

NORTH CAROLINA CEMETERY COMMISSION

July 20, 2011

9:00 A.M.

The North Carolina Cemetery Commission held a meeting on Wednesday, July 20, 2011, in the Wood Oak Building, Suite 242, at 1100 Navaho Drive, Raleigh, NC. 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, David Brown, and Frank Rose, Jr. The Commission’s Auditor Brenda Jeffers and interim Administrative Assistant Molly Lee were present. Attorneys Faison Hicks and 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 Moment of Reflection in silence. Agenda Approval followed, Ralph Yates moved to accept the Agenda as presented. Dicky Powell seconded the motion. All voted in favor. Chairman Stephens introduced the Reading and Approval of the Minutes of the April 20, 2011 meeting.

Linda Cotten requested clarification on page 1, Section II, in reference to “Bethany Memorial Gardens in Chatham County completed part of the New Cemetery process”. Chairman Stephens stated that the process is in a holding pattern and has not moved forward to his knowledge. Glenn Cutler suggested that the capitalization of “New Cemetery” presents confusion. The words should not suggest a “New Cemetery process” but a “new cemetery process”. Furthermore, Chairman Stephens stated that what would be required is a payment of \$50,000 which has yet to be made.

Ralph Yates moved to dispense with the reading of the minutes and to accept them as presented. Linda Cotten 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. Glenn Cutler recused himself from participation in Agenda Section V, Item F regarding Pamlico Memorial Gardens.

II. ADMINISTRATOR’S REPORT:

Chairman Stephens said that he and Brenda Jeffers would give a joint report. Chairman Stephens began with an update on hiring a replacement Administrator. Two rounds of interviews have occurred and candidates are being processed through the Dept. of Commerce. The process has not been completed due to direction from the Governor’s office. Human Resources could not offer further information. Phone calls to Deputy Sec. of Commerce Carroll have not been returned to date. The Commission liaison to the Governor’s office has not returned e-mails.

Chairman Stephens informed all present that the Commission is working to hire a private attorney to assist with the Department of Justice attorneys’ efforts. The lapsed salary of the Administrator allows for this consideration. The State requires a 7-page justification form of which Chairman

Stephens completed. The attorney candidate must be a registered vendor with the state, which was done. The Commerce internal operations officer is now requiring a detailed scope of work for the attorney before approval. As a result, the hiring of an attorney resides within the Department of Commerce.

Chairman Stephens noted that the Provisional Sales License for Christopher Williams is no longer active; Mr. Williams is no longer employed at StoneMor.

Chairman Stephens recognized that in the absence of Nancy Waggoner (due to personal leave), Brenda Jeffers has single-handedly maintained the Commission office; and has done an excellent job in efficiently and thoroughly keeping the office moving. Brenda Jeffers then updated the Commission on the Audit program. Six Audits were completed since the last meeting; in sum:

- 17 Cemeteries at 6 years since last audit;
- 35 Cemeteries at 5 years since last audit;
- 21 Cemeteries at 4 years since last audit;
- 37 Cemeteries at 3 years since last audit;
- 14 Cemeteries at 2 years since last audit;
- 24 Cemeteries at 1 year since last audit;
- 28 Cemeteries audit within last year.

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

III. REQUESTS FROM THE PUBLIC TO ADDRESS THE COMMISSION:

Chairman Stephens recognized Mr. Michael Rulison who presented three topics:

- #1. In reviewing January 19, 2011 minutes, the presentation of the content could be improved to be more topics specific.
- #2. Commission members seated on the side are hard to hear; please raise their voices.
- #3. Requested permission to take a group picture for posting on his Website of the Commission members. Glenn Cutler suggested that if someone has a concern they remove themselves from the picture. Mr. Rulison could take a photograph.

Chairman Stephens recognized Ms. Jodie Rentz.

Ms. Rentz has been addressing the Commission since 2008. She presented in February 2011 the problems and concerns with Cemeteries in the Western part of the state. Some are Cemeteries in receivership and little can be done. She reiterated that complaints over past two years have increased; and that she suggested these topics be considered to be handled via statute changes. She suggested that the Commission has the ability to change statutes. Ms. Rentz noted that in July 2010 a cemetery act reform was to be considered and improve cemetery guidelines. She referenced several states adjacent to North Carolina re: perpetual care – for ex. Georgia, Tennessee. Ms. Rentz distributed photocopies of other states' statutes to the Commission. She also noted that QR codes is a new issue that will become pressing, and introduce privacy issues. She appreciated Commission member Boscoe Fulcher touring cemeteries last year and noting weed growth as a concern; and she was also appreciative of any changes to landscaping that was a result.

Chairman Stephens stated that there is a perception that the Commission has more influence than available. Specifically, State Bill 18 was less than victorious for the Commission. Ms. Rentz responded that a consumer act should be separate and can be done.

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

IV. REPORTS OF SPECIAL COMMITTEES: There were none.

V. NEW BUSINESS:

The Budget was presented. In response to any shortage, Glenn Cutler noted that the Commission funds deficit of \$44,000 was due to not collecting funds; yet the Commission didn't spend all budgeted either. Cutler recapped that \$256,000 revenues budgeted was vs. \$211,000 revenues collected; however, \$267,000 expenses budgeted was vs. \$215,000 actual expenses. This left \$52,000 in revenues despite uncollected funds. This amount was intended to be used for an Attorney etc. Discussion followed noting that the new Budget needs to reflect current figures to prepare for the new year. Although Cemetery fees are not tax based, Cutler stated that the State Budget considers all funds state dollars. Faison Hicks suggested that Dep. Secretary Carroll might be sympathetic to inquiries.

A. Pre-Need Sales Counselor License

Glenn Cutler inquired as to the need for this item to be brought before the Commission. Faison Hicks noted that it is when the Commission staff discovers a concern about an applicant – most often due to a prior criminal record.

Emma Stephens of Pinelawn Memorial Park presented two applicants for the Commission's consideration:

Applicant Anita Davis addressed the Commission:

Resident of Kinston, N.C. requesting the opportunity to work. Charges against her include several assaults. Faison Hicks asked for clarification of records: driving with expired registration card; speeding; D.W.I.; driving with license revoked; possession of marijuana; two misdemeanor probation violations. Ms. Davis responded that two of the charges were dropped. Boscoe Fulcher made a Motion to deny applicant; Motion was seconded by 'Dicky' Powell. There was no discussion. Ms. Emma Stephens asked to address the Commission to vouch for Ms. Davis. Glenn Cutler asked for clarification re: provisional options. Linda Cotten stated that a Motion was required re: Cutler's question in order to proceed to original Motion. Original Motion was voted on. All voted in favor with Cutler opposing. Chairman Stephens instructed Ms. Davis that she will receive documentation from the Commission office regarding her right to appeal.

B. Applicant Cammie Kemmerer addressed the Commission:

Details before the Commission were ten years ago. She noted she has two children and a loving father. She never missed court required appointments, or failed drug tests. She is the sole provider and requested consideration. Faison Hicks asked re: specific criminal record. Ms. Kemmerer served 3 ½ yrs. in prison for possession of methamphetamine in Georgia. 'Dicky' Powell made a Motion for a provisional license for six months. Ralph Yates seconded. All voted in favor.

C. Gardens of Gethsemane:

Mr. Chester Clack of Gardens of Gethsemane, Rocky Mount, N.C. addressed the Commission. He stated he had follow up questions and explanations to present; and as he is not involved in the day to day operations he deferred to Ms. Elsie Ricks for details. Ms. Ricks

detailed the Audit history of 2003 – 2006 with NCCC Auditor Brenda Jeffers; and stated she was unaware of the 48 mos. penalty for Perpetual Care. Faison Hicks asked if the PC funds were actually entrusted. Ms. Ricks stated they were not. Chairman Stephens noted that Gardens of Gethsemane was late paying PC funds and then overpaid PC. He presented to Mr. Clack the option of the overpayment remaining in PC; yet penalty would not be levied. Linda Cotten asked if the PC was not collected from customers. Ms. Ricks stated that they did not set it up. Cotten questioned if the penalty was being assessed against PC recent payments. Glenn Cutler noted that a recalculation would be necessary to assess recent PC fund activity. Cutler made a Motion to apply the PC overpayment (credit) currently available against existing penalties and said credit to remain in the PC, and that whatever the difference is would still remain as a penalty and be owed to the Commission. Cotten seconded the Motion. All voted in favor. Mr. Clack accepted this option.

D. Wake Memorial Park Extension:

Chairman Stephens summarized that Wake Memorial Park has a pre-construction mausoleum project underway and requested an extension. The Cemetery has been permitted an extension until December 31, 2011. Chairman Stephens would like to table this pending additional information from the Cemetery and allow Wake Memorial Park to present to the Commission in October, 2011. Glenn Cutler made a Motion to table. Dicky Powell seconded the Motion. All voted in favor.

E. Beatties Ford Memorial Park:

Chairman Stephens recognized William and Naomi Linder. The Linders requested to address the Commission regarding an ongoing complaint. Mr. Linder referenced a sale made to them by Beatties Ford Memorial Park (BFMP) in June, 1998 for two graves and two openings/closings. BFMP contacted the Linders stating they voided the Pre-need portion of the contract as they did not offer that service. BFMP refunded monies to the Linders for that portion. The Linders preferred to seek a new contract with another cemetery. In addition, Mr. Linder requested that a new contract with an alternate cemetery not require any additional monies from the Linders. There was no representation from BFMP. Mr. Linder declined to consider a corrected offer from BFMP.

Faison Hicks stated that although the Commission has a substantial responsibility to assist and protect consumers but also has limited tools to remedy such situations. He further strongly suggested that the Linders seek assistance from the State Attorney General's Consumer Protection Division. In referencing BFMP response documents, the BFMP attorney has requested that the Linders stop publicly saying negative things about BFMP. Mr. Hicks noted that the Commission's next step would involve further litigation, as in a class action suit and perhaps there are greater more pressing issues for the Commission to engage in. With the limited resources within the Commission, there is one other option: preparing a letter to BFMP declaring that further litigation will be considered by the Commission.

Chairman Stephens informed Mr. Linder that if he doesn't want to consider resolving the contract within BFMP a letter from the Commission may not be productive.

It was noted that Nancy Waggoner released a letter to BFMP requesting a 20 day reply to the Linders' complaint; BFMP and their attorney responded. Brenda Jeffers noted that the

openings/closings in dispute were never sold or secured with a trust fund by BFMP. Hicks suggested that the Commission make a formal inquiry about the scope of the BFMP situation. Frank Rose made the Motion that Hicks draft a letter on the behalf of the Commission requesting BFMP to address the Commission at the October 19th meeting. David Brown seconded the Motion. All voted in favor.

F. Change of Control for Pamlico:

(Glenn Cutler reiterated his recusal). No representation from Pamlico Gardens present at meeting. Boscoe Fulcher moved to table discussion; Frank Rose seconded. All voted in favor.

G. Installation Fees on Contracts:

Objective is to review if some cemeteries are charging for installation of vaults but did not escrow funds. Should all cemeteries be specifying installation cost and should that be held in trust? Audits have revealed that in some instances installation fees of merchandise are going into operation expenses instead of trusted merchandise or services accounts. Brenda Jeffers noted that the documents that detail the premises were created by the previous Administrator, and that she was not in the position of defending the content. Jeffers declared that the contracts do not note the trust allocations according to the law as written and suggested that Audits need reflect clear support in either direction. Glenn Cutler made a Motion to adopt staff recommendation as presented that notification be released to all cemeteries. Ralph Yates seconded the Motion. Boscoe Fulcher noted the vague interpretation of the “installation” component of the current statute. Vote on the Motion resulted in a tie. Noting that this has only occurred in one instance over 30 years, Chairman Stephens voted no to overrule the tie and deny Motion.

H. Requirement of Contracts:

The Commission discussed viability of enforcement of contract language and specific requirements. Brenda Jeffers noted that in the Audit process formal contracts are not always used by cemeteries; instruments in writing are considered a contract. Glenn Cutler made a Motion to take no action at this time. Seconded by Linda Cotten. All voted in favor.

I. Letters of reference requirement for Sales Licenses

Chairman Stephens requested the Commission consider the requirement for letters of reference. Letters of reference are not part of the Statute however the Commission can request letters if desired. Bill Gaffney made the Motion to remove letters of reference as a requirement. David Brown seconded. Voted in favor with Linda Cotten opposing.

VI. OLD BUSINESS

A. HTCC PC Shortage:

No representative present for further discussion.

B. Oakwood Memorial Park:

Per Chairman Stephens, Oakwood has paid their PC. So issue is finalized.

C. Moody Cemeteries status

Chairman Stephens informed that the issue with Moody Cemeteries is still with the Court of Appeals. There is the possibility for a development in November, per the plaintiff.

Frank Rose made a Motion to go into Executive Session for further legal representation and discussion. Seconded by Ralph Yates. All voted in favor. Dicky Powell made a Motion to end Executive Session. Boscoe Fulcher seconded. All voted in favor. Executive Session began at 11:23 a.m. and ended at 11:53 a.m. During Executive Session, legal counsel was presented and all were satisfied.

D. LandQuest Update

E. LQ Restland/Chapel Hill Split

F. LQ Trustee Recommendation

Boscoe Fulcher made a Motion for LandQuest to voluntarily resign as trustee and transfer funds to Pinehurst Funds, LLC. Seconded by Dicky Powell. Voted in favor with Glenn Cutler opposing.

VII. ELECTION OF OFFICERS

Boscoe Fulcher made a Motion to nominate Gantt Stephens as Chairman. Seconded by Linda Cotten. All voted in favor.

Frank Rose made a Motion to nominate Glenn Cutler as Vice Chairman. Chairman Stephens seconded. All voted in favor.

David Brown made a Motion to adjourn. Frank Rose seconded. All voted in favor.

The meeting adjourned at 11:54 a.m. on July 20, 2011.

The next meeting is scheduled for Wednesday, October 19, 2011 at 9:00 a.m.

CHAIRPERSON

DATE