

State of North Carolina  
Cemetery Commission Meeting Minutes  
January 20, 2016

The North Carolina Cemetery Commission held a meeting on Wednesday, January 20, 2016 in The Hilton North Raleigh Midtown located at 3415 Wake Forest Rd, Raleigh, NC 27609. Those Members in attendance were President Gantt Stephens, Vice-President Glenn Cutler, Treasurer William "Bill" Gaffney, Commissioners Angie Thomas-Daoud, Brad Bailey, Heather Boshier, David Brown, Linda Cotten and John "Winn" Graham. Members of the public were also in attendance.

The meeting was called to order by President Stephens who called for a Moment of Reflection. First item was Agenda approval. Mr. Cutler and Mr. Stephens made two revisions to the proposed agenda. Mrs. Cotten moved to approve the amended Agenda, Mr. Graham seconded the motion, all voted in favor to accept the amended agenda.

Next up for approval were the minutes from the October 21, 2015 meeting. Mr. Cutler moved to approve the minutes, Mr. Brown seconded 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. Stephens then asked if there were any conflicts of interest. Mr. Brown, Mr. Gaffney and Mr. Graham all noted their recusals from specific items on the agenda. These recusals are indicated below with the related agenda items below.

**II. PRESIDENT'S REPORT:**

Mr. Stephens asked if there were any questions related to the financial reports and noted that the CPA for the Commission was also available in the gallery to answer any questions. There were none.

Mr. Stephens reported that Mountain View cemetery in Black Mountain is officially in the control of the new owner. This change of control was approved at the last meeting and the transaction has closed.

Mr. Stephens moved on to inspections reporting that 11 inspections had been completed since the last meeting. There have been nine complaints since the last meeting. All nine of those have been resolved or are within the 20 day response period.

Mr. Stephens reported that a new fillable pdf version of the Annual Report had been created and was now available on the Commission's website for download. Paper copies of the Annual Report will still be available upon request. A new form for the Annual Trustee's Report has also been created to comply with NC General Statute 65-65. Copies of the new Annual Trustee Report will be distributed to all trustees for completion.

There are about ten cemeteries that are late submitting their monthly reports. They have been notified and penalties have been levied. If these cemeteries remain late at the time of the April meeting suspension of their cemetery license will be considered. Ms. Cotten asked if all the 2014 Annual Reports had been received. Mr. Nathan Morris answered that one remained outstanding for Bowman Rector Cemetery in Asheville. Mr. Stephens noted that this cemetery has been reported to be sold out by its owners and that no additional activity would occur. The

owners do not intend to renew the cemetery license. The Commission has advised the owners of Bowman Rector Cemetery that if any pre-need activity occurred at that cemetery it would be in violation of state law. (Upon review after the meeting the following correction should be noted: Bowman Rector had submitted its 2014 Annual Report on 10/6/2015. Yadkin Memorial Gardens had not submitted its 2014 Annual Report as of the January, 2016 meeting.)

Mr. Cutler added that letters have been sent out to all cemeteries notifying them of the new fillable reports available on the Commission's website. Mr. Cutler reported that the Commission office has moved from suite 107 to 207. The Commission's phone service was interrupted during this transition for several days. Temporary telephone numbers were put in place and these numbers have been posted on the Commission's website during this interruption. Mr. Cutler noted that the new office suite was smaller than the previous suite however the new lease was lower as well.

Mr. Stephens addressed the members and gallery that any feedback on the new pdf forms would be welcomed and appreciated.

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

There were no requests to address the Commission

### **IV. NEW BUSINESS:**

- A.** Change of Control for Harnett Devotional Gardens. Mr. Winn Graham represented the seller and was recused from this agenda item. Mr. Lenual Primus represented the seller. Ms. Cotten asked about a possible \$1600 deficiency in the opening closing trust fund. Mr. Morris noted that there was a deficiency in the opening closing trust fund however there was a surplus in the merchandise trust fund. Mr. Cutler noted that the Change of Control inspection had been performed but not completed and that the inspection would reveal any trust deficiency. Any deficiency would be required to be corrected before the change of control could be approved. Ms. Cotten moved to approve the change of control pending the trust funds being reviewed and made whole. Mr. Cutler seconded. Mr. Cutler asked Mr. Primus to tell the Commission a little about himself. Mr. Primus gave his history in the cemetery profession. The President called for a vote. All voted in favor.
- B.** Pineshurst Funds-Request to change Pre Construction Trust Agreement. Mr. Gaffney was recused from this agenda item. Mr. Gaffney stated that this desired change to the trust agreement was due to a change in the statute that allowed for distributions from the Pre Construction trust as the mausoleum construction progressed. Mr. Cutler voted to approve the change. Mr. Brown seconded. All voted in favor.
- C.** Gethsemane Memorial Gardens-Charlotte Inspection Findings. A summary document of issues was distributed among the Commissioners and included in the meeting packet. Failure to respond to 20 day letters, late submittal of monthly and annual reports, failure to make deposits to the PC and Pre need trusts were among the issues. The inspection that had occurred to date was a preliminary one due to absence of records available to perform a complete inspection. Mr. John Gouch, Jr., manager of Gethsemane, addressed the Commission and stated that using his calculations the PC shortage was \$95,000 and the Merchandise shortage was \$17,000. Mr. Gouch proposed three options to the Commission members to resolve the issues at Gethsemane. An extensive discussion ensued. Mr. Boscoe Fulcher

spoke from the perspective of a receiver for the NCCC and offered to visit Gethsemane, assess the situation and report back to the Commission at his own expense. Dr. John Gouch, Sr. requested to speak and requested he be allowed him 60 days to cure all the issues at Gethsemane. Mr. Cotten moved to allow Dr. Gouch the requested 60 days and to allow Mr. Fulcher and the Commission's inspector to identify the total sum of issues at Gethsemane. The report from the Commission's inspector should be completed by March 20<sup>th</sup>. The cost and expenses of the Commission's inspector will be borne by Gethsemane. Gethsemane is to make its proposal for remedy to the Commission at its April meeting. Mr. Gaffney seconded. All voted in favor.

(Break)

## **V. OLD BUSINESS:**

- A.** Update on Ashelawn Gardens of Memory. Mr. Fulcher provided an update on his receivership of Ashelawn. Mr. Fulcher stated that \$16,000 of pre need liability has been delivered bringing the total liability down to \$90,000. Rose Cobb continues to operate the cemetery on a day to day basis. Mr. Fulcher feels that things are very tight financially at Ashelawn. Mr. Fulcher continues to seek a permanent solution to Ashelawn.
- B.** Change of Control Rocky Mount Memorial Park. Mr. Brown was recused from this agenda item. The buyers of Rocky Mount requested an extension to the 60 day deadline to complete the change of control due to health issues of the buyer. Mr. Cutler moved to extend the deadline to March 1<sup>st</sup>. Ms. Cotten seconded. All voted in favor.
- C.** Pending Legal Matters update. Mr. Cutler moved to enter executive session. Ms. Cotten seconded. Executive session began at 9:54AM and ended at 10:19AM. Upon coming out of executive session Mr. Bailey made the following motion: That the Commission and Landquest entered into a Settlement Agreement on or about March 8, 2013 to resolve Landquest's apparent improper misappropriation of trust funds and other related improper and/or illegal action, as described in the Commission's draft complaint, which was prepared but not filed. Although the Commission executed the Settlement Agreement and has complied with its obligations under the Settlement Agreement, Landquest has not done so, including but not limited to, because Landquest has not paid the Commission its actual costs and expenses, including attorney's fees up to \$40,000 as required by the Settlement Agreement. Although the Commission has provided Landquest invoices evidencing actual attorney's fees in excess of \$40,000, Landquest refuses to pay the required amount. The Commission has not received the benefit of its bargain. Since Landquest has refused to comply with the Settlement Agreement, the Commission's concerns, disputes and claims as outlined in the draft lawsuit with Landquest have not been resolved. Although Landquest repaid approximately the principal amount apparently misappropriated from the trust accounts, it did not repay the interest earned that was apparently misappropriated by Landquest and/or its principals. Therefore, in order to protect the public and Commission, I move to authorize the Commission's counsel David Ferrell to draft a complaint based on the prior complaint drafted but not filed, modify it as necessary, and file it to protect the public and ensure compliance with the NC Cemetery Act. Mr. Graham seconded. Mr. Cutler opposed. All others voted in favor.

## **VII. REMINDER OF NEXT MEETING:**

Next meeting for the Commission will be April 20, 2016 at this location unless

advised otherwise..

Mr. Graham moved to adjourn. Mr. Gaffney seconded. All voted in favor. Meeting adjourned at 10:23 AM.