



**State of North Carolina
Cemetery Commission**

January 18, 2012

9:00 A.M.

The North Carolina Cemetery Commission held a meeting on Wednesday, January 18, 2012, in The Woodoak Building, Suite 242, at 1100 Navaho Drive, Raleigh, N.C. The Commission members in attendance were Chairman Gantt Stephens, Vice-Chairman Glenn Cutler and Members Ralph Yates, Michael 'Dicky' Powell, William 'Bill' Gaffney, Leonard J. 'Boscoe' Fulcher, David Brown; Linda Cotten and Frank Rose, Jr. were unable to attend. The Commission's Auditor Brenda Jeffers and interim Program Assistant Molly Lee were present. Dept. of Justice Attorney Anne Brown provided legal representation. Numerous interested parties also attended the meeting.

The meeting was called to order by Chairman Stephens. Commission Members then observed a brief silent Moment of Reflection. Chairman Stephens presented the Agenda for approval with one addition under New Business: Item V. D. for Change of Control for Reidlawn Cemetery. Mr. Powell moved to accept the Agenda as presented. Mr. Yates seconded the Motion. All voted in favor.

Chairman Stephens introduced the Reading and Approval of the Minutes of the October 19, 2011, Commission meeting. Mr. Fulcher questioned the content of the Minutes as a summary but not an actual recap of details and what actually transpired; specifically in regards to Perpetual Care and the Change of Control for Pisgah Memorial Gardens. Vice-Chairman Cutler noted that an earlier draft be beneficial and perhaps less perfunctory. Ms. Brown stated that the minutes do not need to be exhaustive or word for word but an accurate summary; what is important is to reflect what transpired. Vice-Chairman Cutler made a Motion to approve the Minutes as presented; Mr. Powell 2nd the Motion; Mr. Fulcher opposed; all others 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. Mr. Fulcher and Mr. Gaffney recused themselves from New Business Item V. D. (Reidlawn Change of Control); Vice-Chairman Cutler recused himself from Old Business Item VI. B. (Pamlico Change of Control); Chairman Stephens and Mr. Yates recused themselves from New Business Item V. E. (Mountlawn Memorial Park and Gardens request to address).

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 office items are needed; Chairman Stephens stated that the purchase process must pass through E-Procurement. Mr. Yates asked what funds are projected for the end of the fiscal year. Ms. Jeffers noted that funds were approximately \$28,000 at the end of the last FY; and that funds have been reallocated based on need.

Mr. Fulcher inquired how the personnel and legal services are itemized on the current budget. Vice-Chairman Cutler addressed that the itemization is on target and that the Administrator salary is not part of the budget evaluation.

Chairman Stephens provided an update on the approval of an Administrator. The Governor’s office’s candidate did not meet the necessary requirements and asked for two more candidates in addition to the candidate previously submitted by the N.C. Cemetery Commission. Chairman Stephens stated in the past only a single candidate had to be presented for consideration.

Chairman Stephens continued the Administrator’s Report with the following for 2011/2012:

- Pre-Need Sales Licensure: 454
- Pre-Need Sales Licensure to date for 2012: 10
- Cemetery Licensure: 176 of the 176 are current
- Annual Care & Maintenance Report requests have been released; due March 15, 2012
- Complaints: 16 received in 2011; 10 resolved; 6 pending of which 5 rest with the complainants. 1 outstanding complaint still remains regarding Beatties Ford Memorial Park.

Ms. Jeffers, Auditor, presented to the Board and to the public the status of recent audits.

- 4 Audit had been completed since Oct. 19, 2011:
 - Mountlawn Memorial Park, Boone
 - Ashelawn Memorial Gardens, Jefferson
 - Sunrise Memorial Gardens, Salemburg
 - Cabarrus Memorial Gardens, Kannapolis

In addition, a perfunctory audit was made at Seymour Memorial Park – East & West of Goldsboro in consideration of creating a new cemetery.

In total:

Of the 176 cemeteries: 24 have been audited within 1 year; 22 within 2 years; 21 within 3 years; 27 within 4 years; 24 within 5 years; and 30 within 6 years.

III. REQUESTS FROM THE PUBLIC TO ADDRESS THE COMMISSION:

Chairman Stephens recognized Ms. Jody Rentz. Ms. Rentz informed the Commission and the public that WRAL would be airing a program that evening regarding cemeteries.

Chairman Stephens recognized Mr. Michael Rulison. Mr. Rulison chose to defer.

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

IV. REPORTS OF SPECIAL COMMITTEES:

There were none to report.

Chairman Stephens requested the appointment of a Special Committee to address how Perpetual Care is calculated on atypical items such as private mausoleums, cremation benches/pedestals and other items where property and merchandise are combined and requested the appointment of Vice-Chairman Cutler (as a Consumer representative); Mr. Fulcher (as a previous Chairman and years of experience as a commissioner) and Mr. David Brown (as a corporate Cemeterian).

V. NEW BUSINESS:

A. Change of Control – Cabarrus Memorial Gardens:

The Audit has been completed; monies have been paid per audit. New paperwork received reflected 100% bond versus 60%. Bond of \$10,000 has been documented with \$8,760 utilized. Mr. Powell inquired if the bond follows the new purchaser and a new bond has to be established under a new owner. Ms. Jeffers responded that once the Change of Control is approved, new bond documentation will reflect the new owner. Ms. Jeffers noted that the same Trust agreement with Wells Fargo will be transferred to the new owner. The conclusion resulted in that the Trust agreement would stay intact and there would not be a Bond agreement. Mr. Fulcher inquired regarding financial statement information pertaining to the potential owner's residence; the potential owner responded that as a contractor his home has increased in value.

Mr. Rodney Holbrook addressed the commission regarding his role as current Owner of Cabarrus Memorial Gardens and as the future manager. Mr. Holbrook stated his 25 years of cemetery experience. Mr. Fulcher inquired regarding Mr. Holbrook's relation to the previous cemetery owners; Mr. Holbrook noted his family's experience. Mr. Fulcher inquired about the land acreage. Mr. Holbrook stated there are currently 30 acres in use for Cabarrus Memorial Gardens; an additional 37 acres is in ownership by Mr. Holbrook.

Mr. Gaffney inquired what the name of the enterprise would be. Mr. Holbrook stated that the corporation name would remain Holbrook Enterprise.

Mr. Fulcher reviewed the documentation from Ohio Bond and Liberty Trust. The Commission requested documentation of transfer of bond and trust. The title/name on the bond and trust must be exactly the same. Ms. Jeffers responded that the Commission has a liability list that is associated with the bond.

Mr. Fulcher made a Motion to approve Change of Control. Mr. Brown 2nd the Motion. All voted in favor.

Mr. Dan Sullivan inquired about establishment of office on existing 30 acres for Office purposes. The Commission agreed and sanctioned.

B. New Cemetery application for Seymour Memorial Park East & West

Vice-Chairman Cutler inquired regarding audit review and paperwork assessment by the Commission. Ms. Jeffers responded that paperwork was in order; and a review of the site indicated other issues in order. The land is not contiguous. Pictures from Ms.

Jeffers assessment were made available. 30+ acres included 14 acres on Seymour Rd. and 16 acres on Airline Road. The distance between the acreage is 5 miles. Vice-Chairman Cutler asked about the contiguous interpretation.

The Commission noted that if an existing cemetery adds annexes it is covered by the Grandfather allowance. Mr. Powell noted historical experience regarding purchase of additional non-contiguous land when connected to an established cemetery.

Chairman Stephens requested clarification of the plats presented from Mr. David Simmons. Vice-Chairman Cutler inquired about the specific locations in Goldsboro. Mr. Simmons detailed to the Commission with regards to location of plats presented.

Motion was made by Mr. Fulcher to decline the approval of a new cemetery on the grounds that the proposed land did not meet the 30 acre statutory requirement. Mr. Powell 2nd the Motion.

Vice-Chairman Cutler requested clarification regarding contiguous land precedents Ms. Brown and Ms. Jeffers noted G.S. §65 reads that each licensed cemetery must have a minimum of 30 acres. Mr. Simmons stated that there is additional land available that can be utilized.

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Vice-Chairman Cutler asked for confirmation of the determination if Mr. Simmons presents documents supporting 30 acres and later requests the annex. Mr. Simmons responded that at a later time he may request an annex. Mr. Gaffney inquired about any future development of a Veteran's Association Cemetery in the Goldsboro area. Mr. Simmons stated he was not aware of that possibility. Vice-Chairman Cutler requested clarification about the current Motion to decline the creation of Seymour Memorial Park East & West and is it based on the non-contiguous 30 acres.

Chairman Stephens communicated to Mr. Simmons that upon presentation of 30 contiguous acres the approval of developing a new cemetery will be reconsidered.

C. Perpetual Care: Separation of PC on contracts

There remains a lack of clarity whether or not Perpetual Care (PC) should be separated/itemized on the contract. Vice-Chairman Cutler asked about a past Position Paper where no action was taken. Chairman Stephens clarified that the previous Position Paper was tied to contracts. Chairman Stephens further stated that the question at hand is how the Commission proceeds with PC requirements on contracts. Chairman Stephens addressed if the Commission request or require that PC needs to be separated and itemized out. Ms. Jeffers was asked to present the current practice and did so.

Mr. Fulcher asked what language the statute requires; and further stated that the total the consumer pays remains the same regardless of how the PC is documented. Ms. Jeffers referenced that the law states that the consumer pays for the PC of an individual grave space; and noted how the statute reads in regards to the §65-66 receipt of personal property and services.

. Mr. Fulcher questioned if separating the PC on the contract makes the audit easier. Ms. Jeffers responded that the procedure is not about the audit process but per the law. The consumer's contract may or may not state what the consumer has purchased. Each contract may not reflect what is put in PC. Mr. Yates inquired what is the reason it should not be shown in the

contract. Mr. Fulcher responded that the reason is that the consumer would pay additional monies; Mr. Yates questioned does that mean the cemetery would also receive an additional amount of money; and if a consumer purchases a time of death service and has a contract, can the cemetery add PC on at that time, if not specified on the contract with each item separated out. Chairman Stephens clarified that the Commission does not require a contract to separate line items. Ms. Jeffers noted that when an audit or discovery is noted of a PC not accurately recorded a letter is documented and presented to the cemetery.

Chairman Stephens recognized that the Commission had previously made the decision that the statute did not require for contracts to be used. Mr. Yates noted GS §65-66 contract references indicate specific requirements, i.e. services, merchandises, separations, font; and that the contracts be separated per merchandise and services per the NC Legislature. Mr. Gaffney stated that merchandise (as in lawn crypt) is not considered PC and not a service. Chairman Stephens noted that services and merchandise are not the same. Ms. Jeffers referenced a recent audit revealed a cemetery had charged consumers 10% more out of the consumer's pocket. Once identified, it was reassessed by the cemetery.

Mr. Brown made a Motion that the Commission not require Perpetual Care to be broken out on contracts; Mr. Powell 2nd the Motion. Those in favor said aye. Vice-Chairman Cutler and Mr. Yates opposed.

D. Change of control: Reidlawn Cemetery.

Mr. Gaffney and Mr. Fulcher recused.

Audit is pending. Vice-Chairman Cutler asked if paperwork is in order for Change of Control for Reidlawn Cemetery. Ms. Jeffers responded that certain questions still remain regarding Annual Care & Maintenance documentation for Reidlawn Cemetery. Vice-Chairman Cutler addressed bonds and trust issues regarding the Change of Control. Mr. Gaffney responded that those are confirmed.

Mr. Yates made a Motion that the Change of Control proceeds if audit is in order; Vice-Chairman Cutler 2nd the Motion. All voted in favor.

Next item:

Mr. Yates raised a question regarding Special Committee on PC and objective of previous issue. Chairman Stephens stated there were two separate issues – one is how PC calculated; the other is how PC is addressed in a contract.

E. Mountlawn Memorial Park & Gardens – Request to address the Commission

Chairman Stephen and Mr. Yates recused.

Vice-Chairman Cutler led the Commission per the recusal.

Mr. Klee Liles represented Mountlawn Memorial Park in Boone and noted his appreciation of Ms. Jeffers' professional courtesy. Mr. Liles requested that fees assessed for openings and closings would be given consideration for additional time to put the trust funds in place. Mr. Liles noted that majority of the \$4,755 sales that needed to be trusted and reflect the Pre-Need

O/C were not included. These occurred in 2005 and that upon Mr. Liles purchase of Mountlawn Memorial Park a trust fund was not in place. Mr. Liles stated that in his ownership of six years he would honor the remaining 13 O/C. To date, 118 O/C have been provided by Mr. Liles due to the terms of the sale. The bankruptcy circumstances at the time of purchase required Mr. Liles to accept the terms. To date, Mr. Liles indicated the previous O/C have been provided free of charge. Mr. Fulcher inquired that per the court order has the merchandise and O/C been provided. Mr. Liles stated that when the bonds fell through merchandise was not allowed for. As a result, Mountlawn Memorial Park has provided merchandise free of charge; and roughly \$20,000 has been required and has become increasingly more difficult. There is merchandise in storage; yet some contracts do not reflect the marker was ordered but paid for.

Mr. Liles requested additional time to get funds available for the audit fees assessed. Vice-Chairman Cutler noted that the Commission cannot ignore a violation of the law and penalty or fees associated.

Mr. Liles further noted the office property that was deeded to Mr. Carl Steiger was cut out of the property by Mr. Derrick Roberts. The 13-acre cemetery does not include the office and Mr. Liles had been paying a rental/lease deal with Mr. Steiger. In lieu of rent payment Mr. Liles submitted deeds to Mr. Steiger. Mr. Steiger has since presented eviction notices. At the time of the audit Mr. Liles was informed that when deeds issued PC funds are due and the PC funds are not due a second time. Mr. Liles was of the assumption that when bonds were paid the deeds utilized for the lease of the office would be recovered. His contention was with the removal of the office per Mr. Steiger, the cemetery was reduced in size. Mr. Powell addressed that a cemetery cannot be reduced in size except for burial or interments. Mr. Liles indicated that he was of the belief that when bonds were paid he would recoup rental funds.

Mr. Fulcher inquired about the property and office lines. Mr. Liles responded that property behind the cemetery was not owned by Mountlawn. Mr. Liles stated he would pay the \$1,600 within 30 days; the Commission agreed that Ms. Jeffers was correct in that PC was due when deeds are issued. Mr. Liles agreed; and stated that when Mr. Rusty Tysor was the receiver rent for the office was paid as well. At that time the office portion would have made Mr. Liles "free and clear".

Mr. Fulcher inquired if the financial note had been reduced. Mr. Liles stated no payments have been made due to consideration pending the Commission decision. Previously Mr. Yates made a Motion to have the monies put back in operation and was voted unanimously. Mr. Liles noted that the purchase of the cemetery was assumed to be with bond support; and signed an agreement that supported his understanding of repayment to the best of his abilities; given that the bonds would support that.

Mr. Liles appealed that the \$4,755 and/or the \$1,600 be reconsidered; if possible the \$1,600 be given 30 days leniency; and extreme leniency of the \$4,755. Mr. Powell noted that the legislature does not allow the Commission that ability. Mr. Liles asked if any further actions would be helpful; and noted an attorney had been obtained.

Mr. Fulcher suggested removal of the cemetery office in question. Mr. Liles stated that an office is necessary to operate the cemetery. Ms. Brown noted that the action of the Commission cannot advocate one litigant over another; and that the Commission cannot take on an advocacy role.

Mr. Powell agreed with Ms. Brown that the courts are to decide the legal issues; and it's not a matter for the Commission.

Mr. Fulcher inquired about the terms of the agreement between Mr. Steiger and Mr. Roberts. Mr. Liles responded that he was uncertain.

Vice-Chairman Cutler requested a Motion; noting a recusal reminder in regards to Chairman Stephens and Mr. Yates. No Motion was made; the terms of the audit stand.

<Break>

F. Mr. Roger Tucker, Pre-Need Sales Application; Addition to Agenda.

Mr. Mark Guettler, Alamance Memorial Park presented before the Commission details regarding Mr. Tucker. Vice-Chairman Cutler inquired about the details of the information and recent history. Mr. Yates asked about if any physical assault was involved. Mr. Tucker stated no. Mr. Yates inquired about the specifics of the violations against the restraining order; and any mental therapy requirements. Mr. Tucker indicated he has been under the care of a psychiatrist. Mr. Tucker's work history noted recent unemployment yet maintains his electric licensure. Mr. Fulcher addressed Mr. Guettler regarding responsibility of cemetery for the applicant.

Motion made to go to Executive Session by Chairman Stephens. Mr. Powell 2nd the Motion. All voted in favor. Mr. Yates made the Motion to conclude Executive Session; Vice-Chairman Cutler 2nd the Motion; all voted in favor. The Executive Session began at 10:59 a.m. and concluded at 11:07 a.m. During Executive Session, legal counsel was presented and all were satisfied.

Mr. Powell made a Motion to deny Mr. Tucker's Pre-Need Sales Application; Vice-Chairman Cutler 2nd the Motion. All voted in favor.

VI. OLD BUSINESS

A. Ms. Cammie Kemmerer, Pre-Need Sales Application, Provisional Update

Provisional status completed and documentation received.

B. Change of Control Pamlico Memorial Gardens.

Vice-Chairman Cutler recused.

Attorney Keith Hackney of Washington presented before the Commission to provide information and that current and proposed buyers were present. Chairman Stephens recognized that papers were in order – referencing the corrected Annual Care & Maintenance Report. Mr. Yates made a Motion to approve; Mr. Brown 2nd the Motion. All voted in favor.

C. HTCC PC Shortage:

There was no representation from HTCC. A letter from HTCC was presented regarding medical complications. Penalty and fees to the Commission are still required; the PC has been paid by HTCC.

Mr. Powell made a Motion to impose the penalty and present a 20-day letter regarding fees required; Mr. Yates 2nd the Motion. All voted in favor.

D. Moody Report:

Chairman Stephens presented that the receiver is in control of the two Cemeteries. There is a possible buyer for P.E. Moody Cemetery in Sylva and for Bill Moody Memorial Park in Bryson City. Chairman Stephens asked Mr. Rusty Tysor for confirmation. Mr. Tysor concurred. Vice-Chairman Cutler inquired if receiver is satisfied with result. Mr. Tysor stated that the receiver is satisfied. There is the possibility of an auction for Moody properties.

E. Additional Address:

Mr. Simmons of proposed new cemetery Seymour Memorial Park East & West requested further consideration of approval.

Mr. Fulcher made a Motion to table consideration of request pending addition of contiguous acreage. Motion was 2nd by Dicky Powell; all voted in favor. Vice-Chairman Cutler noted next action would be in April meeting regarding this matter.

Vice-Chairman Cutler made a Motion to go into Executive Session for further legal representation and discussion. All voted in favor.

Vice-Chairman Cutler made a Motion to end Executive Session. Mr. Brown seconded the Motion. All voted in favor. Executive Session began at 11:23 a.m. and ended at 11:55 a.m. During Executive Session legal counsel was presented and all were satisfied.

A Motion was made to adjourn by Chairman Stephens; seconded by Vice-Chairman Cutler. The meeting adjourned at 11:55 on January 18, 2012.

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

CHAIRPERSON

DATE