



## State of North Carolina Cemetery Commission

October 19, 2011

9:00 A.M.

The North Carolina Cemetery Commission held a meeting on Wednesday, October 19, 2011, in The Woodoak Building, Suite 242, at 1100 Navaho Drive, Raleigh, N.C. The Commission members in attendance were Chairman Gantt Stephens, and Members Linda Cotten, Ralph Yates, Michael 'Dicky' Powell, William 'Bill' Gaffney, Leonard J. 'Boscoe' Fulcher, David Brown, and Frank Rose, Jr. Vice-Chairman Glenn Cutler was unable to attend. The Commission's Auditor Brenda Jeffers and interim Program Assistant Molly Lee were present. Attorney Faison Hicks and Attorney Anne Brown 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 silent Moment of Reflection. Chairman Stephens presented the Agenda for approval with two additions under New Business: Item D. for Robert Spears' Pre-Need Sales License and Item E. for Eric Anderson's Pre-Need Sales License. Boscoe Fulcher moved to accept the Agenda as presented. Ralph Yates seconded the Motion. All voted in favor.

Chairman Stephens introduced the Reading and Approval of the Minutes of the July 20, 2011 Commission meeting. Boscoe Fulcher questioned the content of the Minutes regarding Beatties Ford Memorial Park. Dicky Powell made the Motion to approve the minutes of July 20, 2011 and to accept them as presented. Ralph Yates seconded the motion. All voted in favor.

### **I. CONFLICTS OF INTEREST:**

Chairman Stephens declared that, in accordance with the State Government Ethics Act 138A15E, it is the duty of every commission member to avoid both conflicts of interest and appearances of conflict in regard to the matters being brought before them today, and to refrain from any undue participation in the particular matter involved. Boscoe Fulcher recused himself from New Business Item A (Pisgah Gardens Change of Control) and Item B (Sunset Memorial Park Change of Control); Bill Gaffney recused himself from New Business Item A (Pisgah Gardens Change of Control) and Item B (Sunset Memorial Park Change of Control); and Dicky Powell recused himself from New Business Item C (Cape Fear Memorial Park Change of Control).

**II. ADMINISTRATOR’S REPORT:**

Chairman Stephens and Auditor Brenda Jeffers jointly presented the Administrator’s Report. The first item discussed was the current Budget Report with specific inquiries regarding what funds were withdrawn by the State.

Chairman Stephens provided an update on hiring an Administrator. The hiring process continues to be presented to the Governor’s Office and to the Human Resource Department. Chairman Stephens noted that the Statute instructs the Commission to present recommendations to the Governor’s Office. A Motion was made by Boscoe Fulcher to present a certified letter to the Governor’s Office requesting the acceptance of the Commission’s recommendation of an Administrator. The Motion was seconded by Linda Cotten. All voted in favor.

Next item presented was a summary of activity regarding Lee Memory Gardens, of Sanford, N.C. Bill Gaffney travelled to the cemetery to observe the current care and maintenance. Chairman Stephens has approached the City of Sanford and Lee County about purchasing Lee Memory Gardens. Charlie Dye, the owner of Lee Memory Gardens has agreed in principle that he would be willing to sell the cemetery for one half of the current amount in the perpetual care trust fund. As part of the purchase the entire perpetual care trust fund of Lee Memory Gardens would be transferred to the city or county. In addition, the cemetery would no longer be regulated by the Cemetery Commission. The City of Sanford declined. Situation also applies to Oakwood Memorial Park of High Point, N.C. Decisions pend the municipalities and the Commission’s approval; reference Statute §65-69c.

In regards to budget considerations, Attorney Faison Hicks offered that individual contact to Legislators and/or Secretary Keith Crisco or Dept. Secretary Dale Carroll might facilitate attention to N.C. Cemetery Commission hiring and budget needs.

Brenda Jeffers presented the Auditor’s Report. Seven audits have been completed since July 20, 2011. In sum:

- 25 Cemeteries at 6 years since last audit;
- 28 Cemeteries at 5 years since last audit;
- 30 Cemeteries at 4 years since last audit;
- 18 Cemeteries at 3 years since last audit;
- 20 Cemeteries at 2 years since last audit;
- 31 Cemeteries at 1 year since last audit;
- 24 Cemeteries audit within last year.

There were no questions or comments for Brenda Jeffers. This concluded the Administrator’s Report.

**III. REQUESTS FROM THE PUBLIC TO ADDRESS THE COMMISSION:**

Chairman Stephens recognized Mr. Michael Rulison. In regards to a previously mentioned item (Lee Memory Gardens), Mr. Rulison expressed concern about removing half of Perpetual Care funds and distributing this amount to the current cemetery owner. Mr. Rulison stated his concern was regarding consumer protection.

Chairman Stephens recognized Ms. Jodie Rentz. Ms. Rentz questioned the definition of Perpetual Care and what activity has been addressed by the Commission in regards to said definition; specifically addressing consumer protection and how Perpetual Care is managed. Chairman Stephens suggested Ms. Rentz to draft suggestions and submit for clarity on Perpetual Care; he

would then bring the specific suggestion in front of the Commission. Boscoe Fulcher noted that the N.C. Cemetery Commission regulates 176 cemeteries – and that there are approximately 26,000 cemeteries in the state of North Carolina – of these 176 cemeteries under the jurisdiction of the commission the care and maintenance is well monitored.

Ms. Rentz questioned Perpetual Care funding distribution and guidelines involved. Chairman Stephens responded that the corpus of the Perpetual Care was never to be utilized for maintenance and was considered sacrosanct.

No other members of the Public requested to address the Commission.

Chairman Stephens noted that, calendar year to date a total of 13 complaints have been noted for the 176 cemeteries.

**IV. REPORTS OF SPECIAL COMMITTEES:** There were none.

**V. NEW BUSINESS:**

**A. Change of Control – Pisgah Gardens:**

Brenda Jeffers addressed the Commission regarding the Audit disclosures. Pisgah Gardens of Pisgah Forest, N.C. owed funds to the Trustee and to the N.C. Cemetery Commission. Ralph Yates inquired regarding how unpaid funds to the Commission are not identified; Brenda Jeffers explained that unpaid funds are the responsibility of the Administrative Assistant.

Mr. John Lindsay of Citadel Management, LLC presented before the Commission background information regarding the ownership of Pisgah Gardens. Challenges include ownership issues. Citadel Management, LLC and the attorney representation of Pisgah Gardens will address and reconcile financial obligations. Mr. Lindsay requested consideration for the approval of the Change of Control, pending release and payment of funds owed or possibly payment of funds in Perpetual Care. Faison Hicks advised that there is not a statute of limitations regarding recovery of fees to Commissions. Jeffers summarized the total fees due to the NC Cemetery Commission; and the funds due to the Trustee. Dicky Powell made a Motion to approve the Change of Control contingent with payment of fees owed to the Commission and to the Perpetual Care fund as noted per Audit dated October 3, 2011; Ralph Yates seconded. All voted in favor. Motion carried.

**B. Change of Control – Sunset Memorial Park:**

Brenda Jeffers noted Audit prepared September 2009 – July 2011 for Sunset Memorial Park of Forest City, N.C. The Trustee and the NC Cemetery Commission are owed funds. Ralph Yates made the Motion to approve the Change of Control pending payment of funds. Frank Rose seconded the Motion. All voted in favor.

**C. Change of Control – Cape Fear Memorial Park:**

Brenda Jeffers presented Audit discovery for Cape Fear Memorial Park of Southport, N.C. and that all payments have been received. Boscoe Fulcher made the Motion to approve the Change of Control. Linda Cotten seconded. All voted in favor.

**D. Pre-Need Sales Application: Robert L. Spears, Pinelawn Memorial Park and Oak Hill Memorial Cemetery**

Pre-Need Sales Application for Mr. Robert Spears was pending review and approval from the Commission. Mr. Spears provided details of his criminal record and the results of the court proceedings. Restitution and fees had been paid by Mr. Spears. Mr. Spears requested approval from the Commission to obtain a Pre-Need License. Dicky Powell made a Motion to approve licensure for Mr. Spears. Motion was seconded by Boscoe Fulcher. All voted in favor.

**E. Pre-Need Sales Application: Eric D. Anderson, Greenlawn Memorial Park and Oak Hill Memorial Cemetery**

Pre-Need Sales Application for Mr. Eric Anderson was pending review and approval from the Commission. Mr. Anderson provided details of his criminal record and the results of the court proceedings. Unsupervised probation was completed and restitution was made. Boscoe Fulcher made a Motion to approve licensure. David Brown seconded. All voted in favor.

**VI. OLD BUSINESS**

**A. Wake Memorial Park Construction Extension Request**

Chairman Stephens recognized Mr. Mike Hunter, Owner of Wake Memorial Park of Cary, N.C. Mr. Hunter provided an update to the status of the extension requested. Upon questions from the Commissioners, Mr. Hunter provided sales figures for the mausoleum and how current interment needs are being met in advance of the completion. Mr. Hunter requested an extension to 2013. Boscoe Fulcher made a Motion to approve; Ralph Yates seconded. All voted in favor.

**B. Gardens of Gethsemane – Updated Report:**

Mr. Chester Clack has completed total payments due to the N.C. Cemetery Commission. As voted upon by the Commission on July 20, 2011, the funds paid were the residual balance due to the Commission, with any overage of funds paid by Gardens of Gethsemane to be used to offset any shortage for Perpetual Care.

**C. Change of Control – Pamlico Memorial Gardens:**

Chairman Stephens recognized Mr. Joe Paul, proposed buyer of Pamlico Memorial Gardens of Washington, N.C. Mr. Paul requested approval of a Change of Control from the Commission. Chairman Stephens noted a discrepancy of the Annual Care and Maintenance Report figures. Brenda Jeffers responded to Ralph Yates inquiring regarding Audit findings. Pamlico Memorial Gardens is required to pay the Audit expenses and to correct contractual issues as indicated by Jeffers. The Cemetery has not renewed the required cemetery license to date. Yates made a Motion to table approval of the Change of Control until all questions and payments are addressed. Boscoe Fulcher seconded the Motion. All voted in favor.

**D. Beatties Ford Memorial Park/William and Naomi Linder Complaint:**

Next item presented by Chairman Stephens was the Complaint registered by the William and Naomi Linder against Beatties Ford Memorial Park (BFMP), of Charlotte, N.C. Attorney Ryan Rich of Hunton & Williams, in Charlotte, NC represented BFMP before the

Commission. Mr. Rich explained that the Linder's specific complaint regarded a pre-need sale that was in violation; and that additional pre-need sales to other consumers at BFMP had occurred (a total of 45 since 1971). BFMP has honored any and all pre-need sales that have required service. Per Mr. Rich, the balance of the 45 pre-need sales that have not been serviced to date have had the appropriate amounts placed in trust. BFMP is willing to negotiate fair market value to the Linders for resolution. The Commission will be kept apprised of any developments. Pending resolution, no motion was required at this time.

**E. HTCC PC Shortage:**

No additional information was presented; Mr. Kent Willard was not present, nor his attorney. Charges are still unclear regarding the sales individual's embezzlement charges. (Point of reference: HTCC's attorney recently deceased.) Faison Hicks suggested that Mr. Willard locate a replacement attorney to address pending fees to the Commission. A 20-day letter has already been released to Mr. Willard regarding pending fees. Boscoe Fulcher made a motion to generate a letter to Mr. Willard requesting him or his legal representation to the next Commission Meeting for addressing payment of fees owed to the Commission. David Brown seconded. All voted in favor.

**F. Moody Cemeteries Update**

Chairman Stephens addressed the Commission with a summary of Moody Cemeteries. Cemeteries are in full receivership and the appointed individual is actively pursuing new ownership.

Ralph Yates made a Motion to go into Executive Session for further legal representation and discussion. Seconded by Boscoe Fulcher. All voted in favor.

Dicky Powell made a Motion to end Executive Session. Boscoe Fulcher seconded. All voted in favor. Executive Session began at 11:14 a.m. and ended at 11:43 a.m. During Executive Session, legal counsel was presented and all were satisfied.

A Motion was made to adjourn by David Brown; seconded by Ralph Yates. The meeting adjourned at 11:44 a.m. on October 19, 2011.

The next meeting is scheduled for Wednesday, January 18, 2012 at 9:00 a.m. at The Woodoak Building, 1100 Navaho Drive, Suite 242, Raleigh, NC 27609.

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CHAIRPERSON

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DATE