

Cemetery Board Minutes
May 12, 2020
Via WebEx

BOARD MEMBERS PRESENT:

Mark Pattison, Department of State, Chair
Jill Faber, Office of the New York Attorney General
Thomas Fuller, Department of Health

OTHER ATTENDEES

Joseph Ambrose, Division of Cemeteries	Vince Gimondo, Division of Cemeteries
Andrew Hickey, Division of Cemeteries	Kerry McGovern, Division of Cemeteries
Lewis Polishook, Division of Cemeteries	Kathleen Richardson, Division of Cemeteries
Michael Seelman, Division of Cemeteries	Brendon Stanton, Division of Cemeteries
Alicia Young, Division of Cemeteries	Antonio Milillo, Dep't of State, Counsel
Robert Vanderbles, Dep't of State, Counsel	Joshua Beams, Dep't of State
Mercedes Padilla, Dep't of State	John Fatato, Dep't of State

GUESTS:

David Fleming, NYSAC, Featherstonhaugh, Wiley & Clyne
Mark Cuthbertson, Law Offices of Mark Cuthbertson
David Flynn, Oxford Hills Crematory
Thomas Flynn, Oxford Hills Crematory
Bruce Geiger, Bruce Geiger & Assocs. for Pinelawn Memorial Park
Brian Groblewski, Pinelawn Memorial Park
Hemish Kapadia, CPA for Oxford Hills Crematory
Ralph Schoene, Esq., for Oxford Hills Crematory
Philip Tassi, Ferncliff Cemetery

Opening Remarks

Mr. Pattison gave an overview of how the meeting would proceed via WebEx.

Mr. Milillo explained that the meeting is operating pursuant to Executive Order 202.1, which suspends the requirement to appear in person. The notice was posted in accordance with law and notice, agenda, and materials were posted on the web.

20-05-A-25 Minutes of Previous Meeting

Two separate motions were made, seconded, and unanimously adopted approving as submitted, respectively, the minutes of the Board's April 8, 2020 special meeting and April 14, 2020 regular monthly meeting, without change.

20-05-B-26 Legislation and Regulations

1. Pending Legislation

Mr. Milillo provided the legislative report. He reported no change on any bills previously introduced and reported on the introduction of a new bill, A.0366/ S.8276, introduced (respectively) on May 4 and May 1, increasing the maximum Social Services burial/ cremation benefit and providing that funds could be paid straight to the provider rather than having the person making final arrangements paying out of pocket and obtain reimbursement.

2. Rules and Regulations

Mr. Milillo reported that the Board's emergency regulation had been filed with the Division of Administrative Rules on May 1 and that he was working on legal documents required to be filed within 30 days of the adoption of the emergency rule.

Mr. Polishook reported that there would be a call with NYSAC later this week to discuss the Department's bullet points for a regulation concerning abandonment.

20-05-C-27 Division Report

Mr. Polishook thanked cemetery grounds workers and office staff for their efforts during this pandemic and noted that the New York Post had published a nice story about a gravedigger's efforts.

Mr. Polishook reports that the Division is reviewing data concerning burials and cremations downstate. Based on an initial review of that data, many, but not all, cemeteries seem to be seeing reduced burial volume and are scheduling burials less far out. The picture concerning cremations is less clear. There may be some improvement but crematories are still scheduling cases out as much as 30 days and the number of remains awaiting cremation is still significant.

Finally, Mr. Polishook noted that the likely reopening of three regions of the state this week could affect cemetery operations in those regions

Annual report update

The Division has received 1,033 annual reports so far this year. 334 of those annual reports received were filed online, representing just over 32% of all reports filed.

20-05-D-28 Vandalism, Abandonment and Monument Repair or Removal Fund Report

So far in the 2020 calendar year the Division has collected \$406,879 in vandalism funds. Assessment collections total \$232,794.

In the 2020 fiscal year, beginning April 1, 2020, vandalism funds collected total \$22,547, and assessment funds \$15,962.

The Board has not approved any new vandalism fund applications in Fiscal year 2020-21.

The Board discussed three vandalism fund applications all for restoration of dangerous monuments. Those applications are

<u>No.</u>	<u>Name</u>	<u>Amount Requested</u>
13-034	Ouleout Cemetery	\$22,413
25-009	Glendale Cemetery	\$19,168
35-035	Seneca Cemetery	\$41,230.30

Mr. Milillo noted that one of the two bidders on the work for Ouleout Cemetery had withdrawn its bid, but there were still two bids originally submitted. He also noted that Glendale Cemetery, despite diligent efforts, had only received one bid, but that the Board's regulations require two bids. He suggested that amendment of the requirement be considered.

Motion was made, seconded, and unanimously adopted approving all three applications in the sums requested, subject to availability of funds.

20-05-E-29 Woodlawn Cemetery (Canandaigua) (35-004) Columbarium Application

Mr. Seelman presented this application. Woodlawn Cemetery in Canandaigua seeks approval of Ballston Spa Cemetery wishes to install four columbarium units. It has three existing columbarium units that have sold well. The cost of the project is estimated at \$148,906.48, all of which will come from the Cemetery's general fund. The cemetery projects a positive rate of return.

Mr. Milillo questioned the correct amount of the cemetery's general fund, given that the Division reported this fund was \$616,040.00 as of 12/31/2019 but only \$230,551.08 as of 12/31/2018. Ms. DeYoung explained the increase in general funds came from an approved application to use net appreciation. This addressed counsel's concern that the columbarium project would use up much of the general fund.

Motion made, seconded, and unanimously adopted approving the application.

20-05-F-30 Oxford Hills Crematory (36-042) New Retort

Oxford Hills Crematory, a grandfathered standalone affiliated with the Flynn Funeral Home, wishes to replace a retort. The retort has not been used since 2009. The demand for cremation as a result of the Covid-19 pandemic has taxed the crematory's two operating retorts and it is struggling to keep up. The cost of the replacement retort is approximately \$111,000 and will be financed via a loan.

Mr. Polishook noted that, given the need for cremation capacity to address the current pandemic, it sees the need for a replacement retort but is unable to recommend approval because of an unresolved inquiry by the Office of the New York Attorney General (OAG) that resulted from a Cemetery Board order and referral in 2011.

Mr. Milillo questioned whether, before 2009, the crematory operated three retorts, or used the third retort only for backup. Tommy Flynn, a crematory director, noted that in the 1990s the crematory had done significantly more cases but had rotated use of all three of its retorts to extend their life until 2009, when the cost of repairing this retort became excessive and its continued use became unsafe.

Mr. Milillo also noted that he was concerned about compliance with the issues raised in the Cemetery Board's referral to the OAG and that there was also an unresolved recommendation of a financial penalty against the crematory for non-compliance before 2011. Ralph Schoene,

counsel to the crematory, indicated that the issues had been resolved, that there was a letter agreement addressing all points, and that the crematory was prepared to pay \$12,000 (an agreed amount) to resolve the financial penalty, \$6,000 on settlement and \$6,000 45 days later. Mr. Milillo indicated that there were additional legal issues that needed to be discussed in executive session.

Messrs. Dave and Tommy Flynn both expressed the need for additional cremation capacity at the crematory.

The matter was put over to executive session for discussion of the legal issues.

Public Comment

David Fleming of the New York State Association of Cemeteries addressed the Cemetery Board, thanking the Division for its assistance in dealing with the coronavirus pandemic. Mr. Fleming also indicated that several crematories had received remains from downstate in poor condition, in containers without wood bottoms, and in soiled or leaking containers, and that one crematory had suffered an explosion in a retort because a battery pack was not removed.

Executive Session

Motion was made, seconded, and unanimously adopted to go into executive session.

Motion was made, seconded, and unanimously adopted to exit executive session.

After executive session, the Board agreed to table the application of Oxford Hills Crematory so that the following matters can be addressed:

- (1) Resolve the issue of whether or not the application for a new retort is consistent with the capacity the crematory had at the time it was grandfathered; Division will review its records and if necessary reach out to Oxford Hills for documentation of what the status of the third retort was at the time of grandfathering;
- (2) The board will expedite its review of the impact of the application on the law in terms of increasing capacity; and
- (3) The board authorizes its counsel to work with the applicant's counsel to come to an agreement on settlement discussions regarding past referrals to the Office of Attorney General including fines in expedited fashion.

The application will be brought back to the board either at a special meeting or the June 9 regular meeting.

Adjournment

Motion was made, seconded, and unanimously adopted adjourning the meeting.

The next meeting is scheduled for June 9, 2020, at 10:30 a.m.; Mr. Pattison indicated that this meeting is likely to occur via Webex.