselves up for failure. Mr. Cutler said they would discuss streamlining the reporting, so that it would be more helpful for audits. There were no other questions/comments for the administrator. That ended the Administrator's report.

- III. **REQUESTS FROM THE PUBLIC TO ADDRESS THE COMMISSION:** Mr. John Lindsay began by saying that he hoped Member Glenn Cutler would be attending the meeting with Lamar Johnson. He also thought it was a valid point brought up earlier regarding the 3-year window by the N.C. Department of Revenue. Mr. Lindsay went on to inform that the IRS audit less than 2% of all the tax returns filed each year. Additionally, he believed that the several levels of review were necessary so that problem areas can be flagged for audit before they become problems. Mr. Lindsay gave an update next on a Recovery Fund to protect cemetery consumers. He was pleased to report that the fund was open

and ready to accept tax-deductible contributions from members of the industry. He and Mr. Gaffney started it off with a sizable contribution. Mr. Lindsay said that funds were available for consumers and cemetery failures. Boscoe Fulcher said that the fund was a wonderful thing. Mr. Fulcher was concerned with a 2-year audit. He recounted how \$827,000.00 in merchandise was placed against a \$250,000.00 Bond at Lee Memory Gardens. It was due to a lack of audits. He related that the same thing happened at Mount Lawn Memorial Park in Boone. John Lindsay said that the Commission would be provided with information on the Fund. Ralph Yates said that the Commission really has nothing to do with the Fund.

There were no other members of the Public to address the Commission.

IV. REPORTS OF SPECIAL COMMITTEES: There were none at that time.

V. OLD BUSINESS:

A. Old Business, With Action:

1. Item 5.a.1.: Special Audit of Forest Lawn Memorial Park in Hendersonville. The Audit was performed by Jimmy Miller. Attorney Odes L. Stroupe, Jr. was present with Shuford Edmiston, owner of the cemetery. Mr. Stroupe reported that Mr. Edmiston proposed to payback the shortage of \$69,064.31 in the PC account over a 12-month period at a rate of \$6,000.00 per month for 11 months and paying the balance of \$3,064.31 in the twelfth month. Mr. Edmiston had previously proposed to pay the funds back over a 5-year period. Glenn Cutler asked what the penalties would be. Mr. Miller said they could not be calculated until the money was paid, but he estimated they would probably be about the same amount, and by law could not be more than the total amount due of \$69,064.31. Mr. Stroupe stated that Mr. Edmiston would not be able to afford the penalties; he had already taken a loan out on his personal property for the PC. Mr. Edmiston had changed his accounting processes according to the example given to him by Mr. Miller, so that he could avoid the same problem in the future. After more discussion regarding penalties, Boscoe Fulcher made a motion to accept the 12-month proposal presented by Mr. Stroupe, with no penalty. Chairman Stephens asked Mr. Fulcher to amend his motion to include if one payment is more than 10 days past due, the whole agreement is void. Mr. Fulcher amended his motion. David Brown seconded the motion. All voted in favor, except Mr. Cutler. The motion carried.
2. Item 5.a.2.: Wake Memorial Park Preconstruction Extension Request/Customer Satisfaction. The cemetery was given a 1-year extension contingent upon satisfying two customers, Robert Way and Richard Bloom. Mr. Miller stated that he received a letter from an attorney for Wake Memorial Park saying that an agreement had been reached with the two consumers. Mr. Way was in attendance. He said that both he and Mr. Bloom were satisfied.
3. Item 5.a.3.: Pamlico Memorial Gardens of Washington Buyer Proposal, tabled from the October, 2010 meeting. Glenn Cutler had recused himself from this item. Mr. Joseph Paul said he no longer wants to build

a building on the existing land, but he has purchased the cemetery. He just needs to file for a Change of Control.

4. **Item 5.a.4.: Inadequate PC for Two Cemeteries.** Kent Williard of HTCC had a slipped disc in his back and wasn't able to attend the meeting. Chairman Stephens reported that Mr. Williard had paid back all of the money he owed the Trust fund. This meeting was to be about any associated fees. Ralph Yates made a motion to table the issue until the next meeting in April. Boscoe Fulcher seconded the motion. All voted in favor.
5. **Item 5.a.5.: LQ Trustee Update** was moved to the end of New Business.
6. **Item 5.a.6.: Contract Audit Proposal** Chairman Stephens said he hoped that the meeting scheduled with John Lindsay, Lamar Johnson, Glenn Cutler, and Jimmy Miller the next day would bear some fruit for the audit program.

B. Old Business without Action:

4. The next item discussed was Item 5.b.4., an update on the new cemetery, Bethany Memorial Gardens and Cemetery in Chatham County. Approval to organize had been done at the last meeting. Licensing was not done yet; it was still in process. There had been no communication from Mr. Patrick O'Neal for 2 months.

At 10:09 a.m. Chairman Stephens called for a short break, since they were waiting on the Attorneys to go over the next few items. Regular session reconvened at 10:23 a.m.

1. **Item 5.b.1.: Cemetery Name Change Request – Chapel Hill Memorial Gardens to Carolina Pines Memorial Gardens.** Jason Fearon, Attorney for LandQuest Legacy said the reason for the name change was to open it up to other members of the community besides Chapel Hill. Consumers don't need to be in Chapel Hill to use the cemetery. Mr. Fearon said they were changing the name for business reasons. Ralph Yates asked if there were any bonds in the old name. Mr. Fearon did not know, but he wanted to know what was required. Attorney Faison Hicks informed him that they needed to know if any bonds were outstanding and if so, under which name; if the surety had been notified of the attempt to change the name; and they needed to see the paperwork to notify the surety of the name change. Ralph Yates made a motion to table the matter. Mr. Hicks said they also needed to know who the owners are of LandQuest, which entity owns it and the Trustee. Glenn Cutler seconded the motion. All voted in favor.
2. **Item 5.b.2.: Wings Aviation Receivership.** This matter was still in the Court of Appeals, so there was nothing the Commission could do at that time.
3. **Item 5.b.3.: Property Split of Restland/Chapel Hill Memorial Gardens by Former Owner.** Attorney Jason Fearon for LQ said they probably would need to table that issue as well. Mr. Fearon said that was requested by the owner before they bought the property. He asked what requirements the Commission needed. Attorney Faison Hicks said they were waiting on a Memorandum of Law stating that it was lawful under the Statute for a cemetery under 30 acres to have a property split. Glenn Cutler moved to table the issue. David Brown seconded the motion. All voted in favor.

That ended Old Business.

VI. NEW BUSINESS:

- A. Item 6.a.: Oakwood Memorial Park of High Point Appeal of the audit. Charlie Dye, owner was not present, but he provided a letter. Jimmy Miller said the penalty was computed at the audit and it was the maximum amount of \$1,440.00. Mr. Dye was asking for relief from the penalty. Glenn Cutler made a motion to deny the request. Dicky Powell seconded the motion. All voted in favor. Jimmy Miller said he would send Mr. Dye a letter informing him of the Commission’s decision along with his appeal rights.**

That ended New Business.

At that time Ralph Yates made a motion to go into Executive Session to receive legal guidance from Attorneys General Anne Brown and Faison Hicks regarding LQ Trustee Update. David Brown seconded the motion. All voted in favor. Executive Session began at 10:36 a.m. and ended at 10:57 a.m. During Executive Session legal advice was sought, received and discussed concerning LQ Trustee Update, and members were satisfied.

There was no other business.

Chairman Stephens reminded Members the next meeting date was Wednesday, April 20, 2011 at 9:00 a.m.

Boscoe Fulcher made a motion to adjourn. Ralph Yates seconded the motion. All voted in favor. The meeting adjourned at 10:59 a.m.

CHAIRPERSON

DATE