



State of North Carolina Cemetery Commission

October 17, 2012

9:00 A.M.

The North Carolina Cemetery Commission held a meeting on Wednesday, October 17, 2012, in The Woodoak Building, Suite 242, at 1100 Navaho Drive, Raleigh, N.C. The Commission members in attendance were President Gantt Stephens, Vice President Michael "Dicky" Powell, Treasurer William W. "Bill" Gaffney, and Members Glenn Cutler, Ralph Yates, Leonard J. 'Boscoe' Fulcher, David Brown, Linda Cotten and Frank Rose, Jr. The Commission's Auditor Brenda Jeffers and interim Program Assistant Molly Lee were present. Dept. of Justice Attorneys Faison Hicks and Anne Brown provided legal representation. Numerous interested parties also attended the meeting.

The October 17, 2012 of the N.C. Cemetery Commission meeting was called to order by President Gantt Stephens. Commission Members then observed a brief silent Moment of Reflection.

President Stephens presented the Agenda for approval. Mr. Boscoe Fulcher made a Motion to approve the Agenda as written; Mr. David Brown 2nd the Motion. All voted in favor.

President Stephens introduced the Reading and Approval of the Minutes of the July 18, 2012. Mr. Glenn Cutler made a Motion to approve the Minutes as written; Mr. Brown 2nd the Motion. All voted in favor.

I. CONFLICTS OF INTEREST:

President 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. Mr. Fulcher and Mr. Brown recused themselves from Section V Item A. (Regarding Mr. Brian Lindquist, Sales Applicant, Rocky Mount Memorial Park).

II. ADMINISTRATIVE REPORT:

President Stephens and Auditor Ms. Brenda Jeffers jointly presented the Administrative Report. The Budget Report was presented in a new format created by the N.C. Cemetery Commission and not the N.C. Dept. of Commerce. Mr. Michael Rulison requested and received a copy. Mr. Cutler inquired about the Year-to-Date and Monthly figures and dates reflected per columns headings; how dates reflect calendar dates, the entire month and if are cumulative.

Mr. Bill Gaffney inquired if any additional funds will be submitted by the Dept. of Commerce to the starting balance. President Stephens responded that no additional funds will be submitted and small amounts may be required to be paid to the Dept. of Commerce.

Next item presented by President Stephens was a summary of recent developments. These include obtaining a new Federal Tax Id#; creating a bank account with Fidelity Bank of N.C.; the hiring of an Accountant per week – approx. 4 hours per week; creation of a website that can be maintained internally; transferring \$100,000 to a Money Market account to accrue interest; and releasing materials to the Dept. of Commerce with the addition of new replacement equipment which offers a minimum savings of \$80/month for service. Ms. Linda Cotten inquired if website has a fee attached. President Stephens stated it does not require additional cost.

Mr. Cutler asked if ratification is needed of these developments. Mr. Brown and Mr. Fulcher made the Motion to approve; Mr. Dicky Powell 2nd the Motion; all voted in favor. Mr. Gaffney inquired what type of entity is the N.C. Cemetery Commission in regards the EIN number and if the N.C. Cemetery Commission is considered a corporation; President Stephens responded that the Commission is considered a government entity and not a corporation.

President Stephens detailed the activity of the office, including:

- Cemetery License Renewals: 170 of 176 renewed; reminders were sent to balance;
- PreNeed Sales License Renewals: 163 renewed that will expire 2014;
- PreNeed Sales Licenses Issued (new): 65 that will expire 2014;
- Broker/Sales/Management Licenses Renewals: 2 issued to expire 2014.

Complaints: 23 to date. Compared to 11 to date in 2011; and 48 to date in 2010.

In addition, a complaint per the Epps to the Gardens of Gethsemane was looked into by Mr. Ralph Yates and Mr. Powell. The complaint is considered resolved.

Two complaints pending and unresolved were presented to the Board involved Lee Memory Gardens. Mr. Gaffney inquired as to the Commission's follow up regarding these outstanding complaints. The Commission has made multiple attempts. Attorney Faison Hicks suggested that the owner be contacted to determine if complaints still unanswered. Mr. Gaffney agreed to contact Mr. Charlie Dye, owner, to ascertain status and report to President Stephens.

Ms. Brenda Jeffers then presented the Auditor Report:

- (11) Audits have been performed since the last meeting;
- (10) have been completed;
- (1) is in the process of being completed.

Audits performed were Sunset Memory Gardens in Charlotte; Crestlawn Memorial Gardens in Farmville; Floyd Memory Gardens in Lumberton; Skyline Memory Gardens in Mt. Airy; Crestview Memorial Cemetery in Roanoke Rapids; Onslow Memorial Park in Jacksonville; Seaside Memorial Park in Swansboro; Overlook Cemetery in Eden; Person Memorial Cemetery in Roxboro; Mountain View Memorial Park in Black Mountain (to be completed) and McDowell Memorial Park in Marion.

The Audit for Mountain View Memorial Park uncovered that since 2008 Mountain View Memorial Park has been filing with negative numbers and had in fact been selling in that time. Some 84 contracts have been reviewed. The amount due to the Perpetual Care Fund is in excess of \$14,000.

Audit progress:

- (25) 6 years since last Audit
- (31) 5 years since last Audit
- (18) 4 years since last Audit
- (18) 3 years since last Audit
- (30) 2 years since last Audit
- (26) 1 year since last Audit
- (28) have been audited within the last year.

Mr. Gaffney asked Ms. Jeffers who is the current owner of Mountain View Memorial Park. Ms. Jeffers noted that Terry Brigman is President; and Tracy Wilson is Vice-President and confirmed that the Funeral Home is also being audited by the Funeral Board. Mr. Wilson has expressed interest in acquiring the Funeral Home and the Cemetery and is aware of the documents required to submit to Raleigh.

Mr. Fulcher asked if the Funeral Home owns the Cemetery and how the purchase of merchandise is managed. Ms. Jeffers noted the Funeral Home does own the Cemetery and that merchandise that is sold through the Funeral Home is not put in a Trust. Mr. Gaffney asked if a Cemetery has common ownership with a Funeral Home and sells merchandise through the Funeral Home and the Funeral Home does not trust the merchandise, who is responsible for that merchandise? Ms. Jeffers responded that it depends on what is represented on the Contract – if it's the Funeral Home or the Cemetery. Grave spaces were sold through the Cemetery; very little merchandise appeared to be written through the Cemetery. Additionally the information the Commission receives is what's on the Cemetery contracts. Mr. Yates noted it appeared very little fees were submitted to the Commission as most of the merchandise was on the Funeral Home contracts. Ms. Jeffers noted that a Funeral Home and a Cemetery are considered two different entities and fees are separate.

President Stephens asked if there were other questions or comments regarding the Auditor's Report. There were none.

III. REQUESTS FROM THE PUBLIC TO ADDRESS THE COMMISSION:

Mr. James Smith and Attorney John Meadows will have the opportunity to address the Commission as per the Agenda in Section V Item A and Section VI Item A respectively.

There were no other Public Requests.

IV. REPORTS OF SPECIAL COMMITTEES:

A. Study of the Perpetual Care Committee requires additional research and certain parties need to be heard. Report will be deferred.

B. The Beatties Ford Memorial Park Audit Committee Report will also be deferred.

V. NEW BUSINESS:

A. Pre-need Sales License for Mr. Brian Lindquist for Rocky Mountain Memorial Park.

President Stephens reminded all that Mr. Fulcher and Mr. Brown had recused themselves. Mr. Lindquist explained the situation to the Board regarding an embezzlement conviction in 1991 in Virginia when practicing law that included a Real Estate and Title company. Accounts were comingled, not separated and accepted fault. Mr. Lindquist stated he turned in his license, met

with the V.A. Attorney General's office and amount involved was approx. \$210,000. Mr. Lindquist has paid back all but \$23,000; served a 10-year suspended sentence; and continues to make restitution for the \$23,000 remaining. Mr. Lindquist has since been employed as a non-licensed Accountant and involved in responsibilities for Babe Ruth Baseball finances. Atty. Hicks asked for Mr. Lindquist to read his written statement into the records.

Atty. Hicks asked if Mr. Lindquist has any substance issues and if he is under the treatment of a Mental Health professional. Mr. Lindquist stated he had been but was not currently.

Ms. Marianne Smitherman of Rocky Mount Memorial Park presented to the Board and recommended Mr. Lindquist to the Commission having been professionally associated since March 2012.

Mr. Cutler asked if Mr. Lindquist was considering returning to practicing law. Mr. Lindquist stated that he is not. Atty. Hicks asked what has changed for Mr. Lindquist in regards to his behavior. Mr. Lindquist noted circumstances, both personal and economical, have changed. Atty. Hicks asked for confirmation that the conviction was not a bookkeeping error but intentional.

Motion was made by Ms. Cotten to decline the Applicant's approval; Mr. Yates and Mr. Powell 2nd the motion. All voted in favor.

B. Mr. Billy Etheridge/Mr. James Smith request to present before the Board.

Mr. James Smith represented Mr. Billy Etheridge of Primitive Baptist Church Cemetery of Goldsboro, N.C. Mr. Etheridge was not present due to health reasons. Mr. Smith came before the Board in reference to a Commission cease and desist letter he received to stop selling Grave Spaces. Mr. Smith presented Mr. Etheridge's deed of the Cemetery indicating it was less than an acre in size. The Church no longer existed and the Church building donated to the Historical Society of Wayne County. Mr. Smith stated a discrepancy of the name of the Cemetery as Resthaven. Mr. Smith asked for the Commission to allow plot sales. Mr. Smith is associated with a Goldsboro Funeral Home and assists Mr. Etheridge. Atty. Hicks noted that the Cemetery is no longer associated with a Church but is owned by the Funeral Home; and that the sales of plots monies need to be Trusted per the Consumer Protection Division. Despite the intent, plot sales violate the law as the Cemetery is no longer part of a Church and that accurate and timely documents are not presented. Motion was made by Mr. Fulcher to deny the Cemetery to continue plot sales. Mr. Yates 2nd the Motion; all voted in favor.

C. New Items Related to SB-443

President Stephens noted that as a result of Senate Bill-443 a policy needs to be adopted as regards Commissioner's per diem compensation and expenses reimbursement practices. President Stephens noted that Statute 93B-5 allows per diem up to \$100.00. The Commission is to determine amount of per diem, how it is measured, and the mileage rate. Mr. Frank Rose suggested that expenses be met and not use a per diem. Atty. Hicks noted that 93B-5 separates compensation and reimbursement for out of pocket expenses. Mr. Cutler made a Motion that the policy for the next year be for reimbursement of expenses for meals, gas and hotel costs as allowed per statute and not for any per diem compensation. Mr. Rose 2nd the Motion. Mr. Fulcher 2nd the Motion; all voted in favor.

Ms. Cotten made a Motion allowing the mileage rate to be based on I.R.S. rates currently at \$.55 per mile. Mr. Yates 2nd the Motion. Atty. Hicks noted the State of N.C. has rules and expectations requiring certain expenses are modest and within limits. All voted in favor.

Mr. Cutler asked if a Motion was needed to authorize Board members travel expenses, and then made a Motion to request determination from the President or Vice-President to incur expenses. Mr. Gaffney asked if the Motion could be restated that the travel request be made first to the President; with the Vice-President as an alternate. Mr. Yates 2nd the Motion. All voted in favor.

VI. OLD BUSINESS:

A. HTCC Update

Atty. John Meadows represented HTCC before the Commission. Mr. Fulcher asked Atty. Meadows to explain the HTCC situation. Atty. Meadows advised that HTCC owns two Cemeteries, Oak Ridge Memorial Park (“Oak Ridge”) and Scotland County Cemetery (“Scotland”); Ms. Gale Barney is the Owner with her husband Mr. Ken Willard acting as Operating Manager.

According to Atty. Meadows, Mr. Willard has health concerns, is homebound and cannot make decisions. Ms. Barney has tried to maintain the Cemeteries. Oak Ridge barely breaks even and supports the expenses of Scotland. Ms. Barney has tried to sell the Cemeteries. Atty. Hicks asked if Ms. Barney has tried to notify the Bond companies of the financial situation. Atty. Meadows said Ms. Barney has communicated to the Bonding Company and presented tax returns and the Bonding Company still maintains the previous amount owed.

Mr. Fulcher detailed past events: previous funds in Merchandise Trust were requested to be released by HTCC for the Bond. The Commission denied the request; HTCC sued the Commission and won. Therefore no money was in the Trust, a Bond allowed and no monies in the Corporation against the will of the Commission. The Court had upheld the request of the Cemetery owner. Atty. Hicks asked if Ms. Barney is selling PreNeed how there is no realized revenue. Atty. Meadows responded that Oak Ridge generates some revenue to maintain Scotland and to pay the staff; and does allow some profit to be placed in a PreNeed account. Atty. Hicks asked if the owner is in complete compliance with her financial reporting obligations to the Commission and all Trusting requirements of the Statute. Manager Sharon Foss stated all reports are current but that no money is trusted for merchandise. Atty. Hicks noted that that is a crime.

Mr. Yates asked Ms. Jeffers what was the status of the Trust. Ms. Jeffers responded that the Commission’s involvement began when the Administrator was Jimmy Miller and findings were reported to the Commission; she has not been actively involved in HTCC except at Commission meetings. HTCC stated total Merchandise and Services Trust and Perpetual Care is approx. \$26,400 for both Cemeteries; with \$11,700 for Oak Ridge and \$9,042 for Scotland and does not reflect past due PC or fees assessed.

Atty. Meadows responded that his position is to help HTCC avoid Chapter 7 Bankruptcy. A previous letter sent to the Commission by Atty. Meadows requested a Receivership alternative. Atty. Hicks asked how a Receivership would have efficacy and add value. Atty. Meadows stated that perhaps a Receiver or Chapter 7 Trustee might manage the process better than Ms. Barney and that she’s considered selling both properties for significantly less; Ms. Foss noted that two years of Property taxes (approx. \$8,000) plus the Trust and PC funds owed are approx. \$34,000 to a potential buyer. President Stephens asked what the internment activity has been. HTCC estimated 45 per year total. There is also liability of \$430,000 not bonded at Scotland. Mr. Gaffney asked if it wouldn’t be best for the county to step in and take possession. Atty. Hicks noted the county may consider the properties a toxic asset. Mr. Gaffney asked if the revenue from Oak Ridge is enough to reduce debt. Ms. Foss stated that small payments to the Trust have been made; Mr. Gaffney asked if it is realistic to expect within 6 mos. the debt can be reduced from \$26,000 to \$20,000; Ms. Foss felt it could be done.

President Stephens asked about acreage available; HTCC said there were 4 acres at Oak Ridge and 25 at Scotland.

Mr. Yates asked about the past due amount; Ms. Jeffers noted originally the Cemeteries had a deficit of \$2,400 for Scotland and \$6,290 for Oak Ridge and the Commission requested that the money was

paid immediately to the PC fund. HTCC had made payments to the earlier assessed PC and fees due when the Commission required payment in full. At that time, HTCC stopped making payments which built up the current fees due.

Atty. Hicks suggested that a Commissioner meet with a representative of HTCC to get all details and facts. The Commission could then act within the Statute as quickly as possible. President Stephens suggested further research and Mr. Gaffney's inclusion. Atty. Meadows and Ms. Blarney pledged full support and cooperation. Mr. Fulcher said future Merchandise and PN Sales need to be Trusted and not used for past unpaid debt. Mr. Gaffney requested going forward future PN is Trusted according to the Statute. Mr. Cutler requested a cap placed on future liability until all information is known.

<Break> 10:40 a.m.; ended 10:55 a.m.

B. Moody Cemeteries Update

President Stephens updated that Moody Cemeteries' Receiver still has a buyer yet the offer is less than the taxes owed to the I.R.S. The Receiver has requested to the I.R.S. that penalties be reduced, and petitioned the Judge to allow the Change of Control. No ruling has been made. The Receiver's intent is to allow the potential Buyers to begin operations. She is also the Receiver of the Funeral Home per Mr. Gaffney, but details not clear.

At 11:02 a.m., Mr. Yates made a Motion to go into Executive Session. Mr. Fulcher 2nd the Motion. All voted in favor.

Mr. Fulcher made a Motion to end the Executive Session at 12:39 p.m. Mr. Brown 2nd the Motion. During Executive Session Legal Counsel was presented and all were satisfied.

Mr. Fulcher made a Motion that by November 15, 2012 a Commission meeting will be called to discuss and decide on a business/organizational plan for the coming year. Mr. Brown 2nd the Motion. All voted in favor.

Mr. Fulcher made a Motion to adjourn meeting. Mr. Powell 2nd the Motion. All voted in favor.

Meeting adjourned on October 17, 2012.

The next meeting is scheduled for Wednesday, January 16, 2013 at 9:00 a.m. at The Woodoak Building, 1100 Navaho Drive, Suite 242, Raleigh, NC 27609.

PRESIDENT

DATE