

NORTH CAROLINA CEMETERY COMMISSION

October 20, 2010

9:00 A.M.

The North Carolina Cemetery Commission held a meeting on Wednesday, October 20, 2010 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, Frank Rose, Jr., and William 'Bill' Gaffney. Members absent were Leonard J. "Boscoe" Fulcher and David Brown. 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 changes in the Agenda order. Chairman Stephens proposed to move Agenda Items 5 a. (1) LQ Trustee Update, 5 a. (4) Contract Audit, and 6 h. Property Split of Restland/Chapel Hill/Carolina Pines by Former Owner to the end of the meeting after 6 i. He explained the reason for the move was because he anticipated these to be quite lengthy Items. He also informed Members that Item 6 f. Request to Change Cemetery Name-Chapel Hill to Carolina Pines Memorial Gardens, was withdrawn with consent by the requestor. Glenn Cutler made a motion for 'Agenda Approval' with the noted changes. Dicky Powell seconded the motion. All voted in favor. Chairman Stephens next announced the Reading and Approval of the Minutes of the July 21st, 2010 meeting. Jimmy Miller pointed out a spelling note on page 4 for Dyanne Matzkevich's name that both he and Nancy Waggoner missed in proofreading. Glenn Cutler made a motion to approve the minutes. Linda Cotten seconded the motion. All voted in favor. Next was the reading and approval of the Minutes for the September 28, 2010 Emergency Teleconference. Glenn Cutler made a motion to approve the minutes as submitted. Linda Cotten seconded the motion. All voted in favor.

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 New Business Item a. regarding Pamlico Memorial Gardens. There were no other known conflicts.

The second item on the agenda was the Administrator's Report. Administrator Jimmy Miller began the report by talking about licenses. They had issued 214 Pre-need sales licenses to expire in 2012. There were 8 (eight) cemeteries whose licenses had not yet been renewed at the end of the Fiscal year. They were operating on expired licenses. If they had not renewed by December 31st, 2010, they will need to start the licensing process all over again. Mr. Miller next gave the Audit report. There were 8 (eight) audits completed since the last meeting. Three of the audits were for Changes of Control for that meeting. Mr. Miller reported that 93 of the 176 cemeteries had been audited since he started in 2007, which was an average of 31 cemeteries per year. The status of the 2009 Annual Care & Maintenance reports was to follow. Mr. Miller still did not have the required reports from 3 (three) cemeteries; Azalea, Bowman-Rector, and Calvary. The StoneMor locations on the last report had satisfactorily corrected their errors on these Care & Maintenance Reports. There was still a problem with Pisgah

Gardens, that the General Manager assured Mr. Miller would be taken care of within the next week. Mr. Miller next called Members attention to the Complaint List included in their packets. He stated that all complaints had been satisfactorily responded to by the cemeteries and responses sent back by him to the complainants. The next item he discussed was the Newsletter, which had been reestablished. He finished one up and transmitted it within the previous two weeks. His next step was to be able to put them on the Website (www.nccemetery.com), which brought him to his next topic. The Website was due to transition Commerce-wide to new software mid-January, 2011. The staff would then be able to have more control over the content and add and change items. One of the Chairman's suggestions was to have fill-out-the-forms on the site; such as the monthly reports and the sales license applications. The last item addressed was the Budget. There was \$85,000.00 in the bank at meeting time, with \$14,000.00 payroll to come out. The income was stationary at \$3,000.00-\$6,000.00 per month with assessments as the primary source of revenue. Glenn Cutler asked if the Cemetery Commission had been asked to make an additional 15% budget cuts by the Governor. Jimmy Miller said they were not at that time because they were a receipt-based agency. He also stated that he didn't think the State would take over their \$259,000.00 like last year to balance the budget. Frank Rose expressed his disagreement over the State taking their money if no tax dollars were used to maintain the agency. Glenn Cutler said that once it hits the State coffers, it becomes the State's monies. After some more dialogue, it was agreed that the way to fix the problem was through new legislation. There were no other questions/comments for the administrator. That ended the Administrator's report.

The next item on the Agenda was Requests from the Public to Address the Commission. Mr. Robert Way from Cary requested Wake Memorial Park refund monies paid, plus interest for a double niche in their uncompleted mausoleum since it was not completed as promised. He was against the Commission granting them an extension of time to complete it, however if they were to complete it by the end of 2011 (in one year's time), he would accept it along with a commitment in writing from Wake Memorial Park and the Commission. Chairman Stephens told him that the matter was on the Agenda for later in that meeting and it would be decided at that time.

Mr. John Lindsay from Citadel Management gave an update next on a Recovery Fund to protect cemetery consumers who have purchased property in a cemetery that has run out of money. The fund is being set up as a tax-deductible entity so that members of the industry can contribute. Mr. Lindsay said that the framework was expected to be in place for the fund by the Commission's next meeting in January.

Mr. Michael Rulison of the Funeral Consumers' Alliance of the Triangle said that he had no remarks at that time.

Ms. Jody Rentz, a consumer, next addressed the Commission. She asked how often audits were done and how often reports were required to be filed by the cemeteries. Jimmy Miller answered her queries. The audit plan was to perform an audit every two (2) years. Reports were due monthly and there was an annual one, as well. Ms. Rentz wanted to know how a company named Wings Aviation could continue to operate two cemeteries in the western part of the state and send in reports for the past two years if they were foreclosed upon in 2007. Mr. Miller stated that he last checked with the Secretary of State's office three weeks prior and at that time Wing's Aviation was listed as authorized to do business in North Carolina. He informed her that the foreclosure was on assets only against the funeral home, parking lot, and an adjacent crematory parcel, not the cemeteries. Ms. Rentz was reading a local newspaper article where Reg Moody said that Wings Aviation had nothing to do with either of the

cemeteries. She had some other legal questions, as well, that Attorney Faison Hicks replied he would be happy to assist her with if she would give him a call.

Mr. Richard Bloom spoke to Members regarding Wake Memorial Park's request for an extension in Cary. He did not think Wake Memorial Park should be granted an extension. He would like his money back since they can't complete the mausoleum by December 31, 2010 as promised. His request would be decided later in the meeting as an Agenda item.

Mr. Doyle Bunting next addressed the Commission. At the last meeting he asked the Commission what defined Perpetual Care. He wanted to know if it had been determined yet. Chairman Stephens said that it was not defined in the Cemetery Act and he was frustrated about it, too. Attorney Faison Hicks said that the Court would define it if a legal action were filed. Mr. Bunting's complaint was against Randolph Memorial Park, a StoneMor cemetery. If no one complains and no loved ones are alive, the cemetery does nothing to repair broken markers or fix sunken sod. Chairman Stephens said that he spoke to the owner of the cemetery and was told that someone would contact Mr. Bunting and take him on a tour of the cemetery. Mr. Bunting said that no one had contacted him yet. Administrator Jimmy Miller said that these items were not a violation of the North Carolina Cemetery Act, unless they were a safety issue. Linda Cotten asked Mr. Bunting if he had prepared a formal notice to the Cemetery Commission since the last meeting. Mr. Bunting said he had not yet. The newspaper wouldn't print his letter until he wrote a complaint to the Cemetery Commission. Ralph Yates and Frank Rose encouraged Mr. Bunting to also contact his county officials. They mentioned that Graham County collected a tax to fix broken markers and sunken sod in all cemeteries, regardless of the owners.

Mr. John Gouch of Gethsemane Memorial Gardens in Charlotte came before the Commission with a request for a Pre-need Sales License for Jeff Rutledge. Mr. Rutledge had a felony on his criminal record for exploitation of a minor. Mr. Gouch said that it was a case of being in the wrong place at the wrong time and a whole lot of bad luck. He said that Mr. Rutledge was on the computer and opened a mismarked 'Live-Wire' file that happened to be part of a state-wide sting operation. He did not email or chat with anyone, but when the authorities came to his home; they took his computer. They also arrested him because he had some vacation airline tickets lying out; and thought he might be a flight-risk. Pastor Dan Rague also spoke on Mr. Rutledge's behalf. After several questions from Commission Members Ralph Yates made a motion to go into Executive Session to receive legal guidance from Attorneys General Anne Brown and Faison Hicks regarding the matter of licensing Jeff Rutledge. Dicky Powell seconded the motion. All voted in favor. Executive Session began at 10:25 a.m. During Executive Session, legal advice was sought, received and discussed concerning the licensing of Mr. Jeff Rutledge at Gethsemane Memorial Park, and members were satisfied. Coming out of Executive Session, Chairman Stephens asked for a short break at 10:31 a.m. Regular session resumed at 10:41 a.m. Glenn Cutler moved to deny the request for a license for Jeff Rutledge. Linda Cotten seconded the motion. All voted in favor. Chairman Stephens said that the Commission would issue a formal notification to Mr. Gouch and Mr. Rutledge.

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

The fourth item on the agenda was the reports of special committees. There were none at that time.

The next item on the agenda was Old Business, With Action. Item 5.a.1., the LQ Update was moved to the end of the meeting. Item 5.a.2. was an Update on Session Law 2010-

102/ Senate Bill 18 and Revisions of the Cemetery Act in accordance with that Law. Chairman Stephens said that input was solicited from the Members, as well as the Cemetery Association, however there was little response; so no meeting occurred. Administrator Jimmy Miller stated at that time when the Study Committee would be formed, after the General Election, he was only tasked with asking them to eliminate bonding. Linda Cotten made a motion to have the Administrator also ask for a definition of Perpetual Care (PC). Ralph Yates seconded the motion. Frank Rose pointed out that the subcommittee tasked with making recommendations on revising the Cemetery Act did a lot work and felt that their input should be included in the recommendation. After some more discussion, Ms. Cotten stood on her motion. She did not want to include anything else at that point. All voted in favor. Item 5.a.3. was the Special Audit of Forest Lawn Memorial Park in Hendersonville. Chairman Stephens informed the Commission that the cemetery anticipated a Change of Control audit, so instead of doing two audits back-to-back, he felt it not necessary to have Mr. Miller do one at that time. If the Change of Control was not scheduled for the January, 2010 meeting, Mr. Miller would go ahead and do the audit. There was no further discussion on the matter. Item 5.a.4., Old Business of the Contract Audit was moved to the end of the Agenda.

The next item on the Agenda was Old Business, Without Action, the Administrator's visit to Sylva and Bryson City. Chairman Stephens said that matter was in the hands of the Court of Appeals and he felt that little could be accomplished by Mr. Miller going up there. Commissioner Bill Gaffney had recently stopped by and took pictures and distributed them. Chairman Stephens called for a motion to rescind the previous one from 2009 tasking the Administrator to visit the two cemeteries. Glenn Cutler so moved. Dicky Powell seconded the motion. All voted in favor. Chairman Stephens announced to Ms. Jodie Rentz that it didn't mean that the focus would be off those two cemeteries. That ended Old Business.

The first item of New Business, Item 6.a. was a Prospective Pamlico Memorial Gardens of Washington buyer proposal. Glenn Cutler had recused himself from this item. Mr. Joseph Paul wanted to buy the cemetery if he could build a new chapel with a prep room inside it. This would enable him to keep his funeral license. He couldn't afford to run the cemetery without the funeral license because the cemetery mausoleum posts need to be replaced, the office roof is leaking, and overall, the cemetery is in great need of repair. He said that the Zoning is already approved. He wants to do improvements to the cemetery. Chairman Stephens stated that the cemetery would benefit, but the law is the problem the way it's written. Ralph Yates made a motion to table the matter until the attorneys could look into the legal aspects of the law. Dicky Powell seconded the motion. All voted in favor. Item b. of New Business was Inadequate PC for two cemeteries. Jimmy Miller stated that he found the shortfall in the PC account as a result of his review of the Annual Care & Maintenance reports. Mr. Miller sent a 20-day letter to the owner. The owner deposited \$2,400.00 for one cemetery and requested a 90-day extension for a \$6,290.00 shortage in the PC account for the second cemetery. The owner representative Mr. Kent Williard was present for Hometown Cemetery Consultants (HTCC). Mr. Williard stated the reason for the request was that he had \$30,000.00 embezzled from him by an administrator of his cemeteries recently. He further stated that he would be able to pay half of the monies owed to the PC account within 30 days and the balance in 60 days. He promised that he would keep everything else current. Ralph Yates asked how much the penalties were. Mr. Miller said that they would be close to, if not the full amounts owed of \$2,400.00 and \$6,290.00; but that was a separate issue. Attorney Faison Hicks asked Mr. Williard if he understood that there was criminal liability involved. He impressed upon Mr. Williard the seriousness of this offense of not making timely PC deposits. After some more discussion, Bill Gaffney made a motion to accept the repayment of the principle within 60 days. Dicky Powell seconded the motion. There was a discussion regarding penalties. Glenn Cutler suggested they amend the motion to include revisiting the issue of

penalties after 60 days. Mr. Gaffney amended the motion and stated half the monies were due on November 25th and the balance was due on December 31st, 2010; and the issue of fees and penalties would be addressed at the next meeting on January 19, 2011. All voted in favor, so the motion carried. Attorney Hicks asked Mr. Williard to bring information on the embezzlement with him to the next Commission meeting. He agreed. Item c. of New Business was a Proposed New Cemetery, Bethany Memorial Gardens and Cemetery in Chatham County. Mr. Patrick O'Neal addressed the Commission. His son Kevin O'Neal, who would take care of the construction and landscaping side and Michael Lyon, proposed general manager, were also in attendance. Patrick O'Neal asked the Commission for the Authority to organize and to be licensed. Glenn Cutler asked if the application was in order. Jimmy Miller said that he found the application to be in order. Mr. Miller further stated that he could attest to the fact that he had done a background check; and in his words it came out 'vanilla'. He also mentioned they had completed the steps to be organized; but had not finished the steps to be licensed under NC GS 65-55 (f) of the Cemetery Act. Bill Gaffney asked when the cemetery would be ready. Mr. O'Neal said they expected by late spring, 2011. Linda Cotten noticed that question 14 was left blank on the financials. Mr. Miller stated that the background check came up with two violations in the past umpteen years. One was an expired registration and the other was a city ordinance registration. Mr. O'Neal said they were from the same registration. Bill Gaffney made a motion to accept the application of Bethany Memorial Gardens and Cemetery for the organization of the cemetery. Ralph Yates seconded the motion. All voted in favor. Mr. O'Neal requested that the Commission empower Mr. Miller to be able to license them after all requirements have been met. They wanted to have this completed before the next Commission meeting in January, 2011. Mr. Miller enumerated the steps: the Trust statement must be completed, signed, and the initial \$50,000.00 deposit made to the Trustee; Two acres minimum must be fully developed ready for burial with paved roads and representative of your organization certifying that has been done; Thirty acres or more indicated by metes and bounds with a clear title; and A cemetery plat with numbers and locations of all lots surveyed. Ralph Yates moved to empower the Administrator to do so. Bill Gaffney seconded the motion. All voted in favor. Mr. O'Neal thanked the Commission.

Chairman Stephens announced a 30 minute lunch break at 12:00 p.m.

Item d. of New Business was 3 Changes of Control from Heritage Family Services to StoneMor Partners. Dwaine Smith was present for the seller and Mendy Tucker represented the purchaser. Glenn Cutler asked what right the Commission had at that point to consider other complaints against StoneMor properties (cemeteries). He referred to the complaints discussed earlier regarding Randolph Memorial Park and the treatment received by the public. Jimmy Miller said that as part of their review of the application would be to determine if the prospective buyer would operate in a manner consistent with the Cemetery Act. Dwaine Smith spoke up and said that he was still going to look after the operations of the cemeteries. After some more discussion, Dicky Powell moved to accept the Changes of Control of Chatham Memorial Park, Crestview Memorial Park, and Woodlawn Memorial Park. Frank Rose seconded the motion. Glenn Cutler voted against the motion because of the problems at Randolph Memorial Park. Linda Cotten and Ralph Yates also voted no. Bill Gaffney was for the motion, so there was a tie. Chairman Stephens voted in favor of the Changes of Control to break the tie. He felt that StoneMor met all the requirements for the Changes of Control. As an aside, he requested that Mr. Bunting be contacted by the cemetery and given a tour of their new office. Mendy Tucker said she would take care of it and promised she would look into the complaints. Since Wake Memorial Park's representative wasn't there, Chairman Stephens moved onto Item g. of New Business, Request from Wings' Aviation Receiver Representative to address the Commission. Rusty Tysor addressed the Commission on behalf of the receiver Sheila Gahagan. Per Mr. Tysor Wings Aviation consisted of a funeral home, a crematory, and

two cemeteries. He was before the Commission on behalf of the two cemeteries Bill Moody/Swain Memorial Park in Bryson City and P.E. Moody/Fairview Memorial Gardens in Sylva. The cemeteries had been in the hands of the receiver since December, 2009. The receiver had been trying to continue operating the cemeteries. The owner had been uncooperative. The receiver had a plan to keep the cemeteries afloat and try to sell them. There have been lots of complaints about the cemeteries and they need some/lots of work. The plan was to take hold of the records and get them on computer, maintain the cemeteries, dig the graves, set the monuments, and get them looking good in order to sell them. The problem was that there were no monies for anything. The receiver was requesting a release of funds from the Perpetual Care Trust Funds of the cemeteries of \$5,000.00 each. Discussion ensued regarding the receivership being on appeal in the Court of Appeals. Frank Rose thought there should be other ways. Rusty Tysor reminded Members that they had granted requests for withdrawals from the PC in the past in cases where he was the receiver. In one case, the monies were paid back from the sale of the cemetery. In another case, the cemetery was sold contingent upon payments being made to the PC account over time. Mr. Tysor stated that monies made after the sale of assets would go into the PC account. Attorney Faison Hicks said that the Commission could grant the request. He further said that he wished the receiver would come to the Commission so that they could ask her questions. Jimmy Miller said that the cemeteries were currently being operated on expired licenses as of June 30, 2010. After more discussion, Ralph Yates made a motion to table the matter until they could find out exactly who owns what and what the courts are saying, and for more information. Frank Rose seconded the motion. All voted in favor.

The next Item 6.e. of New Business was Wake Memorial Park Preconstruction Extension Request. Brad Bailey, general manager of the cemetery was present for the cemetery. Mr. Bailey said there were three reasons preconstruction of the mausoleum had been delayed. The first was management difficulties followed by about a year of public relations work related to those difficulties. Secondly, the market began to change quickly from more traditional burials towards cremation. Thirdly, the economy slowed their sales. He said they had the funds necessary at that time to move forward with the project. Bill Gaffney made a motion to grant a one year extension for completion of the mausoleum project contingent upon successful negotiations with the two consumers being satisfied; and a letter signed by Mr. Way and Mr. Bloom presented to Mr. Miller at the Commission. Dicky Powell seconded the motion. All voted in favor. The next item of New Business was Item i., Perpetual Care based on "on retail sales price", N.C. G.S. 65-63. Administrator Jimmy Miller requested guidance on the application of "retail sale price" as stated in the Statute in determining the amount of PC to be collected and deposited. Chairman Stephens presented the two schools of thought as being the price on the retail price list and secondly, the price on the contract. It matters because it's what the PC is calculated from. Attorney Faison Hicks asked if the contract price was the actual sales price. Chairman Stephens said that was correct. Mr. Hicks said it was as opposed to a suggested price. Glenn Cutler likened it to buying a car, whatever price is advertised for it. Mr. Hicks said that the higher the retail price is, the more money that goes into PC; therefore the more consumers are protected. Jimmy Miller advised that when audits were done that they use the price off the retail price list to compute Perpetual Care. Mr. Cutler and Mr. Rose disputed that it should be the contract price. Lucius Pullen said that you never make anyone pay sales tax on the listed price; it's on the contract price. Mr. Miller argued that they could not look at every single contract during an audit to see if the spaces were a 'bogo' or half off, etc. Mr. Hicks said for him to use his best judgment. Dicky Powell made a motion for the Perpetual Care deposits to be based on the contract sales price. Glenn Cutler seconded the motion. All voted in favor.

At that time Chairman Stephens gave the floor to Vice-Chairman Glenn Cutler for a presentation concerning audits, investigations, and examinations performed by the North Carolina Cemetery Commission. Mr. Cutler spoke about what the Statute and the Administrative Rules said about audits. There was a discussion at length. He passed out a handout that Chairman Stephens said everyone should read and discuss at the next meeting. There was no further New Business to be discussed. Chairman Stephens announced a short break at 2:39 p.m., prior to going into Executive Session.

After the break 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 and Property Split of Restland/Chapel Hill/Carolina Pines Memorial Gardens by former owner. Glenn Cutler seconded the motion. All voted in favor. Executive Session began at 2:38 p.m. and ended at 3:42 p.m. During Executive Session legal advice was sought, received and discussed concerning LQ Trustee Update and Property Split of Restland/Chapel Hill/Carolina Pines Memorial Gardens by former owner, and members were satisfied. Coming out of Executive Session Ralph Yates made a motion as follows: 1. The Cemetery Commission to authorize the Department of Justice Attorneys to negotiate with LQ for the positions indicated in the next two parts; 2. Negotiate with LQ to create a new Trustee, LLC, not associated in any part or parcel to LQ and to transfer all Trustee assets to this new Trustee, subject to the Commission's approval; 3. Demand payment of the \$590,000.00 liens to satisfy the related party loans not later than December 1, 2010. Frank Rose seconded the motion. All voted in favor.

There was no other business.

Chairman Stephens reminded Members the next meeting date was Wednesday, January 19, 2011 at 9:00 a.m.

Glenn Cutler made a motion to adjourn. Frank Rose seconded the motion. All voted in favor. The meeting adjourned at 3:47 p.m.

CHAIRPERSON

DATE